farmers, and the agency's experience in lending to farms of extremely large size is not a happy one.

TRIBUTE TO STATE SENATOR LES KLEVEN

Mr. PRESSLER. Mr. President, last week South Dakota lost a great public servant, State Senator Les Kleven. Les lost a brave and courageous fight against cancer. His leadership and innovation will be greatly missed.

A native of North Dakota, Les moved to Sturgis, SD, in 1962 to start KBHB radio station. Under his direction and leadership, KBHB grew to become one of the premier radio stations in western South Dakota. To this day, it remains an important source of news, information, and entertainment to thousands of listeners in western South Dakota and nearby States. Over the years, Les often had his station broadcast live the meetings I held in the Sturgis area on agricultural disasters, the farm bill, and other important issues. I always appreciated his valuable advice on issues important to the South Dakota broadcast and radio industry, as well as many other issues.

Les was a past president of the South Dakota Broadcasters Association. His love for South Dakota and service to the State did not begin and end with radio. He served three terms in the South Dakota State House of Representatives in the 1970's. In 1992, Les was elected to the South Dakota State Senate. Of course, much as he did on the air waves, he significantly affected South Dakota political currents. Throughout his career as a member of the South Dakota State Legislature, Les distinguished himself as a leader and fiscal conservative. His constituents and his colleagues knew him to be independent, straightforward, and fair. Indeed, his contributions to the State of South Dakota will long be remembered.

Most important, Les was a family man. Though all who knew Les held him in high respect and admiration, none could be more proud of him than his mother Alice, his lovely wife, Marguerite, and his two children, Andy and Jazal.

Les Kleven's honesty and integrity will be greatly missed. His accomplishments as a radio innovator, a State legislator, and a proud father provide an inspiring example of the South Dakota spirit—a man who gave to his profession, his community, his State, and to his family. Les was a family man, a pillar of the community, and a good friend.

We will all miss him.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

ARMENIAN GENOCIDE

• Mr. LAUTENBERG. Mr. President, I rise today to commemorate the 80th anniversary of the Armenian genocide.

The Armenian genocide marks an ignominious chapter in world history. It reminds us how low unchecked hatred can drag the human spirit, unleashing cruelty and brutality. As we memorialize the Armenians who died needlessly in the genocide, we must resolve never to forget how they suffered at the hands of the Ottoman Empire.

Nor can we forget how the Armenian people continue suffering today as the country struggles to cope with the devastating impact of Azerbaijan's blockade. The blockade has put a stranglehold on the Armenian people. Necessities—like food and heating oil—are in scarce supply. Such shortages endanger the lives of many in Armenia, especially during the harsh winter months.

While humanitarian assistance provided by the United States can help alleviate the suffering, it cannot lift the blockade. Only the Government of Azerbaijan can do that. That is why we must continue to apply pressure. We should not provide United States foreign assistance to Azerbaijan as long as it maintains its blockade of Armenia. The blockade should be lifted without delay.

Mr. President, I hope my colleagues will join me in commemorating this anniversary. It is important that we remember the atrocities of the past, and support efforts to allow the Armenian people an opportunity to live in peace in the future.•

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of H.R. 956, which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes.

The Senate proceeded to consider the bill.

Mr. PRESSLER. Mr. President, as the Senate begins its debate of H.R. 956 I wish, as chairman of the Senate Committee on Commerce, Science, and Transportation, to discuss the provisions of S. 565—the Product Liability Fairness Act—as reported by our committee. S. 565 as reported will be offered as a substitute for H.R. 956, therefore I shall discuss the Senate bill as we begin this debate. Earlier this month, the Commerce Committee conducted extensive hearings over 2 days and then voted 13 to 6 to report the legislation with an amendment on April 6. S. 565 as reported is a fair and balanced bill.

Mr. President, as we begin I cannot help but point out: Here we are again—product liability reform being debated by the Senate of the United States. Do not get me wrong. As chairman of the Commerce Committee, I am proud to bring S. 565 to the floor. So why do I say, "Here we are again"? It is not that I do not think this is an important issue. Far from it. This bill is vital. It is vital not just to America's businesses but also to our Nation's workers and consumers. It also is vital to the victims of injuries caused by products.

THE HISTORY

It is just that we have come this far before. Indeed, since 1981, the Senate Committee on Commerce, Science, and Transportation has held 23 days of hearings on product liability reform. S. 565 marks the seventh piece of product liability reform legislation reported by the Commerce Committee over that 15-year period. It is my fervent hope this time we can achieve meaningful results.

Mr. President, I see no reason why we cannot. This year's bill is balanced and reasoned. I consider it superior to legislation debated in the last Congress in that it does not include a provision to disallow punitive damage awards in lawsuits for certain manufacturers receiving pre-market certification from the Federal Aviation Administration.

As my colleagues know, that section of last year's bill made this Senator extremely uncomfortable, so uncomfortable as to put me in the equally uncomfortable position of voting against cloture on legislation addressing other legal reforms I have supported and voted for many times over the years.

I personally have been involved in the product liability reform movement since the early 1980's. I am proud of that. I was an original cosponsor of the Risk Retention Act that became law in 1981 and provided for liability insurance pools—or risk retention groups—for businesses. Throughout the 1980's I cosponsored numerous uniform product liability bills with Senators Kasten, Danforth, and GORTON. The early bills were supported strongly by the business community but lacked bipartisan support in Congress. I chaired Small Business Committee field hearings in Sioux Falls and Rapid City, SD, on this issue in 1985.

I commend the efforts to Senators GORTON and ROCKEFELLER with regard to S. 565. They are, indeed, tireless advocates for meaningful reform of America's product liability system. They demonstrated serious leadership in the committee on this issue and the bill reflects their commitment.

KEY PROVISIONS

I would now like to take a few minutes to briefly highlight some of the key provisions of S. 565 as reported.

ALTERNATIVE DISPUTE RESOLUTION

This legislation provides either party in a product liability suit may offer to participate in a voluntary, nonbinding state-approved alternative dispute resolution [ADR] procedure. If a defendant in a products suit is asked to participate in ADR and refuses and later a

judgement is entered for the plaintiff, the defendant will be required to pay the claimants reasonable legal fees and costs if the court determines the defendant acted unreasonably or not in good faith in refusing to participate in ADR. There is no penalty for claimants who refuse to participate in ADR.

The bill's ADR provisions should be particularly helpful to those who experience injuries the system considers minor—generally speaking, injuries that amount to less than $100,000. These individuals often have difficulty finding a lawyer to take their case on a contingency basis due to the expense of preparing for trial. The section also puts claimants squarely in control of whether to choose ADR procedures as a quicker and cheaper mechanism of handling their claim.

PUNITIVE DAMAGES

Although you would not know it to listen to those on the other side of the issue, S. 565 does not remove a plaintiff's ability to recover punitive damages. It does, however, make their imposition more rational.

Punitive damages are not designed to compensate those who have been injured. They are punishment, punishment of defendants found to have injured others in a conscious manner. They are used much as fines are used in the criminal system. However, there are two big differences. First, unlike the criminal law system, there are virtually no standards for when punitive damages may be awarded. Second, when they are awarded, there are no clear guidelines as to their amount.

Under this bill, punitive damages can be awarded if a plaintiff proves, by ''clear and convincing evidence'' that his or her injuries were caused by the defendant's ''conscious, flagrant indifference to the safety of others.'' Thus, S. 565 provides a meaningful standard for when punitives may be awarded.

In addition, the legislation before us allows punitive damages to be awarded in the amount of 3 times economic damages or $250,000, whichever is greater. This provision provides a measure of certainty as to the amount of punishment a wrongdoer will suffer.

STATUTES OF LIMITATIONS AND REPOSE

The bill also establishes a statute of limitations of 2 years from when the claimant discovered or reasonably should have discovered both the harm and its cause. This is another example of how this legislation will benefit those injured by products. Under current law, some States establish the ''time of injury'' as the point at which the time for bringing a claim begins to run. Often this is not a problem. However, where the harm has a latency period or becomes manifest only after repeated exposure to the product, the claimant may not know immediately he or she has been harmed or the cause of that harm.

S. 565 will reduce the number of plaintiffs who, having otherwise meritorious claims, would be denied justice solely on the basis of the statute of limitations in the State in which they choose to file a claim. The bill also establishes a statute of repose of 20 years for durable goods used in the workplace. After such goods have been in the workplace 20 years or longer, no suit may be filed for injuries related to their use unless the defendant makes an express warranty longer than 20 years.

The need for a Federal statute of repose was presented well by one of my fellow South Dakotans, Art Kroetch, chairman of Scotchman Industries, Inc., a small manufacturer of machine tools located in Philip, SD. Earlier this month, he told the committee how vital product liability reform is to the ability of American manufacturers to compete in the global marketplace. Art told me that under the current patchwork of liability laws, his company pays twice as much for product liability insurance as it does for research and development.

JOINT AND SEVERAL LIABILITY

The doctrine of joint and several liability provides that any defendant in a lawsuit may be required to pay all damages, regardless of the degree of fault or responsibility. What are the consequences? One person is held responsible for the conduct of another. True wrongdoers are not always punished. Indeed, the average citizen ultimately pays the claim—either through higher prices, loss of service, or higher insurance premiums.

S. 565 would abolish joint liability for noneconomic damages such as pain and suffering and emotional distress. Thus, each defendant would be liable for noneconomic damages only in proportion to the defendant's share of responsibility for the harm. This section goes a long way in correcting many of the inequities of the joint and several liability doctrine and is essential to any tort reform effort. This section would provide some relief. It is an issue in which I have been particularly interested for many years.

In 1986, I attempted to strengthen proposed product liability legislation, S. 2760, with an amendment regarding joint and several liability. My amendment, which passed the Commerce Committee, would have curtailed the joint and several liability abuse that is all too common in our current system. The amendment abrogated joint and several liability for noneconomic damages in product liability cases. As such, defendants would be held liable based only on their degree of fault or responsibility, not the deepness of their pocket. Unfortunately, that bill was never enacted. I am proud the concept underlying my amendment a decade ago is part of the bill before us today.

ALCOHOL AND DRUGS

S. 565 also provides a defendant will have an absolute defense if the plaintiff was under the influence of intoxicating alcohol or illegal drugs and as a result of this influence was more than 50 percent responsible for his or her own injuries.

I think across the country this is something that is much misunderstood. We see the use of alcohol or drugs by a person operating equipment causing that person to be injured. In these cases, the manufacturer can be held liable, which seems ridiculous. This bill will correct that and will put greater responsibility on everybody to avoid those situations.

BIOMATERIALS ACCESS ASSURANCE

During markup of S. 565, the committee accepted an amendment I offered. In addition to making technical corrections to the legislation, my amendment added a new title to the bill. This title II is identical to S. 303, the Biomaterials Access Assurance Act of 1995 introduced by Senators MCCAIN and LIEBERMAN.

This title would allow suppliers of raw materials—so called biomaterials—used to make medical implants, to obtain dismissal, without extensive discovery or other legal costs, in certain tort suits in which plaintiffs allege harm from a finished medical implant. Specifically, it would allow raw material suppliers to be dismissed from lawsuits if the generic raw material used in the medical device met contract specifications, and if the biomaterials supplier cannot be classified as either a manufacturer or seller of the medical implant.

During its hearings, the committee heard compelling testimony that without such changes in the law, the millions of Americans who depend upon a variety of implantable medical devices will be at risk. Suppliers of biomaterials have found the risks and costs of responding to litigation related to medical implants far exceeds potential sales revenues, even though courts are not finding such suppliers liable.

Indeed, three major suppliers of raw materials used in the manufacture of implantable medical devices recently announced they will limit, or cease altogether, their shipments of crucial raw materials to device manufacturers. All three companies have indicated these were rational and necessary business decisions given the current legal framework.

PRODUCT LIABILITY AND SMALL BUSINESS

Mr. President, from my comments it should be apparent product liability reform is essential to the future health and success of America's businesses. This is particularly true for our small businesses. According to a 1992 Small Business Administration [SBA] study, small firms may be affected more negatively than large firms by nonuniform product liability laws.

This is because small businesses do not enjoy economies of scale in production and litigation costs. In addition, they are less able to bargain with potential plaintiffs. Finally, their limited assets make adequate insurance much more difficult to obtain. The cost of product liability insurance in the United States is 15 times higher than that of similar insurance in Japan and 20

times higher than in European countries.

America's small businesses need rationality and uniformity in the product liability system if they are to compete effectively in the global marketplace. As I explained previously, this point was at the heart of the testimony given by Art Kroetch of Scotchman Industries in Phillip, SD at the Commerce Committee hearings earlier this month.

It also was the point made to me by Jim Cope of Morgen Manufacturing in Yankton, SD. Jim calls product liability reform a jobs issue for our State. Morgen has had to lay off workers and has been unable to give raises to other employees because of losses due to product liability claims, claims that never resulted in a verdict against his company. Nevertheless, Morgen was forced to spend tens of thousands of dollars defending itself. To Jim Cope, tort reform means more jobs for South Dakota.

PRODUCT LIABILITY REFORM AND CONSUMERS

Aside from the jobs issue, product liability reform also benefits consumers in other ways. It would lower the cost of U.S. goods. The current product liability system accounts for 20 percent of the cost of a ladder, 50 percent of the cost of a football helmet, and up to 95 percent of the cost of some pharmaceuticals—up to 95 percent of the cost of some pharmaceuticals arises from product liability.

Reform of our product liability system also would foster competition and provide consumers with a greater selection of products from which to choose. Studies tell us 47 percent of U.S. companies have withdrawn products from the market and 39 percent have decided not to introduce products due to liability concerns. As a result, Americans depend on single companies to provide such vital needs as vaccines for polio, measles, rubella, rabies, diphtheria, and tetanus.

Finally, S. 565 would encourage safety improvements. The current system encourages companies to discontinue research. Many companies fear research to improve an existing product will be used against them in court to demonstrate they knew the product was not as safe as it might be. Certainty in the system would reduce this counterproductive effect.

In addition, the bill would encourage wholesalers and retailers to deal with responsible and reputable manufacturers. This, in turn, would lead to better products for consumers. Under our bill, product sellers would be legally responsible for products manufactured by companies that are insolvent or do not have assets in the United States. This should increase the quality of the products found on the shelves of U.S. businesses.

Mr. President, I have quickly outlined five ways in which this bill will benefit consumers. First, it will mean more jobs. Second, it will lower the cost of the goods they purchase. Third, it will mean a greater selection of goods from which to choose. Fourth, it will encourage testing to make goods safer. Finally, it will help to maintain and, in some cases, improve the quality of products available to consumers.

PRODUCT LIABILITY REFORM AND THE INJURED

The present product liability system is unfair to those injured by products in at least two ways. The system is full of delay, and compensation that eventually is received, often is inequitable.

Product liability suits take a very long time to process. A General Accounting Office study found, on average, that product liability cases took 2½ years to move from filing to trial court verdict. Most product liability cases are settled before trial, but even these cases suffer from delay. One plaintiff's attorney explained that "most settlement negotiations get serious only a week or so before trial is scheduled to begin."

Delay can result in undercompensation of victims. Many injury victims are forced to settle their claims for less than their full losses so they can obtain compensation more quickly. These individuals often are forced into this decision because of inadequate resources to pay for their medical and rehabilitation expenses.

Another way in which the current system inequitably compensates victims concerns proportionality. Numerous studies have found the tort system grossly overpays people with small losses, while underpaying people with the most serious losses.

Mr. President, this provides a brief overview of S. 565 and the variety of ways in which it will help business—both large and small—consumers, and those injured by products. In short, product liability means jobs for American workers. It means innovative products for American consumers. It means swifter and more equitable compensation for victims. It means international competitiveness for American companies.

This is why I strongly support S. 565. It is good for small business. It is good for their workers. It is good for consumers. It is good for those injured by products. In other words, Mr. President, it is good for America.

I might add, I have been in my State these past days and many people have come up to me saying we need to end frivolous lawsuits. That is a term that is understandable. We need to preserve people's right to sue when something is really wrong. But everybody is suing everybody. It is a sort of lottery out there. The average person is beginning to understand this increases the costs of goods and services. We do want to preserve people's rights to sue. Certainly when there has been a wrong done, there should be punishment, but we want to try to improve our legal system, and this bill is a step in that direction.

I want to commend Senator GORTON and Senator ROCKEFELLER and others, who have worked so long and hard on this. We are very blessed to have their leadership. I stand in strong support of S. 565.

Mr. ROCKEFELLER. Mr. President, the issue of product liability reform is well known to many Senators. I look forward to the debate we begin today because I believe that the bill that we will be considering, S. 565, the Product Liability Fairness Act, builds upon past deliberations of this body to achieve reform in the moderate, bipartisan manner that has characterized this effort in recent years.

Let me pause a moment to thank my colleague and friend, Senator SLADE GORTON, for all his efforts and counsel in crafting the bill that we have introduced. In addition, Senator LIEBERMAN, Senator DODD, Senator HATCH, and Senator MCCONNELL have played critical roles in writing this legislation and bringing us to the point of floor deliberation.

Mr. President, the Senate has considered the topic of product liability reform for over 14 years, and six times the Commerce, Science, and Transportation Committee has reported bills favorably to the floor. Most recently, the committee reported out the current bill, S. 565, by a vote of 13 to 6 on April 6.

We have persisted in our efforts to reform the laws governing product liability because we believe that the current system is broken and that we can make changes that will benefit both consumers and makers of products. We have tried, and I think succeeded, in achieving balance in our effort to streamline the law in this area. We have simultaneously reduced costs and delays for both plaintiffs and defendants.

In 1985, when I first came to the Senate and joined the Commerce Committee, I voted against a product liability reform measure. The committee vote was tied at that time, and I felt strongly that the version of the bill then being considered aided manufacturers at the expense of safe products for American consumers.

Since then, the product liability effort has changed 180 degrees. The legislation has evolved into the even-handed, moderate approach we are considering today. Senator GORTON and I have worked diligently over recent months to hone the bill we are looking at today to ensure that it strikes the right balance between the interests of both consumers and business. Adjustments were made to reflect substantive and other concerns which we concluded were obstacles to the enactment of this bill. We believe we have significantly improved the legislation from earlier drafts and have been responsive to the issues which prevented earlier enactment of this legislation.

Let me draw my colleagues' attention to the substantive changes made in this year's bill compared with the version introduced in the last Congress. The most significant change addresses concerns that have been raised about excessive punitive damages—

damages that are awarded to punish and deter wrongdoing. This year's bill establishes a standard for awarding punitive damages that is essentially unchanged from last year's bill. We have, however, added a provision that requires punitive damages to be awarded in proportion to the harm caused at a ratio of three times a claimant's economic loss or $250,000, whichever is greater. Our rationale for this ratio is the goal of bringing to punitive damages some relationship between the size of the harm and the punishment, a goal supported by the American Bar Association, the American College of Trial Lawyers, the American Law Institute, and the U.S. Supreme Court.

Also concerning punitive damages, we eliminated the Government standards defenses in last year's bill, referred to as the FDA and FAA defenses, which would have prevented punitive damages for instances in which certain classes of products, such as drugs, medical devices, or certain types of aircraft had been certified by the Federal Government as safe. While I remain supportive of the concept of a Government standards defense, a number of Senators expressed reservation during last year's debate about this provision, and we have accommodated those concerns by removing the provision.

Another change in this year's legislation concerns the statute of repose, which we have slightly modified to include a category of products known as durable goods used in the workplace. Last year's bill was restricted to workplace capital goods, a slightly narrower category. Workplace durable goods are defined as having an economic life span of 3 years or greater or being depreciable under the Tax Code. The workplace distinction, identical to last year's bill, preserves the intent of increasing incentives for employers to maintain the safety of equipment used in a place of employment, rather than shifting that responsibility off to a manufacturer even after the useful life of the product in question has expired. In addition, we have moved the statute of repose period to 20 years from 25 years in last year's bill, which is still longer than any State statute of repose, the longest of which is 15 years.

The third significant change made prior to introduction of this year's bill concerns the addition of a provision that had been part of last year's House companion bill that requires a reduction of a claimant's award due to unforeseeable misuse or alteration of the product. For example, if someone purchases a hair dryer that has attached to it a large warning label stating, "Do not use in the bathtub," and the purchaser immediately uses the hair dryer in the bathtub with adverse consequences, it does not make sense to hold the manufacturer liable for such misuse, and this provision would prevent that.

In addition to the changes made prior to introduction, several substantive changes were made in the Commerce Committee markup of the bill. First, we incorporated a bill, S. 303, the Biomaterials Access Assurance Act, introduced by Senator LIEBERMAN and Senator MCCAIN, as title II of our committee-reported product liability bill. This title of the bill is designed to ensure that needed raw materials are available to the manufacturers of medical devices by limiting the liability for firms that supply biomaterials. The title only limits liability for suppliers who have done nothing wrong; the ability of consumers to recover from negligent device manufacturers is preserved.

We made several other substantive changes in the committee markup. We modified our product seller provision to extend protection to blameless rental and leasing companies. This will address the fact that in 11 States car rental companies can be forced to pay for damage caused by people who rent their cars, even though the car rental companies did nothing wrong. We made a change to the statute of repose that will ensure that manufacturers keep their promises by enabling injured workers to sue for damage caused by products over 20 years old if the manufacturers guaranteed their products' safety for a longer period.

Finally, we modified our alternative dispute resolution provision, which gives States an incentive to create proplaintiff, voluntary, nonbinding arbitration mechanisms. This provision contains a penalty for defendants who "unreasonably refuse" to participate in the arbitration, and a criticism was raised during hearings on the bill that greater specificity was needed for the definition of "unreasonable refusal," so a set of factors was added to address that concern.

Mr. President, I will have a lot more to say about the substance of the bill as debate unfolds, but I know that other Senators wish to speak, so I would like to keep my remarks brief. Let me conclude by restating the reasons that we must pass national product liability reform this year.

Under our current system, injured consumers often find it impossible to get a just and prompt resolution, and just as frequently, blameless manufacturers are forced to spend thousands of dollars on baseless lawsuits. The system frequently allows negligent companies to avoid penalties and even rewards undeserving plaintiffs.

Product liability law should deter wasteful suits and discipline culpable practices but not foster hours of waste and endless litigation.

The adverse effect of having a hodgepodge of rules is severe for everyone. Injured persons and those who make products alike face a 55-unit roulette wheel when it comes to determining rights and responsibilities. The results hurt everyone. Injured persons have testified that they may be unable to obtain needed medical devices for their continued health and well-being. Manufacturers have indicated that good and useful products are not placed on the market. The Brookings Institution has documented many instances where safety improvements were not made because of fear about uncertainties in our legal system. Included in their discussion were built-in child seats and air bags.

As I have studied this complex area, I have found that incentives for preventing accidents are often not in the right place. In formulating our bill, we have striven to place incentives on the person who can best prevent an injury. This is a matter that has not been given adequate attention during past debates, but given the opportunity to carefully study our bill, Senators will see that care and thought has been invested to assure that no wrongdoer goes unpunished and that positive prosafety behavior is encouraged.

For all of these reasons, I look forward to our debate, and I welcome the criticisms, insights, and suggestions for improvements that I'm sure our colleagues will contribute during this process.

I yield the floor.

AMENDMENT NO. 596

(Purpose: Substitute reported committee language of S. 565 for H.R. 956)

Mr. GORTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 596.

Mr. GORTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. GORTON. Mr. President, what I have sent to the desk to be treated as the matter before the Senate is the text of S. 565 as it was passed by the Senate Commerce Committee just over 2 weeks ago. H.R. 956 is, of course, the text of the bill which was passed by the House of Representatives.

I hope that we will debate the bill and the report that was passed by the Commerce Committee and will use that as our text. It is for that reason that I have offered this substitute.

Mr. President, the debate over product liability legislation, which begins here this afternoon, is both important and controversial.

It has both of those qualities because it deals with two elements of our life as Americans that are vitally important to everyone. The first of those qualities is the openness of our courts for the redress of grievances to individuals or to groups of individuals by other individuals, groups of individuals, or corporations doing business in the United States. That is a value and a set of rights cherished, of course, by all Americans.

The other good—sometimes a conflicting one—is the desire of the American people for a growing and a prosperous society, for the development and marketing of new goods and services, and for the creation of economic opportunity to our young people, indeed beyond our young people, to all Americans.

At its base, of course, the economic prosperity and viability of our country. So, we here in the two Houses of the Congress of the United States are constantly faced with the necessity, in a dynamic economy and a dynamic society, of balancing these goals with other goals in our society. And it is the restoration of that balance, a balance often distorted to one side of the equation, which is the goal both of H.R. 956, a bill on the subject that has already passed the U.S. House of Representatives, and S. 565, which now is before this body.

This is far from the first occasion on which we have debated product liability, either on a broad scale or a narrow scale, in the U.S. Senate. At least since 1982, bills on this subject have been before the Commerce Committee of this body and frequently before the Senate itself. Already in the course of this debate, however, at its outset, we have gone farther down the road toward reform than in any Congress since the early 1980's. On some occasions, bills have been recommended by the Commerce Committee but never taken up on this floor. On at least two occasions, including the last Congress, bills have been reported favorably by the Commerce Committee. The following motions to proceed to the debate, however, were debated and in fact debated successfully, under the guise of a quasi-filibuster, and cloture was not attained on the motion to proceed. So never have we been in a position to debate the merits of product liability reform itself or, indeed, to offer amendments to those bills which have been reported by the Senate Commerce Committee.

In the last Congress, my friend and colleague from West Virginia, Senator ROCKEFELLER, and I had a bill not dissimilar from this reported from the Commerce Committee by a not dissimilar vote and debated here on the floor for the better part of a week. Before, on two occasions, cloture on the motion to proceed was defeated in spite of having received a substantial majority of the votes of the Members of the Senate. So I know I speak both for the primary sponsor of the bill, the Senator from West Virginia, as well as for myself, in expressing our gratification at the fact that, for the first time in the career of either one of us, we are literally discussing a bill on this subject, and of this importance.

The last Congress, however, did succeed in passing a bill which ultimately became law on one narrow element of product liability. The last Congress created a 1-year statute of repose with respect to product liability actions concerning small private aircraft. And I submit that Members of this body should carefully consider the debate on that proposal, which also lasted over the period of several Congresses, the arguments made on either side, and the results of the passage into law of that aircraft statute of repose.

It had been the claim of small aircraft manufacturers in the United States that their business had effectively been destroyed by product liability litigation. Several famous manufacturers of small aircraft had literally gone out of business. Others were no longer engaged in the manufacture of such aircraft. And those who stayed in the business had their business very significantly reduced, to the point at which, if my memory serves me correctly, the production of such aircraft in the United States over a 20- or 30-year period had declined by close to 90 percent. The industry, in other words, was almost dead in this country.

The opponents of the statute of repose argued, among other things, that litigation had nothing to do with that loss of business. The proponents, including the manufacturers, argued that even this relatively minor relief would result in a substantial recovery of that business. Ultimately, after several Congresses, less than 2 years ago such legislation passed and was signed into law, and already that recovery has begun. Already some of those manufacturers have opened up lines of production, have begun new assembly lines and are back in business.

Has litigation against negligence in the manufacture of private aircraft been terminated by that bill? Of course not. All that Congress passed was a simple statute of repose of 18 years. Already, however, we have seen the creation of jobs, the beginning of the renaissance of an industry, and the return of American companies manufacturing in America to a business out of which they had been almost totally driven. Yet, as Members of this body will learn during the course of debate on this legislation, there are many States with no statutes of repose at all. For other products or equipment, we still face the actuality and the possibility of product liability litigation involving equipment and manufactured items manufactured and originally sold in the 19th century, over 100 years ago.

So in this case we are attempting, on a broader basis, to restore a balance between the fundamental and undoubted right of people to sue when they have been injured by faulty products and the protection of manufacturers and sellers against unwarranted litigation. We will show how this imbalance has caused perfectly good products had to be withdrawn from the market and caused manufacturers to go out of legitimate and important businesses, businesses important to the people of the United States. In turn, this has discouraged research into many important areas and has discouraged the development of products resulting from that research.

So, Mr. President, when Members of this body listen to the kind of doomsday scenarios, threats about the end of justice in our legal system, they may wish to reflect on similar arguments made by many Members of this body less than 2 years ago with respect to the aviation industry, and look at the actual results of such legislation.

I believe that there is a carefully balanced proposal equalizing the right to sue with the encouragement of the American economy and a right to be free from frivolous suits and huge legal bills in connection with matters that do not arise out of any degree of negligence, or which are overcompensated.

So, Mr. President, I am especially pleased to support the Product Liability Fairness Act of 1995. Legislation carefully crafted to reflect a bipartisan spirit that takes a moderate and sensible approach in reforming the product liability system of United States.

What are our goals? Our goals are a system that is fair and efficient; a system that is, to the greatest possible extent, yields predictable results; one that awards damages both proportional to the harm suffered as a result of negligence and in a timely manner, and one which reduces the overwhelmingly wasteful transaction costs associated with the present product liability system.

Finally, this is a bill which builds on the genius of those who wrote the Constitution of the United States, those who placed plenary authority in the hands of Congress to regulate interstate commerce. No occupation can be more intimately involved with interstate commerce than the system by which liability is adjudged with respect to the impact of products manufactured, sold and utilized in every one of the 50 States of the United States.

(Mr. THOMAS assumed the chair).

Mr. GORTON. Mr. President, there are in fact few valid arguments against a greater degree of uniformity and a greater degree of predictability with respect to impacts of such transactions. Estimates of total court costs of litigation and assorted transactional costs range from $80 to $117 billion a year to manufacturers and sellers in this country. It goes without saying that these costs are immediately forced back onto consumers through higher prices for products which Americans use every day.

The current product liability system accounts for approximately 20 percent of the cost of the simple ladder and one-half of the cost of a football helmet. Injured parties receive less than half of the money spent in product liability litigation. More than half goes to the lawyers, and those who work with them in prosecuting and defending that litigation. Nearly 90 percent of all manufacturers and many retailers and wholesalers in the United States can expect to become a defendant in a product liability case at least once. The cost of product liability insurance is 15 times greater in the United States

than it is in Japan, and 20 times greater here in the United States than it is in Europe.

As I have already said, manufacturers can still be sued today for products manufactured in the 1800's, simply because the present potential defendant purchased, at some time or another, the company that was engaged in manufacturing in that century.

As I have just pointed out, the product liability system in the United States is the world's most costly. The editors of a book entitled ''The Liability Maze'' published by the Brookings Institute in 1991 notes:

> Regardless of the trends in tort verdicts, most studies in this area have concluded that, after adjusting for inflation and population, liability costs have risen dramatically in the last thirty years, and most especially in the last decade.

Mr. President, the cost of litigation, court proceedings, attorney fees, and expert fees—in other words, transaction costs associated with the current system—are absolutely outrageous. A 1992 study indicates that for every $10 paid to claimants by insurance companies for product liability cases, another $7 is paid for lawyers and other defense costs. That is defense costs only. If the contingent fee of plaintiff's attorneys is factored in, lawyers' fees account for more than 60 percent of the funds expended on product liability cases.

Obviously, liability insurance costs reflect these increased transaction costs, and insurance rates rise accordingly. Over the past 40 years, general liability insurance costs have increased at more than four times the rate of growth of the national economy. One small manufacturer in my own State of Washington, Connelly Water Skis, Ltd. pays $345,000 a year for liability insurance, even though that company has never lost a product liability case.

Paradoxically, the victims of this system are very often the claimants, the plaintiffs themselves, who suffer by the actual negligence of a product manufacturer, and frequently are unable to afford to undertake the high cost of legal fees over an extended period of time. Frequently, they are forced into settlements that are inadequate because they lack resources to pay for their immediate needs, their medical and rehabilitation expenses, their actual out-of-pocket costs.

In 1989, a General Accounting Office study found that on average, cases take 2½ to 3 years to be resolved, and even longer when there is an appeal. One case studied by the GAO took 9½ years to move through our court system. In an insurance industry study, it was found that it took 5 years to pay claims with an average dollar lost and that ''larger claims tended to take much longer to close than smaller claims.''

An early insurance offices product liability study found that injured plaintiffs with losses of between $1 and $1,000 received on average 859 percent of their actual losses, while those with losses over $1 million received on average 15 percent of their losses, even before attorneys fees were paid.

This is to be contrasted with the results of those lawsuits we often see in the newspapers, or hear about on television, in which a particular plaintiff has received a bonanza, a lottery style set of winnings.

In today's system, consumers, manufacturers, and product sellers are trapped in a product liability litigation system that is essentially a lottery. Identical cases in two different States often produce strikingly different results. And, of course, here in the United States we have 51 separate product liability systems—in 50 States and the District of Columbia, while the European Economic Community, Australia, and Japan each have adopted a uniform, predictable product liability statute. In one of the many hearings held on this issue over the years, University of Virginia law professor Jeffrey O'Connell explained, and I quote him:

> If you are badly injured in our society by a product and you go to the highly skilled lawyer, in all honesty the lawyer cannot tell you what you will be paid, when you will be paid or, indeed, if you will be paid.

Three distinguished judges: Chief justice, Richard Neely, of the supreme court of West Virginia; Federal district court judge, Warren Eginton, author of the ''Product Liability Journal;'' and New Jersey Court of Appeals judge, William Dreier, author of the ''Product Liability Journal of New Jersey,'' have presented congressional testimony attesting to the need for uniformity. While they state that there will naturally be different interpretations of any law, conflicting interpretations will obviously be fewer with a single law than with 51 different ones.

Uncertainty in the present system is a reason for change. Plaintiffs, those injured by faulty products, need quicker, more certain recovery—recovery that fully compensates them for their genuine losses. Defendants, those who produced the products, need greater certainty as to the scope of their liability.

Mr. President, under the current system, consumers are required to pay increased and unnecessarily high prices on necessary goods. Here again the excessive costs of an out-of-control tort system fall on the shoulders of consumers through increased prices.

An example. Lederle Labs, the lone maker of diphtheria, pertussis, and tetanus vaccine, raised its dose from $2.80 to $11.40 simply to cover the costs of lawsuits. According to Prof. George Priest of Yale Law School in testimony before the Senate Judiciary Committee this month, excessive punitive damages awards have increased the general price level for products and services provided in the United States economy, harming consumers—and low income consumers most of all.

In addition to higher prices, Americans suffer from the current system because of the lack of choice. At the present time, for example, only one company is willing to supply vaccines for polio, measles, mumps, rubella, rabies, and DPT. In 1984, two of the three companies manufacturing the DPT vaccine decided to stop production because of product liability costs. Can it seriously be asserted that we should abandon that vaccine?

Later that same year, the Centers for Disease Control recommended that doctors stop vaccinating children over the age of 1 in order to conserve limited supplies of the DPT vaccines for the most vulnerable infants.

Next, product development is hindered in many ways by the existing system. The unpredictability of the product liability system discourages the development of innovative products and cutting edge technology. Innovation is frequently stifled because scientific research essential for advanced product development is foregone or abandoned, due to the excessive costs of product liability.

In 1984, a closed claims study by the ISO found that United States industries spent more on product liability defense costs than on buying equipment to boost productivity.

In an American Medical Association report titled ''The Impact of Product Liability on the Development of New Medical Technologies,'' we read, and I quote:

> Innovative new products are not being developed or are being withheld from the market because of liability concerns or inability to obtain adequate insurance. Certain older technologies have been removed from the market, not because of sound scientific evidence indicating a lack of safety or efficiency, but because the product liability suits have exposed the manufacturers to unacceptable financial risks.
>
> Rawlings Sporting Goods, Mr. President, a leading manufacturer of competitive football equipment for more than 80 years, announced in 1988 that it would no longer manufacture, distribute or sell football helmets. Joining Spalding, McGregor, Medalist, Hutch, and others who have stopped manufacturing helmets, Rawlings was the 18th company in as many years to give up the football helmet business because of increasing liability exposure. Two manufacturers out of the 20 that existed in 1975 remain in the helmet business today.

A recent article in Science magazine reported that a careful examination of the current state of research to develop an AIDS vaccine, and I quote, ''Shows that liability concerns have had negative effects.'' It points out that Genentech, Inc., halted its AIDS vaccine research after the California Legislature failed to enact State tort reform. Only after a favorable ruling did that company resume its research.

And consider—perhaps because of its history this is the most important quotation of all—the comment by Jonas Salk, inventor of polio vaccine:

If I develop an AIDS vaccine, I don't believe a U.S. manufacturer will market it because of the current punitive damage system.

Think of where we would be had we had the present system when Dr. Salk developed the polio vaccine. Would it not have been marketed? Would we still be faced with that scourge?

Not only does the present system hurt medical innovation, it also inhibits small companies from producing everyday goods.

Again, in my own State, for example, Washington Auto Carriage of Spokane distributes various kinds of truck equipment throughout the United States. Here is what its owner, Cliff King, says. And I quote him:

We have been forced out of selling some kinds of truck equipment because of the exorbitant insurance premiums required to be in the market. As a result, this type of equipment tends to be distributed only by a few very large distributors around the country, who can afford to spread the cost over a very large base of sales. Ultimately, there is much less competition in those markets.

In other words, Mr. President, as tough as the present system is on large corporations, it is even tougher on small companies—companies who can be driven out of business by a single lawsuit.

Mr. President, I spoke a few moments ago about the undoubted interstate nature of our product manufacturing and distribution system and the overwhelming justification for a greater degree of uniformity than we have today, and for the obvious constitutional basis in the commerce clause for such legislation.

One would expect, however, that many of those connected with State government would oppose any further limitation of their control over their tort systems. Yet, the representatives of the top organization of State elected officials, the National Governors Association, recognizes both the need for product liability reform and the necessity of such reform at the Federal level. A resolution adopted by the National Governors Association last January summarizes both the need and the support of State Governors for change in the product liability system here by the Congress of the United States. In part, the resolution adopted by the NGA reads:

The National Governors Association recognizes that the current patchwork of U.S. product liability laws is too costly, time-consuming, unpredictable and counterproductive, resulting in severely adverse effects on American consumers, workers, competitiveness, innovation, and commerce.

The issues of product liability reform has increasingly pointed to Federal action as a way to alleviate the problems faced by small and large businesses with regard to inconsistent State product liability laws. This lack of uniformity and predictability makes it impossible for product manufacturers to accurately assess their own risks, leading to the discontinuation of necessary product lines, reluctance to introduce product improvements and a dampening of product research and development. American small businesses are particularly vulnerable to disparate product liability laws. For them, liability insurance coverage has become increasingly expensive, difficult to obtain, or simply unavailable. Further, the system causes inflated prices for consumer goods and adversely affects the international competitiveness of the United States.

Clearly, a national product liability code would greatly enhance the effectiveness of interstate commerce. The Governors urge Congress to adopt a Federal uniform product liability code.

It should be noted at this point, Mr. President, that this resolution reflects the position that former-Arkansas Governor, William Clinton, supported during his many terms as Governor.

Mr. President, I believe it appropriate, briefly at this point, to outline for Members the chief reform features of this proposal. While it makes more uniform laws related to product liability in many fields, it continues to defer to the States in many other areas. As such, it retains a balance between Federal and State concerns over this branch of interstate commerce. It does so, however, in a thoughtful and sober fashion by eliminating those elements of the present system that cause the greatest degree of uncertainty and have the most adverse impacts on interstate commerce, on productivity, on the creation of jobs, and on the competitiveness of American business.

First, Mr. President, we reform the almost uniform system of joint and several liability. In most States, when there are multiple defendants in a product liability action, a deep-pocket theory applies. Under the joint and several liability rule, any defendant who has contributed in any way, to an injury can be held responsible for the entire amount of the damage award. Such a deep-pocket rule encourages plaintiffs and their lawyers to target the wealthiest defendant in each case, even if that defendant can be, and has been found, by the jury to be only minimally at fault.

S. 565 provides for only several liability and not for joint liability on noneconomic damages. This means that each defendant is liable only for his, hers or its portion by reason of its proportion of the fault in causing the injury. This is currently the law in the State of California.

It does, however, apply only to noneconomic damages, those that include pain and suffering and emotional distress. Under this bill, States will be permitted to retain joint liability, if they wish to do so, for economic damages—medical costs, lost wages, and so forth—so that an injured plaintiff can be assured of recovering fully, no matter who the source of that recovery, for those actual out-of-pocket damages themselves.

Pain and suffering and other noneconomic losses under this bill will be tied to the concepts of both fault, and also responsibility.

Mr. President, it is unfair and highly unproductive to make defendants pay for damages of a nature that are literally beyond their control or beyond their fault. In California, it has been found, under this new law, that juries are much more likely to apportion liability fairly according to each defendant's fault.

Mr. President, the particular kind of damages about which we read most frequently are punitive damages. Punitive damages, of course, are damages awarded to punish the defendant, rather than to compensate the victim either for the victim's economic or noneconomic emotional damages. As such, they are a troubling concept in our system of law.

Generally speaking, we punish for criminal activities through the Criminal Code, a code which provides a multitude of protection for those accused under it—proof beyond a reasonable doubt, a right against self-incrimination, limited sentences designed to fit the crime. None of these concepts, however, applies to the imposition of punitive damages. A handful of States, my own included, do not generally permit punitive damages in civil litigation at all. And, Mr. President, there is nothing to indicate that justice is denied in those States, that recoveries on the part of the injured plaintiffs are inadequate, or that companies operate in a less safe and responsible fashion.

I can express a personal preference, dating from the time at which I was admitted to the bar for such a system, for the use of nonpunitive damages only, in civil litigation. But because the vast majority of the States utilize such a system, this bill continues to permit it in States that allow it at the present time, but with a number of limitations.

Under this law, claimants would be required to provide, by clear and convincing evidence proof, that a defendant engaged in egregious misconduct and there would be a degree of proportionality in punitive damages—a cap of $250,000, or three times the economic damages awarded, whichever is greater. A separate jury consideration of punitive damages would also be required from the determination of the jury for compensatory damages.

Reforms of this nature are supported by mainstream academic groups in the American Bar Association and the American College of Trial Lawyers. More recently, these reforms were recommended in a 5-year report studied by scholars of the prestigious American Law Institute.

Third, this bill deals in general terms with exactly the subject of last year's aviation product liability bill, a statute of repose. Under the current product liability system, manufacturers are liable for injuries caused by products without regard to the age of these products, even when the equipment has been rebuilt, altered, or used improperly. Mr. President, it is clearly unreasonable to hold a manufacturer liable for a product that may have been made 30 or more years ago, particularly when it has no control over the use or maintenance of that product.

S. 565 adopts a 20-year statute of repose for workplace durable goods, or less if State law provides a lower statute of repose. By this provision, we inject a degree of predictability in a system, which literally at the present time calls for endless liability.

One example, Mr. President. Since 1830, the firm of Davis & Ferber was one of the largest textile machinery manufacturers in the world. Recently, that company was required to defend itself against a claim involving a machine that left its plant in 1895 and had been modified again and again by different owners for 88 years. In 1982, Davis & Ferber was forced out of business because of the high cost of settlement in this case.

There is one other element of this bill notable for this opening debate, and that element arises out of the fact that at the present time, consumers can sue, not only the manufacturer of an alleged faulty product, but also the retailer who sold it or the firm that rented or leased the product. In over 95 percent of all such actions, the manufacturer ultimately pays any judgment that is awarded, but the web of litigation adds to spiraling unnecessarily legal costs to the wholesaler or the retailer that are ultimately paid for by the consumer.

Under S. 565, product sellers, as well as those who engage in the leasing and renting of products, will be liable for their own negligence or failure to comply with an expressed warranty but not for the negligence of the manufacturer. These provisions will reduce litigation among retailers, wholesalers, distributors, lessors, renters and manufacturers saving legal costs that, at the present time, are passed on to the consumer in the form of higher prices. Unless they are directly responsible for product failure due to negligence or misrepresentation, a seller, lessor, or renter shall not be held liable for injuries caused by a product. If the manufacturer is negligent, that manufacturer should be liable.

Mr. President, in summary, this proposal is aimed at a very real challenge and a very real problem in our society today. It is aimed at spiraling costs of litigation, far more often than not, on the part of manufacturers and sellers in successful litigation, but costly and risky nevertheless.

It is aimed at limiting recovery to those who are responsible by their own negligence for injury to a far greater extent than is the case today; to providing an end to that responsibility after two decades, in the case of certain manufactured equipment; to limiting the arbitrary nature of punitive damages, as the Congress has been invited to do by the Supreme Court of the United States and fundamentally to seeing to it that a greater share of the recovery in litigation of this sort gets to the injured party and less to transactional costs, the present division of which is a disgrace.

Mr. President, as I said at the beginning, I am gratified that for the first time in a debate, which has lasted in the Congress of the United States for almost two decades, we are actually discussing the merits of this kind of legislation. I look forward to a spirited and contested debate, but I also look forward to a conclusion, which creates a greater degree of balance and restores a degree of fairness, competitiveness and common sense to American industry and to its employees.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, in the words of our fearless leader, President Ronald Wilson Reagan, ''Here we go again.''

As we begin the proceedings, Mr. President, the issue is whether the Members of this body will agree to have an open and full debate on this legislation.

Each time this legislation has been brought before the Senate, the proponents have offered up one anecdote after another to justify the bill. We have attempted to ensure that, at a minimum, this bill is fully examined and debated.

I am particularly concerned about the manner in which the current bill has been rushed through without much time for review. The legislation was introduced on March 15. A couple of weeks later, the Commerce Committee held 2 days of hearings and then a markup a day and a half later. The substitute offered at markup—which was not received until 6 p.m. The preceding evening—contained a number of changes and amendments. None of the changes was ever considered by the committee, at the hearings or before the markup. Now, less than a week after the bill was reported, the bill is up for consideration on the floor.

I am not certain what is driving this process. I understand that there may be a desire by some to act in accordance with the House Republicans' Contract With America agenda. However, I did not sign the so-called contract, and as far as I know, neither did any other Senator.

The sole purpose of this bill is to erect barriers regarding the use of the civil justice system for redress of injuries caused by dangerous products. However, I would like to remind the supporters of this bill that unlike the judicial systems of other countries, the American judicial system is rooted in democratic principles of individual redress, the right to a jury trial, and reliance on the people to resolve disputes. These were principles established by the Founding Fathers when they proposed the adoption of the 7th and 10th amendments to the Constitution. Surely, issues such as whether to limit access to courts, limit redress remedies, or penalize citizens for merely bringing suits were considered by the Founding Fathers, as well as the judges and State officials that have administered our system of justice for over 200 years. But they decided against such measures, and opted instead to maintain a system that features free access to the courts, common law, and giving the people the ultimate authority to resolve conflicts. The supporters of this bill, however, are seeking to overturn this longstanding American history and judicial precedent.

I am, in fact, confounded by the fact that the Senate is even considering this legislation. At the beginning of this Congress, Member after Member came to the floor during consideration of S. 1, the unfunded mandates bill, to declare that this would be the Congress of ''States rights,'' where government would be returned to the people. The Jeffersonian democracy of government was revived. If I heard it once, I heard it a million times, that State and local governments know best how to protect the health and safety of their citizens, and that they do not need Congress telling them what to do. How many times did I hear that the one clear message sent by the voters last November was that the people wanted to get the Federal Government off their backs and out of their pocket?

The 10th amendment, lost in the shuffle for many years, was given new light. The majority leader himself, in his opening address to the new Congress, proclaimed:

> America has reconnected us with the hopes for a nation made free by demanding a Government that is more limited. Reigning in our government will be my mandate, and I hope it will be the purpose and principal accomplishment of the 104th Congress.
>
> We do not have all the answers in Washington, DC. Why should we tell Idaho, or the State of South Dakota, or the State of Oregon, or any other State that we are going to pass this Federal law and that we are going to require you to do certain things.

The majority leader went on to say:

> Federalism is an idea that power should be kept close to the people. It is an idea on which our nation was founded. But there are some in Washington—perhaps fewer this year than last—who believe that our States can't be trusted with power. If I have one goal for the 104th Congress, it is this: That we will dust off the 10th Amendment and restore it to its rightful place.

Those are the words of the majority leader himself. These words, spoken so eloquently, make it clear why the Congress should stay out of the business of the States.

During consideration of the balanced budget amendment, Senator BYRD made a compelling argument with respect to the need and obligation of this body to give thorough deliberation to bills that impact our Nation's constitutional structure. He spoke of the need of Members to carefully read and study legislation.

I ask, Mr. President, how many Senators have carefully read this bill? How many are aware of how this bill will affect their constituents? For example, how many Members know that this bill will result in disparate treatment of working-class Americans? How many

Members know that this bill stands to perpetuate discrimination against women and children? How many Members know that this bill will make it much more difficult for workers who suffer product-related injuries to recover for their injuries?

How many Members are aware of how this bill will affect the comfort level we have in the drugs we buy, and the health and safety devices we use? How many are aware of how it will impact their State laws, judicial order, and constitutions? These are the important questions that must be answered, and deeply debated before we consider passing this bill.

The proponents claim that this is a modest bill, one that is different from the House bill, and more reasonable than previous Senate bills. First, Mr. President, this is not an accurate statement. This bill actually has reincorporated many provisions of previous Senate bills that many sponsors of the current bill once opposed. Second, we all know that, if a Senate bill goes to conference with the House bill, House Members will be pushing their version of the bill.

The proponents have offered a number of explanations regarding the need for this legislation. However, every claim that has been made about the need for this bill has been refuted.

The proponents initially lamented that the legislation was needed because of a liability insurance crisis. The alleged crisis became the impetus for the entire tort reform movement. According to Prof. James Henderson, a major supporter of tort reform, and Prof. Theodore Eisenberg of Cornell University, tort reformers were concerned mostly about convincing the American public that there was a crisis and linking the alleged crisis to product liability. They showed less concern over the reality of the crisis itself. The idea was to tie the product liability system to the crisis in a way that reshaped public opinion. Efforts were forcefully made to link the so-called crisis to basic American activities, such as Little League baseball and the Boy Scouts—almost literally motherhood and apple pie. To quote Professors Henderson and Eisenberg, ''using every technique of modern media-shaping, tort reform groups sought to insure that the public believed that products liability law was the cause of this threat to their way of life.''

This, Mr. President, is according to Prof. James Henderson, a supporter of tort reform. Numerous studies have shown, however, that product liability had nothing to do with the availability or affordability of insurance. In fact, during the midst of the so-called crisis, the director of government affairs for the Risk and Insurance Management Society—an association of corporate risk managers which includes more than 90 percent of the Fortune 1000 companies—himself expressed concern about linking tort reform and the insurance availability crisis. Studies by the GAO, and numerous other studies, have shown that to the extent there was a crisis, it was caused by insurance companies themselves, not product liability.

But what is conspicuously missing from this bill, Mr. President, is any requirement that insurance companies submit data to justify the premiums charged to businesses. Former Texas Insurance Commissioner Robert Hunter has stated clearly that unless the insurance problem is resolved, the whole matter concerning legal or transaction costs will not be addressed by this bill.

Next, the sponsors contended that the bill was needed because of a litigation explosion. Some continue to make this claim, despite ample evidence that there never was, and is not now, any litigation explosion.

A recent study by the Rand Corp. found that less than 10 percent of the people who are injured by products ever even consider filing a lawsuit, and only 2 percent actually go forward with filing a suit. According to recent statistics published by the National Center for State Courts, product liability cases are only 4 percent of State tort filings, and a mere thirty six-hundredths of 1 percent of all civil cases.

Throughout this debate, there has been an inordinate degree of contempt toward the American jury system. Some have even characterized the system as an open lottery. However, this is part of a well organized misinformation campaign. The evidence unequivocally demonstrates that our Nation's jury system has not run amok. Last June, the New York Times featured a front page story on how juries are growing tougher on plaintiffs. Citing the latest research by Jury Verdicts Research, Inc., the Times states that plaintiffs' success rates in product liability cases have dropped from 59 to 41 percent since 1989.

Professors James Henderson and Theodore Eisenberg of Cornell University released a study in 1992, which showed that product liability filings had declined by 44 percent by 1991. They concluded that by ''most measures, product liability has returned to where it was at the beginning of the decade,'' beginning in the 1980's.

A 1991 New York University Law Review article by Prof. James Henderson, along with Brooklyn Law School Prof. Aaron Twerski—another major supporter of tort reform—stated that:

> With sharper focus and fewer distractions, American products liability may be better equipped than ever to provide appropriate incentives for product manufacturers and distributors to act responsibility in the public interest. But the days of wretched excess are over, very probably for the indefinite future.

Where is the real litigation explosion, Mr. President? It is in the corporate board rooms. According to Prof. Marc Galanter of the University of Wisconsin Law School, the real litigation explosion in recent years has involved businesses suing each other, not injured persons seeking redress of their rights. He found that business contract filings in Federal courts increased by 232 percent between 1960 and 1988, and by 1988 were the largest category of civil cases in the Federal courts.

Reports by the National Law Journal show that since 1989, of the 83 largest civil damage awards nationwide, 73 percent have involved business suits. Between 1987 and 1994, just 76 of the top business verdicts alone have accounted for more than $10 billion. In 1993, the top 13 business verdicts alone amounted to approximately $3 billion. They included: Litton Systems versus Honeywell, a patent infringement dispute—$1.2 billion; Rubicon Petroleum versus Amoco, a breach of contract dispute—$500 million, including $250 million in punitive damages; Amoco Chemical versus Certain Lloyds of London, a breach of contract dispute—$425 million, including $341 million in punitive damages; Avia Development versus American General Realty Investment, a breach of contract—$309 million, including $262 million in punitive damages. Of course, this does not include the greatest verdict of them all—the $10.5 billion awarded in 1985 in the Pennzoil versus Texaco case. According to the testimony of Jonathan Massey, an expert on punitive damages, the total punitive damage awards since 1965 come to only a fraction of the $3 billion punitive award in Pennzoil versus Texaco. However, the proponents of S. 565 refuse to even discuss that businesses themselves might be the primary reason for increasing litigation—which leads me to their new claim that product liability is stifling competitiveness.

Like the refutation of the insurance crisis and litigation explosion, it has been clearly proven that product liability has nothing to do with American business competitiveness. According to a survey of 232 risk managers of the largest corporations in the country, product liability for most businesses is less than 1 percent of the final price of products, and has little, if any, impact on larger economic issues, such as market share or jobs.

The Office of Technology Assessment conducted an extensive study of the competitiveness of American businesses and did not, among its findings, list product liability as a primary problem or concern. The GAO recently stated that it ''could find no acceptable methodology for relating product liability to competitiveness, and that businesses refuse to release the information needed to conduct such an analysis.'' Mr. President, we should not be debating this bill without having the information necessary to make an informed decision, information that businesses and insurance companies are unwilling to provide.

To the extent that American businesses are having competition problems, it has nothing to do with products liability. It could, however, have a lot to do with our Nation's trade and

economic policy. In fact, I am somewhat surprised that we are even discussing competitiveness after the passage of GATT and NAFTA. It was my understanding that the these were the so-called panacea to our trade dilemma. The fact of the matter, Mr. President, is that if we are going to have a discussion about trade policy, then let us have that debate, and quit wasting time with these nonessential issues.

The proponents have had ample time to make their case, and have yet to produce any evidence to justify the passage of this legislation. It is for these reasons that I believe that this legislation must be defeated.

It would be irresponsible of us as Members of Congress, to consider a bill that has such serious consequences for American consumers, without, at the very least, requiring the sponsors of such a bill to provide factual data—not anecdotal arguments—to support their claims.

Mr. President, as we talk about ''Here we go again,'' and in listening to my distinguished colleague from Washington, he has a very, very reasonable demeanor, and as he pleads how this, after years, has been worked out and is so reasonable, I would not want my colleagues to be misled.

First, this is not a more reasonable bill and the distinguished Senator knows it.

For the past three Congresses, we have not had caps on punitive damages. But now we do have caps in this particular bill. In the past Congresses, we never had misuse, the failure to follow directions. Now we have a provision in here for misuse. I could go right on down the list. The argument is that years of having this idea turned back is the reason now to come forward; however, the very reasons for having been turned back persist even more strongly.

It persists more strongly, Mr. President, because that is the theme of this particular Congress. Whether we like it or not, we have the Contract With America. Whether we like it or not, we have what they call a revolution. And the theme of that revolution and contract, Mr. President, is that the Government here in Washington is the enemy; the Government is not the solution, the Government is the problem. And whether we like it or not, the only way to do it is tear it down and get rid of it and maybe some day rebuild. But for now, get rid of the department of Congress; get rid of the Department of Housing and Urban Development; abolish the Department of Energy; abolish the Department of Education; cut out the revenues, give everybody a tax cut. Of course, we are operating at over a $300 billion annual deficit. We do not have any revenues to cut. But in this pollster exercise behind political reelection, cut the revenues, cut the taxes, increase the deficit, get rid of the departments, and send it all back to the States. That is the very old theme—Jeffersonian.

I have never heard so many Republicans fall in love with Jefferson. They all say that the best government is that closest to the people. Get it back there. When it comes to crime, the bill that we passed really should be reduced to block grants. We debated it and we had Republican support for that crime bill. But now, all of a sudden, that same crime bill that we debated for some 3 years before it was passed needs to be block granted to get it away from the Washington bureaucrats. With respect to welfare reform, get that back to the States. The States know better how to handle these things. Housing—get that back to the States. Whatever it is, abolish the entity up here at the Washington level and get it back to the States and the local level.

That is the theme of the contract save, Mr. President, this fix—and this is a fix. This is a fix. They ought to get my friend down there who has been fixing it for years, Victor Schwartz. That is who O.J. needs. He has taken a little time to get it fixed, but Victor Schwartz, representing this small little manufacturing entity is fixing it. The chambers of commerce, the National Association of Manufacturers, the Business Roundtable, all of those are not interested in injured parties; they are interested in injured pocketbooks.

Of course, they are making more profits than they ever made in their lives. That is what we heard on the GATT: Do not worry about it, we are competitive now, and we have to get a mindset for global competition. And do not worry about the pharmaceutical companies which, they pointed out, with truth and distinction, are making their biggest profits.

But now, under this bill here, we are told that the pharmaceutical industry cannot produce a drug at all on account of product liability. The chemical industry, the biotechnology industry, all of the industries that have been leading in wealth and corporate profits, they have reached higher ceilings than you have ever seen in the history of this land. But now, to justify this bill, we are told America's industry has gone broke, and we finally have found a real solution here in product liability. If we can only get this Federal fix, can you imagine that? With all of the things going on in this town. The tax cut was given the very same day they had the circus out on the east front, trampling around. After that, they want to finally come and ask, ''Who can do it better than the States and the people that sent us here?''

That is a sort of interesting thing to this particular Senator. The people back home are so wise, so studied, so alert, so sensible with the issues of the contract, and the very same people that sent us here to Washington all of a sudden have lost their minds when it comes to product liability. They do not really know how to make a judgment. Of course, they are the only ones who heard the sworn testimony; they are the only ones who are familiar with the facts. But irrespective of the facts, and particularly the English law, the tort system, adopted by the several 50 States over the 200-some year history of this land, all of a sudden we do not single out herein and say automobile accident cases, we do not single out and say, well, there are contract cases exploding. They talked about a litigation explosion. That is where it is, not here. We do not single that out. But we single out this unique fix. And, as I say, here we go again, because nothing has changed.

The American Bar Association, Mr. President, appeared and testified against this bill despite this quick fix because they just had summary hearings before our Commerce Committee that reported the bill out, just as we were leaving town, and we were told it was going to be the first thing called. You can bet your boots they will file cloture tomorrow. They do not want to debate this and understand the law. Just a bunch of business Senators on the Commerce Committee with this fix are going to take care of manufacturers. Just at a time that what we really need to do is get the welfare recipients more responsible, we want to make the manufacturer more irresponsible.

It is the darnedest experience I have ever seen in a mature group. It shows how controlling pollster politics has become, because if you have been in a recent race back home, they are obviously conducted in accordance with the polls. The candidates have too many things to say grace over, and when it comes to product liability, when the chamber of commerce comes, and the business group comes, and they all seek to see the particular candidates, it shows up in the polls. It makes the candidate say it is a terrible problem and, yes, I am for product liability at the Federal level.

Well, how did we start this? We started this under President Ford, and our distinguished President Ford had the good, common sense to realize that it was an onrush of business nonsense, because we have the safest products and we have business booming, and we have, as they talk about, lack of competitiveness. I have foreign industries just diving into my State and saying: We want to come under your product liability law, South Carolina. We love it. One hundred German industries and over 50 Japanese industries have come in—I could go right on down the list.

I have worked in the field now almost 40 years, working and bringing industry in. Never once—never once—have I heard a business leader or industrialist say, ''Representative or Governor or Senator, what about this product liability? We are worried about juries and runaway verdicts,'' and that kind of talk that you hear up here at this level.

We never heard that, and we do not hear it today. When they had the hearing, it was an actual embarrassment,

having worked in the vineyards over these many years, to see the witnesses that they brought in to try to give credence to their hearing. They had some makeshift, unnamed organization, and they came with what? They came with statistics about businesses suing businesses down in Alabama.

We could go on over to Texas. We have the business of Pennzoil suing Texaco, and I remember that was a $12 million verdict. That is more than all the product liability verdicts put together over the history of product liability in this land. Add them up. One business verdict, Pennzoil. But the sponsors of the bill started out first saying there was a litigation explosion. Again, we studied it out and we find that actually in tort cases, in civil filings in the courts of the several States over this land, tort only represents 9 percent of all civil filings, and that 4 percent of the 9 percent, or .36, is product liability.

The trend, in the State's justice system, it was firmed up again in our hearings, is lowering, going down. There has been one exception that has held constant, and that is the asbestos cases. Other than that, tort filings and product liability are diminishing rather than increasing. They are receding rather than exploding.

What has exploded is business suing business—and we will have plenty of time, I am sure, with the amendments we will have at hand, to cite the various verdicts. If they are really worried about money, if businesses are worried about money, they better stop suing each other and keep their contracts.

So we had first the litigation explosion. Then they said that they could not get insurance. They were using these little vignettes, anecdotal examples. They use that Little League and some babble, that same nonsense, about the cost of insurance being more than the bats and the uniforms and everything else.

I guess kids do get hurt. Mine played in the Little League, but we never had any trouble with the Little League in my town of Columbia, SC, at that time, and later on in Charleston, SC, we have not had any real problem with the Little League. It is a very viable, wonderful group. I guess in certain instances they take out insurance, but they have not been denied on account of product liability.

They tried, more recently, to update it into the McDonald's coffee case, saying what a terrible thing, this lady who had been burned by the coffee ought to have known better. She really did not have a claim.

I was very much interested, Mr. President, in that treatment given by Newsweek magazine for product liability. In the Newsweek magazine, in the account of the juror in the McDonald's coffee case, she said she thought at first it was a frivolous claim. Thereafter, on listening, she found out there were 700 cases of individuals being burned by the coffee.

Of course, the question that this Senator asked was, ''Why?'' It comes to my attention now, of course, if the heat of the water is increased inordinately over the coffee beans, you get more coffee. Money—money—is the answer here. It is the answer in this particular case.

The Conference Board questioned 232 particular risk managers. These risk managers overwhelmingly said product liability was less than 1 percent of the cost of the operation. Even the business study showed it was not a litigation explosion.

The availability of insurance problem was studied and found to be bad real estate investments they made in the early and mid-1980's. Like our S&L crisis, the savings and loan industry principally based in the investment in homes, real estate, shopping centers, and what have you—the insurance companies in their real estate portfolio had similarly used bad judgment. The result was that the cost had gone up, but more recently the availability has been there and everything else of that kind.

Then they said we should be more like the European system, the EEC, so we could compete with them. During 1988, 1989, 1990, we found out the European system became more similar to ours, and we put those documents in the record, with joint and several liability moving toward the American system rather than the other way around.

Now they say ''compete''—we want Government to compete. If they had listened to our debates with respect to NAFTA and GATT, we would have found out how this Government can compete, because this is what it is: government-to-government competition in international and global trade. Forget David Ricardo and Adam Smith and comparative advantage and free market. We will discuss in this debate where the Japanese approached Alexander Hamilton—incidentally, the approach of using the Government to determine what decisions can be made in the theory of free market, but whether or not it strengthens the economy or whether it weakens the economy.

On that governmental approach with business, immediately you say, ''Wait a minute. That is industrial policy.'' Well, you are right. I think after 45 years of trying for free market, free market, free trade, free trade, we finally learned our lesson. We cannot do as we do or do as we say; we have to find out the predominance. The global competition is the Japanese model. The Japanese model has been emulated not only throughout the Pacific rim but by Germany and countries in Europe and particularly now the East European countries.

The Japanese have schools. They have instructors in the system, as South Korea has done, Taiwan and Singapore, Malaysia, and the others have done. That is why we just had our Secretary of the Treasury in Bali on an economic summit and monetary conference and they cannot seem to understand why they are not going for free trade, free trade, free trade. This crybaby whining about opening up your markets—the fact is, we are losing our industrial and manufacturing backbone.

I was at a conference not many years back with Akio Marita, of Sony, in Japan. He came, and Marita at that time, talking of emerging countries, said that you had to have a strong manufacturing sector if you were going to be a nation-state. Then he went on to say, ''Look, that country that loses its manufacturing power ceases to be a world power.'' And that is what has happened with merry old England. They told the Brits some years back, rather than a nation of brawn we are going to be a nation of brains. Instead of producing products we are going to provide services, ''service economy, service economy.'' We have heard that same chant here on the floor of the U.S. Senate. ''Instead of creating wealth we are going to handle it and be a financial center.'' And England has gone to hell in an economic handbasket. They have two levels of society there. And that is exactly the road your country and my country is on at this present time.

So, with respect to competing on product liability, being a deterrent, let me invite you to any State in America, and particularly mine, where you will find foreign entities, as a result of the lack of a competitive trade policy, have come in now and bought up, with gusto, the American entities and are now producing those Japanese cars and other products here in the United States, like gangbusters. They are down right now, with the devaluation of the dollar, into Miami. I read that in the Wall Street Journal, where they are buying it up down there right and left, because the dollar has lost 20 percent of its value against the mark since the first of January.

The sponsors of the bill have used every argument that they could possibly think of. And again and again and again the States involved say, ''No, we don't need this.'' Again and again and again that bipartisan group, the American Bar Association, has said, ''No, this is bad legislation.'' And, again and again and again, the Conference of State Supreme Court Justices has come in and testified that, as a group, they oppose this.

Then the sponsors come in and say, with a straight face, that what they are trying to do is get uniformity. Now, now, now—uniformity. Uniformity. It is very interesting that this particular bill provides no uniformity; no uniformity when it comes to holding the manufacturer responsible. Oh, yes, we want uniformity for the customer, the consumer, the user of the particular product, but not for the manufacturers themselves.

There is no better example of an unfunded mandate than this particular

bill. Everyone has attested to the fact that, because the bill has not given a Federal cause of action, you leave it at the State level, with words of art enunciated by this high and almighty Congress up here that knows best, exactly what to do and what caps there are and what tests there are, all to be interpreted by the 50 supreme courts of the 50 States. And then, if there is a further appeal, up to the U.S. Supreme Court. So what is started, is a surge against lawyers, "Get rid of the lawyers." Now more lawyers are going to be hired under this particular bill just for product liability, which is not a national problem whatever. But they manufacture it and rig it so, even in contradiction to their own theme of trying to give meaning and cause to the 10th amendment that those things not delegated under the Constitution to the Federal Government shall be reserved to the several States.

No, no. They do not want this one reserved to the States. In spite of the legislatures, in spite of the attorneys general, in spite of the Supreme Court Justices, in spite of the American Bar Association, and in spite of—oh, heavens above—the list of different groups here that we have who oppose this so-called product liability bill—they, all of a sudden, are being so reasonable. They do not really care what passes. They are going to get into conference with that House crowd and that House crowd has gone amok now. Look at what's going on over there—I mean they can really sell them on voting to cut revenues that they do not have. They have a $300 billion deficit but they say we have to buy the vote, we have to get to the middle class. Unfortunately, I do not speak in a partisan fashion, the President of the United States says the same thing. There are a group of Senators here, in a bipartisan fashion, who say we cannot afford tax cuts. But here it is.

Mr. President, I ask unanimous consent this list of entities be printed in the RECORD at this particular point.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

WHO OPPOSES THE "CONTRACT WITH AMERICA'S" LIABILITY REFORM?

Action on Smoking and Health.
AIDS Action Council.
Alabama Citizen Action.
Alaska Public Interest Research Group.
Alliance Against Intoxicated Motorists.
Alliance for Justice.
American Association for Retired People (AARP).
American Association of Suicidology.
American Bar Association.
American Board of Trial Advocates.
American Coalition for Abuse Awareness.
American Council on Consumer Awareness.
American Public Health Association.
Americans for Democratic Action.
American Federation of Labor and Congress of Industrial Organizations.
Arab American Anti-Discrimination Committee.
Arizona Citizen Action.
Arizona Consumers Council.
Arkansas Fairness Council.
Association of Trial Lawyers of America.
California Citizen Action.
California Crime Victims Legal Clinic.
California Public Interest Research Group.
Center for Public Interest Law at University of San Diego.
Center for Public Interest Research.
Center for Public Representation, Inc.
Center for Women Policy Studies.
Children NOW.
Citizen Action.
Citizen Action of Maryland.
Citizen Action of New York.
Ctizens Action Coalition of Indiana.
Citizen Advocacy Center.
Citizens Clearinghouse for Hazardous Waste.
Citizens Coalition for Chiropractic.
Clean Water Action Project.
Coalition for Consumer Rights.
Coalition of Labor Union Women.
Coalition to Stop Gun Violence.
Colorado Public Interest Research Group.
Command Trust Network.
Connecticut Citizen Action Group.
Connecticut Public Interest Research Group.
Consumer Action.
Consumer Federation of America.
Consumer Federation of California.
Consumers for Civil Justice.
Consumers League of New Jersey.
Consumer Protection Association.
Consumers Union.
Cornucopia Network of NJ.
Democratic Processes Center.
DES Action of New Jersey.
DES Action USA.
DES Sons.
Empire State Consumer Association.
Essex West Hudson Labor Council.
Fair Housing Council of San Gabriel Valley.
Families Advocating Injury Reduction (FAIR).
Federation of Organizations for Professional Women.
Florida Consumer Action Network.
Florida Public Interest Research Group.
Fund for Feminist Majority.
Georgia Citizen Action.
Georgia Consumer Center.
Gray Panthers.
Handgun Control, Inc.
Harlem Consumer Education Council.
Help Us Regain the Children.
Hollywood Women's Political Committee.
Idaho Citizens Action Network.
Idaho Consumer Affairs, Inc.
Illinois Council Against Handgun Violence.
Illinois Public Action.
Illinois Pubilc Interest Research Group.
Institute for Injury Reduction.
International Association of Machinists and Aerospace Workers.
International Brotherhood of Teamsters.
International Ladies Garment Workers Union.
International Longshoremen's and Warehousemen's Union.
Iowa Citizen Action Network.
Judge David L. Bazelon Center for Mental Health Law.
Justice for All.
Kentucky Citizen Action.
Lambda Legal Defense and Education Fund.
Latino Civil Rights Task Force.
Lead Elimination Action Drive.
Local 195, International Federation of Professional and Technical Engineers.
Louisiana Citizen Action.
Maine Peoples Alliance.
Maryland Public Interest Research Group.
Massachusetts Citizen Action.
Massachusetts Consumer Association.
Massachusetts Public Interest Research Group.
Michigan Citizen Action.
Michigan Consumer Federation.
Minnesota COACT.
Minnesotans for Safe Foods.
Missouri Citizen Action.
Missouri Public Interest Research Group.
Montana Public Interest Research Group.
Mothers Against Drunk Drivers.
Mothers Against Sexual Abuse.
Motor Voters.
National Asbestos Victims Legal Action Organizing Committee.
National Association of School Psychologists.
National Black Women's Health Project.
National Breast Implant Coalition.
National Council of Senior Citizens.
National Coalition Against the Misuse of Pesticides.
National Conference of State Legislatures.
National Consumers League.
National Council of Jewish Women.
National Fair Housing Alliance.
National Farmers Union.
National Head Injury Foundation.
National Hispanic Council on Aging.
National Organization for Women, Virginia Chapter.
National Rainbow Coalition.
National Women's Health Network.
Nebraska Citizen Action.
Network for Environmental & Economic Responsibility.
United Church of Christ.
New Hampshire Citizen Action.
New Jersey Citizen Action.
New Jersey Environmental Federation.
New Jersey Public Interest Research Group.
New Mexico Citizen Action.
New York Consumer Assembly.
Niagara Consumer Association.
North Carolina Consumers Council.
NOW Legal Defense Fund.
Nuclear Information and Resource Service.
Ohio Citizen Action.
Ohio Consumer League.
Ohio Public Interest Research Group.
Oregon Consumer League.
Oregon Fair Share.
Pennsylvania Citizen Action.
Pennsylvania Citizens Consumer Council.
Pennsylvania Institute for Community Services.
Pennsylvania Public Interest Research Group.
People's Medical Society.
Public Citizen.
Public Citizen's Texas Office.
Public Interest Research Group in Michigan.
Public Voice for Food and Health Policy.
Purple Ribbon Project.
Ralph Nader.
Safety Attorneys Federation.
Southern Christian Leadership Conference.
Southern Poverty Law Center.
Stephanie Roper Committee, Inc.
Tennessee Citizen Action.
Texas Alliance for Human Needs.
Texas Citizen Action.
Third Generation Network.
Truth About Abuse/S.O.F.I.E.
Uniformed Firefighters Association of Greater New York.
United Auto Workers.
United States Public Interest Research Group.
Violence Policy Center.
Voices for Victims, Inc.
Vermont Public Interest Research Group.
Virginia Citizen Action.
Virginia Citizens Consumer Council.
Virginia NOW.
Washington Citizen Action.
Washington Public Interest Research Group.
West Virginia Citizen Action.

White Lung Association of New Jersey.
Wisconsin Public Interest Research Group.
Wisconsin Citizen Action.
Women Against Gun Violence.
Women's Institute for Freedom of the Press.
Women's Legal Defense Fund.
Young Women's Christian Association.
Youth ALIVE.

Mr. GRAMS assumed the chair.

Mr. HOLLINGS. Mr. President, there are over 100 of these organizations all over the country, not only the trial advocates, of course, but the consumer organizations, the AFL–CIO, the working people and everything else of that kind.

I will dwell, later on, on what good has really come of product liability. We never hear that. We act like it is one of the most torturous things in the world. The truth is that under product liability the using public here in the United States of America can pretty well count on the safety of particular products. What happens in rare cases, and they are rare ones, is that something goes wrong—with respect to medical devices, the Dalkon shield and the different other devices of that kind; the Pinto case. I can tell you, the other day 4 million Chrysler minivans were pulled off the market to change the back door switch. That multimillion-dollar effort on behalf of the traveling public in America was certainly not brought about by the National Association of Manufacturers or the chamber of commerce or the Business Roundtable. It was as a result of the product liability system that we have in America.

The sponsors could not produce a Governor. I was waiting at the hearing for a Governor to come in and say we need a national law. The truth is that 46 of the 50 States over the last 15 years have treated their particular problems. In my State they debated it. They got together, not only with the chamber of commerce and the trial lawyers, but the insurance companies and all other business groups, consumer groups, and they worked out upgrading, as they thought needed to be done, the State law on product liability in South Carolina.

Now we are going to come and say, ''Well, you did not know what you were doing. We know best up here. In fact we do not have any work to do. We are going to meddle into your State entity under the 10th amendment here that which has historically been under the States. We are going to want it handled still by the States, but with our guidelines.''

Heavens above, to come at this particular hour here, right at the so-called climax of the Contract With America, based upon the idea that ''that government closest to the people is the better government,'' to come now and say, ''no, no, no'' with respect to this matter, product liability, we have to get it up to the Federal level—I want to see that Governor who comes and says so, because he is just politically answering the Contract With America and political polls.

I have been a Governor. You go before your legislature and you change things that need changing, whatever they are. If you have a good enough case, that legislature, that is very close to the people, is going to respond. But this has been a national fix for over 15 years.

President Ford had a study commission. The result of that study commission said to leave it to the States. They did not like that. So they come in year in and year out, nibbling here and there, ''Well, can I get your vote if I change this? Can I get your vote if I change that?'' There's a fix on this side of the Capitol to get together with the House crowd to move forward with the English system, with caps, with all the other particular interests that they may be able to tag on.

Like the sheepdog that has tasted blood now with that contract, they are going to turn to product liability and gobble up the rest of the flock while they can. Maybe so. Maybe so. But I hope my colleagues in this supposedly most deliberative body would stop and look and listen and understand that this is not any fairness act whatever. Everyone who has really treated with this, as lawyers—I will have to make a talk later on about the lawyers.

We can go to Shakespeare where he said the first thing we do is kill all the lawyers. That was because the only thing standing between tyranny and freedom were lawyers. Jefferson was a lawyer. All these others, we could go down and mention these forefathers, outstanding lawyers, and, of course, they really drew that Constitution and they really had a feel for individual freedoms and the right of trial by jury under that seventh amendment. There are not any restrictions on that seventh amendment—until now. But now we are going to put on a national restriction that says a trial by jury should conform to these particular guidelines that we on high have decided, because you do not have sense enough at the local level to listen to the judge that charges that jury.

I am going to yield because I see the distinguished chairman of our Judiciary Committee, who I am sure is proud of lawyers and is ready to speak.

We could take murder cases like the O.J. Simpson case, and federalize that. I can give them some guidelines where they can move through in a judicious and expedited fashion rather than the theater that they have going on out on the west coast. No one would really dream of putting in a bill to federalize murder and murder cases with Federal guidelines.

One big interest I have had as an attorney is: Give me a Federal cause of action. Let us get some uniformity amongst the 50 States.

The 50 States, incidentally, do not mind taking some 50 to 75 insurance policies—and I have been in the insurance business—the 50 States do not mind going before the 50 State commissions and filing their particular policies. They say with insurance they have a very difficult time trying cases under different jurisdictions. Well, they do it with respect to all business and contracts. We have certain uniformity under the Restatement of Torts. But with respect to insurance itself, they will not give the Judiciary Committee or the Commerce Committee the facts as to how they have been losing money. They came in the mid-1980's and said there was a big insurance problem. We had an amendment which we will propose again—requiring information that they file.

We have the Senators from the insurance State of Connecticut who are going to be heard later on. That crowd up there, Aetna, Hartford, the different insurance companies that are benefiting and making even more money will not tell you where they have had their losses. We have tried to get that information. I have been chairman of that committee for years on end, and now ranking member at this moment. But you cannot find the facts about insurance because they file them separately in the 50 States and they tell you they do not have a correlation. I know you have to have an actuary if you are going to have good insurance. I can tell you there are actuaries in those particular outstanding companies. They know whether they are winning or losing. They know where their costs are. But they will not give them to the National Congress.

So, we are flying blind without the truth in a very abbreviated hearing with the arrogant assumption that the people who sent us here to Washington had the good sense and judgment to make you and I a Senator but all of a sudden they have lost their minds when it comes to trying a little law case in the courtroom back home. They are the only ones who have heard the sworn testimony. We have not heard any sworn testimony. All we have heard is from the fixers downtown. When we get to the chairman of the Judiciary Committee to talk about lawyers, we are going to have a good heyday. They have 60,000 downtown in the District of Columbia—60,000 lawyers. I doubt if many of them have ever been in the courtroom. They are all hired to fix you and fix me. They all are lobbyist lawyers to take anything they can for someone. I never heard of such fees around here. A poor fellow gets charged under ethics, and he has to hire a lawyer for $400 an hour to peruse all of his records and start looking at this and what happened 15 years ago, and all of that kind of nonsense.

They do not come cheap. Billable hours is their theme. I practiced law for 20 years and never had a billable hour. If we won the case, we got a fee. If we did not win, that was my responsibility. That is the retainer system. We have many an injured party that is out of work. There is no salary, large medical bills, and everything else. Yes.

I have taken those under a one-third contingent basis. I tell that poor client not to worry about it. I am going to pay for the investigation. I am going to pay for the court costs. I am going to pay for the interrogatories. I am going to pay for the depositions. We are going to pay for the trial. I am going to pay for my time. If it goes up on appeal, I am going to pay for the printing of the record. I will appear before the Supreme Court. And, unless we prevail, you do not owe me one red cent.

That worked in America for the poor folks, middle-class America. That would not work for the middle class, if they had to come under billable hours at $200, $300, $400. I think we maybe ought to have an amendment that we limit billable hours for defense lawyers, not put caps on punitive damages, but let us put caps on billable hours to, let us say, $50 an hour. If we had that, they would be making over $100,000, making as much as a Senator. That is just 40 hours a week for 52 weeks. But if they worked overtime like trial lawyers have to do, then they would make even more money. But they do not want to talk about caps on billable hours.

That is the group of lawyers that are moving this thing. Nobody that represented an injured party is coming to this National Government and saying we have a national problem. They know differently. It is not easy. You have to get all 12 jurors to agree. The defense side has the investigative staff. When the plaintiff prevails, they are not runaway juries. In my State of South Carolina, the trial judge can look and say, such as recently was done in a case in Greenville, ''I do not like that finding under punitive damages. I am ruling out all punitive damages with respect to the actual verdict. Actual damages, I do not believe you should get but so much. You can take this much or get a new trial. One or the other. You can count on that.'' We have responsible, conservative jurors in my State. And I do not know where in the Lord's world the business community thinks this Congress is going to be more conservative and responsible than my State of South Carolina. That is why I feel so keenly about this.

They might have the Gingrich leadership and the contract and the conservative bunch at this particular hour. But give it time. Give it time. This crowd is way more liberal than what we are back home. That business crowd, in the years to come, are going to find that you will trip up on the carpet and go over to the window and get your money. You watch how they move in on you when you get these national trends.

This is not in the interest of business. It is not in the interest of consumers. It is not in the interest of good, sound law, and certainly does not respond to any need other than the political fix that has been worked in here. We have thwarted it time and again, by thoughtful Senators looking at it and understanding. We have a lot of work to do up here in the National Government. But certainly tort reform is not one of the great needs in this land.

We have investors coming from all over the world because they like our system here as compared to the systems they have in their own countries. The particular industries involved, whether chemical, pharmaceutical and all, just under GATT were making profits, their biggest return, and they were being able to compete. Now the purposes of this particular bill is to try to allow them to put on the market certain pharmaceuticals that they are being prohibited from putting on the particular market because of product liability.

It is a false chant and claim that should not be honored in this particular bill before us. The Commerce Committee members, I know them intimately. They know better but they are caught up in this particular jam, and we will have a good debate as we move along.

I do thank my colleagues for their attention here this afternoon.

I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I understand the distinguished Senator from Utah is here to speak on this bill and I want to allow him to do so. I simply have a mechanical motion to make at this point.

Mr. President, I ask unanimous consent that the other sponsors of S. 565 be added as cosponsors to my substitute amendment: Mr. ROCKEFELLER, Mr. MCCONNELL, Mr. LIEBERMAN, Mr. DODD, Mr. PRESSLER, Mr. HATCH, Mr. EXON, Mr. INHOFE, Mrs. HUTCHISON, and Mr. CHAFEE, and also added as cosponsors of the substitute amendment Mr. HATFIELD, Mr. LUGAR, and Mr. FRIST.

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

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I always enjoy hearing my colleague from South Carolina. He is one of the more intelligent people in this body. He is certainly a great lawyer, and I agree with many of the things he says. In fact, I consider him one of my dearest friends in the Senate and I learned how effective he was many, many years ago as a brandnew, freshman Senator when we worked together on a variety of issues. Nothing would please me more than to always be together, on every issue.

So I just want to say that I have a lot of respect for him. I know that he believes in what he is doing, and that is very important to me.

Mr. President, I am extremely pleased to speak in support of the Product Liability Fairness Act of 1995. As an original cosponsor of this legislation, it has been my pleasure to work with Senators ROCKEFELLER and GORTON, and many others, in addressing the significant issues underlying product liability litigation reform.

I particularly commend Senator ROCKEFELLER and GORTON for the hard work they have gone through in trying to being people together on this very significant bill, and for their longstanding leadership and their dogged pursuit of meaningful product liability reform. It is long overdue. It is my hope that we in the 104th Congress will finally be able to pass some of the needed reforms that the American people have demanded for years.

This act represents a bipartisan effort to correct what many observers have long recognized to be serious malfunctions in our product liability system. This act aims to help American business to grow, to provide more jobs and more affordable consumer goods, to reduce unnecessary and outrageous insurance and litigation costs, and to encourage the medical and technological breakthroughs that benefit the people of Utah and all Americans.

If passed, this act will do that at the same time it ensures that those who are wrongfully harmed by trule defective products are compensated through a prompt, effective system in which the bulk of their compensation will not be eaten up by court costs and attorneys' fees.

Under the current system, however, American manufacturers and others have been forced to devote far too many resources to the costs of product liability actions. Too often those actions have been frivolous attempts to vex and harass American businesses into unwarranted and unjustified settlements. American consumers in all States have had to bear those costs.

PUNITIVE DAMAGES

I have studied these problems and listened to experts, including those who testified at a tort reform hearing I chaired in the Judiciary Committee in early April. I am particularly concerned about the effect arbitrary punitive damage awards have on our economy and civil justice system. They are sought with an alarming frequency that adversely affects our manufacturers, distributors, and retailers with threats of potentially unpayable damages.

Arbitrary punitive damage awards adversely affect consumers. George L. Priest, professor of law and economics at Yale Law School, testified before the Judiciary Committee on April 4. He has taught in the areas of tort law, products liability, and damages for 21 years and has directed the Yale Law School Program in Civil Liability since 1982. He testified as a private citizens, not on behalf of any client. He said, ''The reform of punitive damages alone even reforms that would cap punitive damages or introduce a proportionality cap—will help consumers * * *.'' He added, ''Where punitive damages become a commonplace of civil litigation * * * or even where they become a significant risk of business operations,

consumers are harmed because expected punitive damages verdicts or settlements must be built into the price of products and services.''

We have all heard about astronomical punitive damage awards for spilled coffee and other horror stories. The dollar amounts of those awards have rapidly grown to reach the mind-numbing highs we hear about today. In California, for example, the largest punitive damage award upheld on appeal in the 1960's was $250,000. In the 1970's, the largest award of punitives upheld climbed to $750,000. But in the 1980's, the largest punitive damage award upheld in California soared to $15 million.

It is not simply the amount of the awards that have been granted that is a problem, however. It is the alarming frequency with which punitive and other damages are sought that has a distorting impact on our economy and our civil justice system. Plaintiffs who feel they may hit the litigation jackpot will hold out for large settlements, prolonging litigation and its attendant costs. The mere threat of punitive damage awards raise the settlement value of a case, regardless of its merits.

JOINT AND SEVERAL LIABILITY

Often, this problem is compounded when parties are joined as defendants in the hopes that those parties—as deep pockets—can be forced to cough up a settlement.

I think most Americans have heard about the McDonald's coffee case, in which the jury awarded a tremendous amount of punitive damages to a woman who spilled hot coffee on herself. But how about the McDonald's milkshake case?

In a 1994 New Jersey case, *Carter* v. *McDonald's Corp.*, (640 A.2d 850, N.J. 1994), the plaintiff was injured when his car was hit by another car driven by a motorist named Mr. Parker. Mr. Parker had purchased a milkshake at McDonald's and had placed the milkshake between his legs while he was driving. He inadvertently squeezed his knees together and popped the top off of the milkshake. This spilled the milkshake all over his legs. He became distracted and drove into the plaintiff's car.

I would not argue with the fact that the plaintiff was injured or the fact that Mr. Parker played a key role in that car accident. I would not argue that Mr. Parker should not be liable for any injuries he caused to Mr. Carter through his negligence.

However, in that case, the plaintiff not only sued Mr. Parker, but he also sued McDonald's. You might ask on what theory? He sued McDonald's on a product liability theory. He alleged that McDonald's had sold Mr. Parker the milkshake, knowing that Mr. Parker would consume it while driving and without warning Mr. Parker of the dangers of eating and driving.

Now I do not think anybody would disagree that that is ridiculous. It simply flies in the face of common sense.

Of course, as a matter of law, ultimately McDonald's was legally vindicated and won the case. The New Jersey trial court granted McDonald's a summary judgment and reached the unsurprising conclusion that McDonald's did not owe a duty to its customers to warn them not to eat and drive.

Even that did not satisfy the plaintiff, however, who forced McDonald's to endure an appeal. Again, and not surprisingly, the appellate court agreed with the trial court. But even that still did not satisfy the plaintiff. He sought review in the New Jersey Supreme Court, which eventually denied review.

In the end, and after nearly 3 years of litigation, three levels of courts passed on the case. None of them concluded that McDonald's could be held responsible on that far-fetched theory. But was McDonald's really vindicated?

As that case unfortunately shows, in product liability lawsuits it is too often the case that even a so-called win is a loss. McDonald's had to endure almost 3 years' worth of legal proceedings under a cloud of potentially high damages and had to bear its legal costs. If a corner ice cream shop had sold the allegedly offending milkshake rather than McDonald's, it is highly likely that the milkshake seller would not still be in business today. Does that make sense? Does that benefit consumers? Does it satisfy justice?

Now, it is not unsafe to conclude that the cost to McDonald's of those three levels of trial and appeals was in the thousands and thousands of dollars, all passed on, of course, to you and me as consumers.

The problem with the current product liability environment is that the law actually fosters such abuses by encouraging trial lawyers to file suit against various parties who have little real responsibility for whatever harm is caused. Those trial lawyers do so because they can extract settlements from parties who may not be at fault at all but who may be unable or unwilling to endure the cost and uncertainty of legal proceedings. Those trial lawyers have their own economic incentives to enter these suits: their share will be in the neighborhood of 30 percent or more of whatever they can force the defendants to pay.

Now, I have to say, these are matters that concern me greatly. Frankly, these abuses are encouraged. In fact, it has gotten so widespread that it would almost be malpractice for a lawyer not to claim punitive damages in these cases, because juries have been giving punitive damages, I guess not realizing that all those costs, even though some of them may be paid by third parties, are passed on to consumers in this society. All of those costs are part of the reason litigation is so expensive.

I might add, that same type of reasoning is what is demoralizing America as we watch the O.J. Simpson case go on for months and months of ridiculous histrionics, with attorneys playing PR people outside of the courtroom and with jurors telling the judge what to do. This is ridiculous. I do not know of any other State in the Union that would allow that kind of travesty to continue.

Yet, those are only two things I would mention at this time.

Take another case. This one comes from New York State. [*Kerner* v. *Waldbaum's Supermarket, Inc.*, 149 A.D. 2d 411 (N.Y. App. Div. 2d Dep't 1989)]. In that case, a woman cut her hand while using a knife to separate frozen hors d'oeuvres. She had not allowed them to thaw and was cutting into them when they were frozen. What did she do? She brought a lawsuit. Whom did she sue? She sued the supermarket and the manufacturer and packager of the frozen hors d'oeuvres.

Yet again, all the defendants were ultimately vindicated as a matter of law. The trial court issued a judgment for the defendants, saying in effect that they were not responsible, and that judgment was upheld on appeal.

Again, however, legal vindication was not necessarily justice. It came only after a costly legal defense and lengthy legal proceedings were foisted on the defendants. That is not fair, and it is not just. How can that possibly be called a win?

Cases like these demonstrate the power that can be wielded over individuals or companies who may have at best a tenuous connection to the cause of an injury. Once those parties are named in a lawsuit, they will face significant costs even if they win on the legal merits.

This specter of large and potentially unlimited liability has fueled irresponsible litigation in our country again and again. That is an injustice that we must correct. It is a needless expense our economy cannot afford to bear.

The fact is—whether the terrific sums expended in such litigation come from large awards imposed by juries, from settlements that have been extracted from parties, or from attorneys' fees and costs that are expended in successfully defending lawsuits—those amounts impose a tremendous cost on our economy and that cost crosses State lines.

That cost ultimately hits us most in the impact it has on where those dollars could be going. The moneys spent on litigation are not funds being invested in new research, expanding inventory, hiring employees, rewarding employees, building new facilities, acquiring new equipment, or paying dividends to shareholders. These huge sums are coming from the budgets of small business, individuals, insurance companies, and others every day. If not spent on irresponsible litigation, those dollars could create jobs and spur innovation and research. But, by forcing the reallocation of those dollars away from productive, job-creating uses, product liability lawsuit abuse has created serious interstate economic damage.

The crux of the problem is that all of this harms our economy and our consumers. It removes companies' incentives to invest and discourages them from engaging in research and development of newer and safer products. The threat of expensive and dragged-out litigation raises the risk of innovation.

Moreover, not only does our current tort system limit the amounts companies can spend on wages. research, and technology by increasing the amounts companies must spend on liability insurance and litigation costs, that is, it imposes high opportunity costs, but it also raises the direct costs necessary for a person or company to protect against litigation. In short, the increasing demand for liability insurance and the increasing amounts of the settlements raise the price of the premiums.

The costs that companies must pay to cover their expected liability are passed on to consumers.

Of the price of a simple ladder, for example, a shocking 20 percent goes to paying the costs of product liability litigation; equally appalling, one-half of the price of a football helmet goes to liability insurance. Unnecessary litigation and insurance costs impact the prices we pay for those and all sorts of other goods and services that we need and use everyday.

WHAT SHOULD BE THE ROLE OF CONGRESS?

Critics of this legislation have pointed out that this is an area in which the States should be involved. I do not disagree with that, and I applaud State innovations to curb excessive litigation. However, it has become clear that some of these problems cannot be addressed comprehensively without a uniform, nationwide solution to put a ceiling on at least the most abusive litigation tactics.

This bill addresses a national need and the regulation of interstate commerce. James Madison observed in Federalist No. 42 that the ability of the Federal Government to protect interstate commerce was one of the central facets of the Federal Government's authority and its reason for being. Alexander Hamilton, in Federalist No. 11, agreed with that sentiment when he noted that one of the key purposes of the Constitution was to prevent interstate commerce from being ''fettered, interrupted and narrowed'' by differing State regulation.

I agree that national power has overreached in some areas and has been overly involved in areas in which it cannot be justified. I agree that in many areas the Federal Government has imposed excessive regulatory burdens on the American people.

That is why we are working so hard on a regulatory reform bill that will end that.

It has become evident over the years, however, that Federal action is needed here precisely to protect citizens of some States from the litigation costs imposed on them by other States' legal systems.

For example, the fact that a company may be subject to huge punitive damage awards in one State—say, Texas or Alabama—and none in another State—say, Massachusetts, which outlaws punitive damages unless expressly authorized by statue—has led to a troubling result. The cost of those differing State standards will not be borne solely by those in the respective States.

Plaitiffs' trial lawyers cross State boundaries to bring suits in certain States rather than other States. They seek to join certain defendants just to bring suit in a given State. The higher costs pass directly across State lines in those cases to harm those businesses that are dragged into another State's courts. The fact is that Massachusetts or Utah or any other State may be unable to protect its businesses from suit in other States.

Moreover, in a more pervasive effect, the insurance and litigation costs that are forced on the system by the laws in some States will be passed on to consumers and workers in other States. These harmful effects cannot be contained in one State, nor can the costs be passed on to consumers only in one State or another. Both unpredictability of litigation and the interstate character of markets—whether for insurance, products, or services—has prevented that.

Critics of this legislation are also wrong in contending that the States can address these problems adequately. A number of States have attempted reforms, only to be thwarted by State courts.

Many States have enacted statutes of repose similar to the one included in our product liability bill. Our bill sets a 20-year statute of repose for durable goods. It prevents manufacturers from being sued for old equipment or machinery, and ensures that after a sufficiently long period of time after which the manufacturer has no longer controlled a particular machine or piece of equipment, responsibility will lie with those who are responsible for its use and upkeep.

Unfortunately, State efforts in this area have been thwarted. State statutes of repose have been struck down in at least 14 States based on State constitutional grounds. [*See Berry* v. *Beech Aircraft Corp.*, 717 P.2d 670, 677–678 (Supreme Court of Utah 1985) (citing cases)].

More sweeping efforts have been equally frustrated. In Alabama, tort reform legislation passed by the Alabama State legislature in 1987 required independent court review of punitive damage awards, and placed a $250,000 flat cap on punitive damages for most civil cases. However, in 1991, the Alabama Supreme Court struck down the provision requiring independent court review of punitive damages [*Armstrong* v. *Roger's Outdoor Sports*, 581 So.2d 414 (Ala. 1991)]; and, in 1993, the Alabama Supreme Court ruled that the Alabama Legislature does not have the authority under the State constitution to impose any cap on punitive damages [*Henderson* v. *Alabama Power Company*, 627 So.2d 878 (Ala. 1993)].

Given the inability of State legislatures to carry through on reforms that they conclude are necessary, Federal action in the area is the only viable course through which to attack lawsuit abuses.

The bill corrects a variety of problems, and it does so in a reasonable, modest manner. This is not a radical bill. In fact, it is a very modest bill. It has been criticized for being too modest.

As for the details of how this bill works, the specific provisions of the bill correct certain inequities in the law as it stands and makes those corrections uniform nationwide. At the same time, it allows State-to-State variation of the law within certain protective boundaries so that, for example, States will be free to prohibit punitive damages altogether or take other steps to toughen the law. In that way, the bill seeks to balance and accommodate the State and Federal roles.

The alternative dispute resolution section of the bill, for example, encourages resort to alternative dispute resolution—so-called ADR—by providing procedures through which parties can arrange to go through ADR and by providing for some fee-shifting to any defendant that unreasonably refuses an offer to proceed through alternative dispute resolution.

I have strongly favored using means outside the court system for resolving disputes. This bill encourages the use of those procedures, but leaves it to the States to experiment with providing various sorts of ADR, such as mediation or arbitration, to determine what works best for their citizens.

Other provisions of the bill encourage responsible litigation. For example, the bill contains a 2-year statute of limitations provision. Under that provision, a product liability action must be filed within 2 years of the date on which the injury occurred or on which the plaintiff, in the exercise of reasonable care, should have discovered the injury and its cause.

This requires parties to take action within a reasonable time after they know of an injury and its cause. It will prevent late-in-the-day lawsuits, like one that was filed in my own State of Utah.

In that suit, the plaintiff purchased a Cannondale bicycle from the Bicycle Center on Salt Lake City in July 1986. In August 1986, the plaintiff fell off the bicycle when, he claimed, it suddenly stopped. Now, at that point, he knew he was injured and knew that his injury was caused by falling off the bike. However, it was not until 3 years later, in August 1989, that he filed suit against Cannondale and against the bike shop.

The plaintiff acknowledged in court papers that he did not think of filing

suit at the time of the accident. He admitted that he only became interested in litigation after seeing a report on television about a successful personal injury lawyer from San Francisco. That was the sole reason explaining why the lawsuit was delayed for so long.

I have nothing against parties seeking representation of counsel and getting legal advice so they know what their legal rights are. And I have nothing against the plaintiff being compensated for his injuries if the bicycle manufacturer and the bicycle shop really were at fault.

However, I do have a problem with lawsuits driven solely by aggressive trial lawyers rather than by real people who face real injuries for which they deserve compensation. Potential defendants should not be forced to wait for a prolonged period of time with no idea that an injury may have occurred involving a product they made or sold. When that happens, key employees with relevant facts may have moved on, memories may have faded, and records may be lost or discarded.

Even if defendants can successfully defend such suits on the merits, as occurred in the Utah case, substantial litigation costs are once again incurred.

This product liability bill includes numerous other provisions to encourage responsible litigation and to ensure that liability is imposed only on truly responsible parties rather than on whatever deep pocket a plaintiff's attorney thinks can be picked successfully.

To that end, for example, the bill imposes liability on product sellers—rather than manufacturers—only under certain circumstances in which the product seller actually is responsible for the safety of the product it sells. If, for example, the seller fails to exercise reasonable care with respect to a product and in so doing causes an injury, then the product seller may be liable. A product seller should not be able to be held hostage to a lawsuit, however, where the damage is the responsibility of the manufacturer and where the plaintiff can and should be suing the manufacturer.

Along similar lines, the bill provides that those who rent or lease products should only be liable in situations similar to those in which product sellers can be liable—that is, where they themselves have actually been negligent or otherwise responsible for the harm and not where they are simply in the chain of supply and have done nothing wrong.

Likewise, liability against biomaterials suppliers—who supply raw materials for use in life-saving and life-enhancing medical devices—is also limited to apply only in circumstances where the raw material supplier should be responsible for the ultimate end use of the material, for instance, where it supplied material in accordance with certain specifications and the material did not meet those specifications.

The bill also provides a defense if the injured party was intoxicated or under the influence of drugs at the time of the accident and if the intoxication or drug-use was more than 50 percent responsible for the harm caused.

The bill reduces damages if harm is caused by any misuse or alteration of the product. And, the bill provides that an employer may not be able to recover from a manufacturer any workers compensation benefits that the employer paid out to an injured employee if that employer was, in fact, responsible for the harm—for example, if the employer encouraged the worker to operate a machine improperly.

In another provision that places responsibility where responsibility should lie, the bill limits joint and several liability. Under joint and several liability law as it stands in many States, manufacturers and others in the chain of production can be held responsible for striking amounts of damages for harm that they did not cause—just because another defendant cannot or will not pay its fair share.

How is it fair that a party judged to be only 30 percent at fault pays 100 percent of the damages? This bill strikes a fair balance by providing that joint and several liability in product liability cases, in State or Federal court, is limited only to economic damages. Thus, an injured person will always be ensured of receiving full compensation for economic loss so long as some defendant who is legally liable is capable of paying that loss.

As to noneconomic loss, the bill provides that responsible parties will be responsible for covering that share of the loss for which they are responsible. This fairness approach means that defendants will for the most part be responsible for the harm they cause rather than the harm of other defendants.

As one final point, I note that the threat of having to bear responsibility for harm caused by another party is not the only threat that has skewed the incentives in our legal system. The possibility of exorbitant punitive damages awards has grown so that it effectively amounts to legalized extortion.

The threat alone of excessive punitive damages forces parties to settle under conditions in which they otherwise would not. We need to put an end to extortion by litigation and curb practices further harming our economy and threatening our small businesses with claims that exceed their net worth.

In my own view, limitations on punitive damages should apply to all civil actions—not just product liability actions. Volunteer organizations, blood banks, restaurants, and everyone else subject to punitive damages deserve these commonsense safeguards. And, whether businesses face product liability lawsuits or some other civil lawsuits, the same harm is done to our economy, our interstate commerce, and to our society.

If businesses face outrageous punitive damage awards in some States, they must impose the increased litigation and insurance costs on consumers in all States. Likewise, the costs to workers are passed on throughout the Nation when a company must defend outrageous claims in one State and then has correspondingly fewer resources to spend on expansion and growth in other States. That occurs whether the lawsuits are product liability actions or are fraud, breach of contract or other types of civil lawsuits.

I intend to join Senator DOLE and others in seeking adoption of an amendment to address these matters.

Similarly, I believe the joint and several liability reform in this bill should be extended to all civil actions.

I hope that we will soon consider addressing those problems as debate on this legislation progresses. Again, I thank Senators ROCKEFELLER and GORTON for their leadership and commend them for their efforts.

I yield the floor.

Mr. GORTON. Mr. President, I want to thank and congratulate my friend from Utah not only on his support, but on his eloquence and on his understanding of the values involved in this debate and for his eloquent statement of the case for this bill.

I believe that we will have several other opening statements during the course of the afternoon. And my friend and colleague, the primary cosponsor of the bill, the Senator from West Virginia, will be here momentarily. I believe the Senator from Kentucky [Mr. MCCONNELL] wishes to speak.

I will make only one brief comment with respect to the position stated by my friend, the Senator from South Carolina, and that has to do with the alleged inconsistency of believing that it is appropriate to delegate some responsibilities on which Congress has done a poor job to the States, while to a certain extent providing for uniform rules with respect to product liability. If the position of the Senator from South Carolina is that it is appropriate to delegate those other responsibilities and inappropriate to federalize these and that had been the position of those who wrote the Constitution of the United States, I suppose we would still be operating under the Articles of Confederation.

But, Mr. President, those who did write our Constitution expressly gave to Congress control over interstate commerce. That is an express line, an express section in the Constitution of the United States. It is up to the Congress to determine the degree to which interstate commerce is so implicated in a particular business or profession as to not only authorize but perhaps to require legislation at this level. And it is very difficult, Mr. President, to think of a single field in which interstate commerce is so important as it is

in the manufacture and distribution of actual hard goods in our national economy.

It really does not matter in the American system whether or not goods are manufactured in South Carolina and sold in the State of Washington or in the State of Minnesota, or manufactured in the State of Minnesota or Washington and sold in South Carolina. Almost every significant manufacturer sells its goods in every State in the country. As a consequence, the burden of a legal system which encourages litigation in which results are likely to be dramatically different in one State than in another—a fact, incidentally, known to most trial lawyers who see, obviously, the most favorable forums for their litigation—calls for a degree of uniformity. The desire that American industry be more competitive, the desire that American industry spend freely on research, the desire that American industry develop products as a result of that research, the desire for the kind of competition which causes lower prices to consumers is obviously in the national interest. When it has been demonstrated so dramatically that the present system discourages research and development, it causes many manufacturers that abandon particular fields, sometimes totally and sometimes leaving them to monopolies or quasimonopolies. When consumer prices in certain areas are so adversely affected, it is appropriate that we seriously consider whether or not we cannot consistently, with justice, provide for a more uniform system than we have at the present time.

Does this bill entirely nationalize it? No, of course not. It would be inappropriate to do so. Does it make it more uniform? Yes, Mr. President, it does. That has no more relevance to whether or not we should continue to maintain a nationalized welfare system or perhaps a myth that it has been a failure and that we need State experimentation. There is no relevance between the two. Each should be judged on its own merits. This should be judged on its own merits. And to say that there are somehow or another seventh amendment of the Constitution implications, again, Mr. President, seems to me to be an equally bizarre argument.

Every jury is subject to the law. Every jury is instructed as to what the law is. Juries are instructed on the degree of the burden of proof and the like, and juries determine facts. Nothing, not one line, not one phrase of this bill, deprives any jury of the right to determine matters of fact which come before it. It sets up a framework—we believe a just and balanced framework—for one relatively small but vitally important field of litigation, perhaps the single field of litigation in which interstate commerce is most implicated. It does that, and it does that in a way which does not deny justice or full compensation for any injury subject by reason of the negligence of a manufacturer, Mr. President.

There are no caps in this bill on compensation, on compensatory damages of any kind. But it does make somewhat more predictable the course of litigation, somewhat lowers the cost of litigation. And, Mr. President, I suspect that no actual victim is likely to suffer at all. But I am convinced that the transaction costs for lawyers and expert witnesses and the like, which now eat up way more than half of all of the money that goes into the product liability system, that those transactional costs will be significantly lessened by the passage of this bill.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

PRIVILEGE OF THE FLOOR

Mr. HOLLINGS. I ask unanimous consent that the privilege of the floor be granted to the following members of the Senators staffs. I send the list to the desk.

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

Mr. HOLLINGS. Mr. President, what you have is, as the Senator from Washington just talked about, punitive damages. You have a procedure whereby you might have willful misconduct, but under this particular section, 107(2):

> Inadmissibility of evidence relative only to a claim of punitive damages in a proceeding concerning compensatory damages. If either party requests a separate proceeding under paragraph (1), in any proceeding to determine whether the claimant may be awarded compensatory damages, any evidence that is relevant only to the claim of punitive damages as determined by applicable State law, shall be inadmissible.

That tells you they have really worked this measure over, and they want to keep out the evidence in the regular trial of a case of willful misconduct. They want to keep that out of the attention of the jury hearing the case.

Right to the point of punitive damages, Mr. President. I have listened to Jonathan S. Massey, an attorney who testified in our recent hearings as having handled punitive damage awards before the U.S. Supreme Court. I asked him, ''You know, I was just thinking that the award of punitive damages in the Pennzoil versus Texaco case of $3 billion in punitive damages, how did that compare to all product liability cases?''

Just go back 30 years to 1965 and see what we really can find out. I ask unanimous consent to have printed in the RECORD a letter to me, along with punitive damage awards from 1965 to the present.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

APRIL 13, 1995.

Hon. ERNEST F. HOLLINGS,
U.S. Senate Committee on Commerce, Science, and Transportation, Washington, DC.

DEAR SENATOR HOLLINGS: At the hearing on April 4, 1995 before the Consumer Affairs, Foreign Commerce, and Tourism Committee of the Committee on Commerce, Science, and Transportation on S. 565, the Product Liability Fairness Act of 1995, you asked me to compare the $3 billion in punitive damages awarded in the *Pennzoil* v. *Texaco* case with the sum of punitive damage awards in all product liability cases since 1965.

The attached pages show that punitive damage awards in products liability cases since 1965 come to a fraction of the $3 billion figure. For products liability cases in which the punitive damage award is known, the total comes to $953,073,079. There are 109 additional cases in which the punitive damage award was not reported by the court or either party, most likely because it was not large. If one were extrapolate for those 109 cases by taking the average award in cases in which the punitive award is known—which would err on the side of inflating punitive damage awards in products liability cases—the total of punitive damage awards in all products liability cases—the total of punitive damage awards in all products liability cases since 1965 would come to only $1,337,832,211—less than half the award in *Pennzoil* v. *Texaco*.

I hope this information is of assistance.

Sincerely,

JONATHAN S. MASSEY.

PRODUCT LIABILITY PUNITIVE AWARDS, 1965–PRESENT

AL, 20 cases, $58,604,000; 9 additional cases with unknown amounts.

AK, 2 cases, $2,520,000; 1 additional cases with unknown amounts.

AZ, 6 cases, $3,362,500; 3 additional cases with unknown amounts.

AL, 1 cases, $25,000,000; 0 additional cases with unknown amounts.

AK, 1 cases, $1,000,000; 0 additional cases with unknown amounts.

AR, 2 cases, $6,000,000; 3 additional cases with unknown amounts.

CA, 17 cases, $35,854,281; 9 additional cases with unknown amounts.

FL, 1 cases, $1,000,000; 0 additional cases with unknown amounts.

CT, 1 cases, $688,000; 0 additional cases with unknown amounts.

FL, 1 cases, $519,000; 0 additional cases with unknown amounts.

CA, 4 cases, $3,618,653; 0 additional cases with unknown amounts.

FL, 1 cases, $750,000; 0 additional cases with unknown amounts.

CA, 3 cases, $2,425,000; 0 additional cases with unknown amounts.

CO, 3 cases, $7,350,000; 1 additional cases with unknown amounts.

CT, 0 cases, $0; 1 additional cases with unknown amounts.

DE, 2 cases, $75,120,000; 0 additional cases with unknown amounts.

FL, 26 cases, $40,607,000; 9 additional cases with unknown amounts.

CA, 1 case, $30,000; 0 additional cases with unknown amounts.

FL, 2 cases, $3,500,000; 0 additional cases with unknown amounts.

GA, 10 cases, $43,378,333; 3 additional cases with unknown amounts.

HI, 1 case, $11,250,000; 0 additional cases with unknown amounts.

ID, 0 cases, $0; 1 additional case with unknown amounts.

IL, 16 cases, $44,149,827; 3 additional cases with unknown amounts.

MN, 1 case, $7,000,000; 0 additional cases with unknown amounts.

IL, 3 cases, $5,000,000; 0 additional cases with unknown amounts.

IN, 1 case, $500,000; 0 additional cases with unknown amounts.

IA, 1 case, $50,000; 2 additional cases with unknown amounts.