manufactured a dangerous product, engaged in employment discrimination, or was guilty of medical malpractice, could still be forced to pay the other side's legal fees. I believe it is bad public policy to allow wrongdoers to escape paying their own legal bills when they are proved on the merits in a court of law to be at fault.

I do not disagree that Congress should encourage parties to settle their claims. Certainly all Americans, including victims of unsafe products or medical malpractice, prefer a quick and certain resolution of their claims. That is why plaintiffs will, in all likelihood, accept settlements offers if they are just and reasonable. There is no need to impose draconian measures that greatly infringe on the ability of all individuals to access the courts. I cannot think of anything in the history of American jurisprudence that would support the enactment of such a provision, and I urge my colleagues in the Senate to reject this approach.

Nor do I support efforts to place arbitrary caps on noneconomic damages. The fact that noneconomic damages are difficult to precisely value does not mean that the losses in those areas are not real. Noneconomic damages compensate individuals for the things that they value most, the ability to have children, the ability to have your spouse or child alive to share in your life, the ability to look in the mirror without seeing a permanently disfigured face. If a company acts in a manner that robs people of these precious gifts, we should ensure that the injured party can recover fully for their loss through the jury system. We should not limit the ability to recover with an arbitrary cap.

In addition, I will oppose attempts to broaden this bill beyond the area of product liability. I know that a number of Senators have broader ''civil justice reform'' amendments, that would extend the provisions of this bill to every civil litigation claim filed in State court, or medical malpractice amendments. As I mentioned above, my support for product liability reform is based both on the constitutional power given Congress to regulate interstate commerce, and the need that has been demonstrated—after many years of study—for a uniform approach in the product liability area. The debate on civil justice reform and medical malpractice should be left for another day.

This is particularly true considering the wide-ranging implications that a number of proposed amendments would have on the enforcement of our Nation's civil rights and antidiscrimination laws. Enacting the broader ''civil justice reform'' bills that have been proposed could cause title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, or the reconstruction-era civil rights legislation to become ''toothless tigers.'' We must not stand by and let Congress repeal our Nation's civil rights protections under the guise of civil justice reform.

Finally, I would like to express my continued opposition to the FDA excuse, a provision that Senator DORGAN and I worked to remove last year. I am pleased that Senator ROCKEFELLER and GORTON did not include the FDA excuse in this year's bill.

Mr. President, as I stated at the outset, I do not oppose some product liability reform at the Federal level. Indeed, I am pleased to see Congress debating the standards that should apply in the product liability area, and I hope to work with Senators ROCKEFELLER and GORTON to craft moderate, bipartisan legislation. I believe the Product Liability Fairness Act that was reported out of the Commerce Committee strikes a reasonable balance between the need to preserve access to the courts, and the need to curb frivolous lawsuits.

That is not to say I believe this bill is perfect. I have a number of concerns with the legislation as currently drafted, concerns that I have raised with Senator ROCKEFELLER, and concerns that my staff has made clear to Senator ROCKEFELLER and Senator GORTON's staff. In the first instance, I would like to see the punitive damage provisions altered to accord equal treatment to noneconomic damages. Under S. 565 as currently drafted, punitive damages are limited to $250,000 or three times economic damages, whichever is greater. By excluding noneconomic damages from this calculation, the bill shortchanges the women who do not work outside the home, children, the elderly, and others who may not have large amounts of economic damages. While I support the notion of making punitive damages proportionate to the harm cased by the product—the goal that the punitive damage limitation is intended to accomplish—that harm should not be limited to out of pocket costs or lost wages. Noneconomic damages can often be difficult to calculate, but that does not make them any less real. As a notion of fundamental fairness, any congressional attempts to create a punitive damage standard should include both economic and noneconomic damages in its formula.

Nor do I feel the bill as currently drafted strikes the proper balance in the area of creating ''National, uniform standards,'' it will not completely level the playing field in all 50 States. If anything, I wish the current bill went farther in pre-empting State law in the product liability area. National standards should be just that; standards that apply in all 50 States. For example, if the Federal Government wishes to establish a 20-year statute of repose, that should be the statute of repose, States should not be allowed to establish a lower statute that will prevent consumers from suing after only 12 or 15 years. Again, I have raised this concern with Senator ROCKEFELLER, and I will continue to raise it in the coming days.

Yet while S. 565 is not perfect, it represents a good start. If this bill remains substantially the same, I intend to vote for cloture, as I stated very clearly on the floor of the Senate last year. It is not appropriate for the Senate to continue to filibuster an issue that clearly needs to be addressed. The current system is too slow. The transaction costs are too high. Given that our markets are now national and global in scope, Congress, which has authority over interstate commerce, has a responsibility to examine this problem.

The issue of product liability reform has been before the Senate for well over a decade now. I believe that everyone who is interested in our Civil Justice System should have come to the table and worked with the Commerce Committee, with Senators ROCKEFELLER and GORTON to address and resolve the underlying issues. If you do not feel this bill is the right one, submit a counterproposal. If you feel there are still changes that need to be made, put them forward.

But to simply refuse to even discuss the issue is, in my opinion, irresponsible. It is gridlock. It is not in the best interest of consumers, it is not in the interests of business men and women, it is not in the interests of employees, and it is not in the interest of our country.

I do want to caution, however, that my commitment to vote for cloture is limited to the bill as reported by the Senate Commerce Committee. I do not think that I am alone in that respect; indeed, I believe that the prospects of enacting a product liability bill will be vastly improved if the Senate rejects amendments to broaden the bill beyond its current scope, or to add the dangerous, anticonsumer provisions in the House legislation. If cloture is not able to be invoked, there will be many who will try to blame the democrats. In truth, however, if this bill does not clear the Senate, it will be because the majority on the other side of the aisle was more interested in making a political point than in making a law. It will be because they failed to keep the bill narrow enough and fair enough to command the supermajority necessary to move this bill to final passage.

So, Mr. President, in conclusion I would just say I hope in the ensuing weeks we will be able to debate, and I am sure we will debate in detail, the particular provisions of S. 565. But at this point, based on the legislation before us, I am prepared to support a vote for cloture so we can actually get on the legislation and get beyond filibuster. I yield the floor.

ORDERS FOR THURSDAY, APRIL 27, 1995

Mr. SANTORUM. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9:30 a.m. on Thursday, April 27, 1995; that following the prayer, the Journal of proceedings be deemed approved to

date, the time for the two leaders be reserved for their use later in the day, and there then be a period for the transaction of morning business, not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak for up to 5 minutes each, with the following exceptions: Senator LOTT for 10 minutes, Senator THOMAS for 15 minutes, Senator PRYOR for 10 minutes, Senator HATCH for 5 minutes, Senator HARKIN for 10 minutes, and Senator DORGAN for 10 minutes; further, at 10:30, the Senate immediately resume consideration of H.R. 956, the product liability bill.

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

Mr. SANTORUM. For the information of all Senators, votes can be expected to occur throughout Thursday's session of the Senate and the Senate may be asked to be in session into the evening in order to make progress on the pending bill.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. SANTORUM. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that, in further respect of the passing of the Senator from Mississippi, Senator John Stennis, the Senate stand in recess under the provision of Senate Resolution 111.

There being no objection, the Senate, at 9:10 p.m, recessed until Thursday, April 27, 1995, at 9:30 a.m.