Thereupon, at 12:37 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. COATS).

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. What is the pending business and what is the status of the pending business?

The PRESIDING OFFICER. The pending unfinished business is H.R. 956, and the pending question is amendment No. 709. The Senate is operating under cloture.

Mr. GORTON. Is that the Gorton-Rockefeller-Dole amendment to the Coverdell-Dole amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. GORTON. Mr. President, since we are now under cloture and without the presence of my colleague, Senator ROCKEFELLER, I should like, very tentatively, to announce what I hope the course of action will be this afternoon.

I will, unless there is objection, within a reasonable period of time, ask unanimous consent for a minor but significant amendment to the Gorton-Rockefeller-Dole amendment, a proposition that does require unanimous consent to keep the undertaking that Senator ROCKEFELLER made with respect to the right of a new trial after a judge imposed additur.

After that, I would propose that we go forward by adopting the Gorton-Dole-Rockefeller amendment and the underlying amendment and then having a debate on any further amendments to the bill, some of which will require unanimous consent in order to bring them up, as I understand from the Parliamentarian, because of the position in which we find ourselves.

Senator ROCKEFELLER and I have agreed that amendments from the other side, during the pendency of cloture, that Members opposed to this bill want to bring up ought to be allowed to be brought up, and certainly we will grant unanimous consent for that taking place.

Each of these will require cooperation and essentially unanimous consent. Senator ROCKEFELLER is not back yet. One of the opponents to the bill is here. I am going to suggest the absence of a quorum so that Members can digest this request, so that the leaders can get together if they wish, and so we can proceed for the rest of the day. I hope that we will end up being able to finish the entire bill and having our final vote on final passage before the day is out, as the leader would like to go on to other bills.

Mr. HEFLIN. If the Senator will withhold the quorum call, regarding what the Senator has said about asking unanimous consent, I think Senator HOLLINGS should be on the floor to respond to that. I think he has some feelings on it. However, I do realize this: It is my information that unless that happens, then unanimous consent is going to be necessary for each and every amendment to occur. Now, I have been talking with various people on our side who are very knowledgeable on parliamentary proceedings. I think it is something we will want to look at. If we enter into a quorum call, we ought to investigate and see exactly what the parliamentary status is and what Senator HOLLINGS' feelings are on that. He articulated to me earlier rather strong feelings against it. But he may have reconsidered it since that time.

Mr. GORTON. I think the Senator from Alabama is correct about the parliamentary situation. Certainly, given Senator HOLLINGS' views on the subject, I want his full knowledge and participation before we go ahead. My announcement was just in hopes that we can get interested people here to make those decisions. Awaiting our ability to do so, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. WELLSTONE. Mr. President, am I correct that we are now on the product liability bill?

The PRESIDING OFFICER. The Senate is now on that matter, H.R. 956, the product liability bill under cloture.

Mr. WELLSTONE. I thank the Chair.

Mr. President, I want to speak about this legislation that is before the body, and I would like to talk about what I think is at stake in the vote that we just cast and what would be at stake in some votes that we will also be casting over the next day or day and a half.

As I see it, we started out with a bill that was unfair, which I think tipped the scale of justice away from consumer protection and in favor of corporate wrongdoers. Then as we went along, there was an overreaching by some of the insurance companies and other big corporate defendants, and yet more amendments were attached onto this bill making it truly awful. Then as a result of several cloture votes—when it was clear that this piece of legislation with all of the additional awful amendments could not pass—it was stripped down to now being just profoundly wrong for people in this country, which is not what I would call much of an improvement.

Mr. President, I am not a lawyer. But as I understand the features of this bill there is a tremendous amount of unfairness. I quite frankly cannot figure out why this body went ahead and invoked cloture. First of all, there is still a cap on punitive damages, as I understand it, of $250,000 or twice compensatory damages. Compensatory means both the economic and the noneconomic damages. So that, for example, if you were not an executive of a large company but a wage earner, if you did not make as much money, if you were a woman—women generally speaking make less than men in the work force—or if you were a senior citizen, and you were hurt by exactly the same behavior and received exactly the same harm from exactly the same defendant as some CEO, there would be differences in terms of what the award would be. The punishment would be greater for hurting the CEO.

This is still an absurd result and still an indefensible one. When I spoke last week I asked my colleagues to consider the faces of people who will be hurt by this provision. LeeAnn Gryc from my State of Minnesota was 4 years old when the pajama she was wearing ignited leaving her with second- and third-degree burns over 20 percent of her body. An official with the company that made the pajamas had written a memo 14 years earlier stating that because the material they used was so flammable the company was ''sitting on a powder keg''. This latest proposal, the Gorton-Rockefeller substitute, would cap the punishment the defendant receives. How would this affect LeeAnn? It is not clear. All of that would depend upon what kind of compensatory damages the jury awards. Are we really willing to sit here in Washington, DC, and change that and preempt Minnesota law and make that kind of determination?

Mr. President, this proposed improvement has new language which would allow a judge to award higher punitive damages than the caps would otherwise provide if the judge thinks it is necessary to serve the twin purposes of punishment and deterrence. Again, first of all, what we do is set this cap and it is either $250,000 or twice a combination of economic and noneconomic damages which is discriminatory, by the way, toward low income, moderate income, middle income in terms of how that formula works out. Then we go on.

When you think about the case of LeeAnn Gryc, or the case of a whole lot of other people who are hurt in this country, who is prepared to say that the cap ought to be $250,000 or a little above? Who is prepared to say that a defendant should be punished less because he or she hurt a wage earner as opposed to a CEO of some of the largest companies in this country? I do not see the Minnesota standard of fairness.

The new language then, in what is apparently supposed to be an improvement, allows the judge to award more punitive damages than the caps would otherwise provide, if the judge thinks that it is necessary to serve the twin purposes of punishment and deterrence. But what happened to the jury? People on juries elect us to office. We have all

the confidence in the world in the people who sit on juries to elect us to office. But all of a sudden we do not trust them to sit in judgment of their peers. They sit in judgment of us, do they not? Are not they usually the finders of fact? I would think that it would be difficult to find some standard of fairness where we essentially remove juries from this important process.

Then I was surprised to find in what is apparently supposed to be an improvement a provision saying that if we are worried about the backlog of cases and paperwork reduction and all of the rest, we tell judges that it is OK to go above the caps whenever they think it is necessary, but we can also count on an additional court proceeding. On the bottom of page 22 in the Gorton-Rockefeller substitute, it says that if a defendant does not like the judge's decision to go above the caps, ''the court shall set aside the punitive damages award and order a new trial on the issue of punitive damages only.''.

So what we get back to is essentially a meaningless provision where we go to yet another trial if the defendant does not like the decision the judge has made. My colleague, Senator LEVIN from Michigan, I thought came out here with a lucid presentation of this problem.

Joint liability I think is the thorniest issue. Actually in the Labor Committee, when we were talking about this question, I may or may not have said thinking out loud that I struggled with this question. But I do not think the substitute does anything to correct the problem. It eliminates joint liability for noneconomic damages. Some of my colleagues have referred to this as the ''deep pocket pays problem.'' But I think they are wrong. This is really a ''victim pays problem.''

I will tell you that it is really a difficult question. Suppose a company is responsible for only a portion of what it would take to restore a victim to whole, compensatory damage. Yet with joint liability that company might have to be responsible for more than its fair share. That does not make a lot of sense. It does not seem as if it is fair.

But, Mr. President, now what we have is a provision which essentially says to the consumer, to the citizen that is hurt, to the citizen that is injured, maimed, that they will always have to assume some of those damages, if one of the responsible parties cannot pay. I do not see the standard of fairness. In my State of Minnesota we came up with what I think is a reasonable compromise; that is, we set a threshold. I think it was 15 percent. What we said was that, if you are responsible for less than 15 percent of the overall damage, then you would not have to be responsible for more than your fair share.

But, Mr. President, it does not make any difference what Minnesota has done. We have struggled with the problem. We have come up with a middle ground. But that all is preempted by this piece of legislation.

Mr. President, it just sounds like a clever political argument. But it really is not. So many people have talked about decentralization. So many people have talked about relying more on States and local governments being the decisionmakers. But in this particular case, we are preempting some of the good work that has been done in a good many States in this country, and I would put Minnesota at the very top.

Mr. President, there are huge problems with this piece of legislation. It is a giveaway to corporate wrongdoers. I think it is a profound mistake. We did not really have that much debate on the whole question of the 20-year statute of repose. But, again, let me just simply say, that regardless of how you look at it, I think again this is arbitrary and indefensible. What possible justification is there for it? After all, if a product is defective and does not hurt anybody until it is over 20 years old, is the harm to the victim any less? Is the responsibility of the manufacturer any less?

I talked about Patty Fritz from Minnesota. She is pretty well known in our State, and she is pretty well known in our country for her courage. In her particular case, her daughter, Katie, was crushed to death by a defective garage door opener.

If it had been after 20 years, if the company had produced this product which was defective from the word go but she had only been hurt after 20 years, does that mean the damage to that family is any less? Does that mean the responsibility of the company is any less?

Mr. President, we are closing the courthouse door to people who are hurt by products produced by some of the businesses—thank God, not many of the businesses—within our country. Some of my colleagues came out on the floor of the Senate with a bill last week. Then there were amendments, which, as I said before, made it a truly egregious piece of legislation. We were successful in opposing a good number of cloture motions. Now the bill has been stripped away of some of the worst provisions, but it is still a piece of legislation which is profoundly anti-consumer, profoundly antiordinary citizen, and I think it tips the scales of justice way too far in the direction of corporate wrongdoers and really denies people some of the redress for grievances that they currently have within our court system.

Finally, I think there is a gigantic problem with this Federal preemption. If a State like the State of Minnesota has come up with some reasonable middle-ground proposals to deal with the problems of excessive litigation, to deal with some of the problems of joint liability, to try to have some fairness between the businesses and the consumers and the lawyers, it seems to me States ought to be able to hold on to some of the legislation they passed and not be preempted by this national legislation.

So, Mr. President, I hope we will have further debate on this piece of legislation, and I hope my colleagues will oppose it.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. STEVENS. Mr. President, I would like to thank my southern neighbor, Senator GORTON from Washington, for agreeing to clarify a few points about S. 565, the Product Liability Fairness Act. I also want to thank Senator GORTON's staff for their willingness to work out some of the finer points of this legislation.

Section 102(c) of S. 565 lists a number of laws that are not superseded or affected by the act. My first question seeks to clarify the language in section 102(c)(2). Section 102(c)(2) provides: ''Nothing in this title may be construed to * * * (2) supersede or alter any Federal law;''

The committee report at page 28, footnote 101, gives examples of Federal statutes that are not superseded by S. 565. The examples in the committee report include the Federal Tort Claims Act, the Oil Pollution Act of 1990, and the Trans Alaska Pipeline Authorization Act.

My question to my friend is whether the language ''any Federal law'' in section 102(c) also includes Federal common law. I assume that it does and, therefore, that S. 565 does not supersede any Federal statutory or common law, such as admiralty law. Would my friend clarify this point for me, please?

Mr GORTON. The assumption of the Senator from Alaska is correct. Section 102(c)(2) provides that S. 565 does not supersede ''any Federal law,'' and that includes both Federal statutory law and Federal common law. The act, therefore, would not affect any causes of action or any remedies, including punitive damages, determined under Federal statutory or common law, including admiralty law.

Mr. STEVENS. I thank the Senator from Washington for that confirmation. My second question seeks to clarify the so-called environmental exclusion—section 102(c)(7)—which I support. Could you elaborate on the statutory exclusion and the statement in the committee report that provides: ''The exception for environmental cases in this section makes clear that this act does not apply to actions for damage to the environment.''?

Mr. GORTON. I would be happy to elaborate on this section for the Senator from Alaska. Section 102(c)(7) reads:

Nothing in this title may be construed to * * * (7) supersede or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a state or person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief for remediation of the environment * * * or the threat of such remediation.

As the Senator notes, the committee report explains that the exception for environmental cases is intended to exclude from S. 565 all causes of action and remedies that are available under Federal or State statutory or common law for damage to the environment. Therefore, this act would not place a cap on any punitive damage award or other remedy under any cause of action related to damage to the environment, including an action under a product liability theory.

Mr. STEVENS. Mr. President, I would like to focus on this point for a moment, if I may. Section 102(c)(7) excludes from coverage under the bill any actions for ''remediation of the environment.'' The section refers to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 for the definition of ''environment,'' which includes the navigable waters, the waters of the contiguous zone, the ocean waters of the United States, and any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States. The section does not define ''relief for remediation,'' which is not a legal term of art.

It is not clear whether ''relief for remediation of the environment'' includes all other remedies to make injured parties whole, such as relief for damage to private property and lost revenues, or whether the exclusion is limited strictly to damage to the environment. I note that the committee report states with respect to section 102(c)(7) that the bill ''does apply to all product liability actions for harm'' which is defined as ''any physical injury, illness, disease, death, or damage to property caused by a product.'' I ask the Senator if he could please explain how this exclusion is intended to be applied in the case of an oilspill that causes damage to the environment and damage to private property?

Mr. GORTON. The exclusion in section 102(c)(7) would apply to all causes of action and remedies for damage to the environment. As the Senator from Alaska has correctly noted, the bill would apply to actions under State law for injury to persons or property that are caused by a product. As mentioned earlier, this bill would not apply to any Federal statutory or common law cause of action.

To expand on the Senator's question, in the case of an oilspill caused by the failure of a storage tank in which the plaintiffs seek to recover for both damage to the environment and loss of property, the rules in the bill would establish the standard of proof and the limit of punitive damages with respect to recovery on the basis of damage to property under any applicable State law.

The bill would not apply to any aspect of the recovery for environmental damages, including any recovery for cleanup costs, remedial measures, damages or penalties for loss of wildlife, or punitive damages that are assessed for damage to the environment, whether under State or Federal law and even if the cause of action is based on a product liability theory. As is noted on page 22 of the committee report in the discussion of the definition of ''harm'' ''it is the nature of the loss that triggers the application of the act'' with respect to State law, not the cause of action used.

Mr. STEVENS. I thank the Senator for that explanation. My final question is whether the owner or operator of a product, such as a tank which contains oil, who is sued following an environmental accident may sue the manufacturer of the ship or tank under a product liability cause of action without limitation by this bill if it was product failure that caused the damage to the environment? My concern is that the equipment operator will be unable to recover fully from the manufacturer. Ultimately, the original plaintiff may only be able to recover to the extent that the operator is able to recover.

Mr. GORTON. I appreciate the Senator's request for absolute clarity. Further reference to the example of the ruptured oil tank may best illustrate the answer to your question. Suppose the oil tank ruptures as a result of a manufacturing defect. It leaks oil, causing damage to the environment and the neighboring private property, as well as damage to the tank owner and the tank.

The statutory construction of the environmental exemption is clear. This bill will not alter any law under which any injured party could recover for damage to the environment.

To the extent that the owner or manufacturer of the tank is liable for civil damages or civil penalties, cleanup costs, restitution, cost recovery, punitive damages or any other form of relief ordered to restore, correct, or compensate for damage to the environment, the rules in this bill would not apply. The bill would apply to an action by the private property owner to recover under State law for damage to that property based on the failure of the tank or on the basis that the oil, which is also a product, caused the harm.

Similarly, under section 102(c)(7) this bill would not apply to third party actions related to environmental damages. For example, the tank owner could implead or cross-claim against the manufacturer of the tank for damages awarded against the tank owner for remediation of the environment under any theory, including product liability. S. 565 would not apply as a limitation on the causes of action or remedies available to the tank owner in an action against the manufacturer, but only to the extent that the tank owner is seeking to recover against the manufacturer for damages awarded against the tank owner for remediation of the environment. Applicable Federal or State law, other than this bill, would continue to govern the action with respect to environmental damage.

However, this bill would apply with respect to any action under a product liability theory by the tank owner against the manufacturer for harm, as defined by this bill, caused by the product. In the case of a tank owner which has been held liable under a strict liability regime such as that found in section 1002 of the Oil Pollution Act of 1990, any damages assessed against the tank owner, including damages for injury to real or personal property caused by the product, should be considered economic damages to the tank owner for purposes of this bill, and an action to recover those economic damages from the manufacturer under a product liability theory would be without limitation under this bill.

Mr. STEVENS. Mr. President, I thank my good friend from Washington for taking the time to clarify the scope of these two provisions. I want to thank, again, him and his staff for assisting me and Annie McInervey and Earl Comstock of my staff to clarify these issues which are of vital importance to my State.

Mr. GORTON. Mr. President, I do believe there is one other clarification that needs to be made. The questions that have been propounded by the Senator from Alaska refer to S. 565. Technically speaking, S. 565 is not before us. We are dealing with a House bill and a Senate amendment which incorporated all of the provisions of S. 565 in it. And so the questions and answers are applicable equally to that amendment as they would be if the identical S. 565 were before the Senate.

Mr. STEVENS. Will this still be called the Product Liability Fairness Act?

Mr. GORTON. It will be.

Mr. STEVENS. Then our comments should be addressed, for legislative history, to that act. I thank the Senator from Washington for clarifying that.

Mr. COATS. Mr. President, this has truly been a year of reform. Since the outset of this Congress, the pervasive theme has been to fundamentally change a system of government that has gone awry. Thus far, most of these efforts at reform have been targeted at the Congress, and rightfully so. As some have said, we must first stop the bleeding. However, there are many very formidable tasks before us. One of which we discuss today.

Mr. President, I rise today to dedicate my support to the effort to reform the product liability system.

Justice in America is fundamentally rooted in the principles of the equality,

expedience, and accessibility. Our current system of product liability is in conflict with all of these principles.

Where product liability cases are concerned, we certainly, cannot say that there is equality in the system. There is a total lack of uniformity in the current product liability system. Due to the broad diversity of legal standards from jurisdiction to jurisdiction, it is absolutely impossible to predict what, when and how you will be compensated for losses resulting from a faulty product. Where businesses are concerned, this unpredictability leads to disproportionately high risk calculations and insurance rates as companies are forced to calculate the worst-case-scenario in assessing liability risk.

These risk costs have, not only an adverse effect on those directly involved in any particular case, but on all Americans. Disproportionately high insurance costs have several negative effects on American business. In each case, that negative impact effect all of us.

Confronted with impossible-to-calculate liability costs, American businesses often choose not to introduce new technologies and innovations into the marketplace. Thus denying consumers the benefits of enhanced products and services.

Nowhere is this more evident than the biomedical industry. In my State of Indiana, there is a large biomedical industry. Among other things, these companies make artificial limbs. This is an industry that provides hope and freedom to so many people who may otherwise find their lives limited by disability. However, due to disproportionate liability costs, the manufacturers of the raw materials utilized in the construction of these prosthetic device are increasingly choosing to forego the market. The sales to the biomedical industry represent such a small percentage of total profits that liability costs outweigh benefits.

Furthermore, American businesses are confronted with insurance costs 20 times greater than their European competitors and 15 times greater than those of Japanese industries. In addition to making American products more expensive at home, this adversely effects competitiveness in a global marketplace. That means damage to job creation.

An excellent example of this is a case in Coatesville, IN. A small community of around 600 people, Coatesville is the home of the Magic Circle Corp.—a company employing around 30 people from Coatesville and Filmore, a small town next door.

Magic Circle is a small business that produces riding lawn mowers. The engine of these mowers is manufactured to automatically shut off when a person gets up from the mower seat. Unfortunately, in a cemetery in a nearby State, someone decided to tape down the seat so that the mower continued to run when that person left it unattended on a hillside. The mower rolled forward and injured their foot.

That person, the one who taped down the seat and left the mower unattended on the side of a hill, sued Magic Circle for $7 million. There was no alteration or misuse defense in the State in which the incident occurred. The amount of damages requested exceeded the total of all Magic Circle profits and assets. In the end, they were forced to pay $10,000 in attorney fees and its insurance company paid out $35,000 to the claimant.

There is an interesting footnote to this case. Officials of a foreign government later contacted the owners of Magic Circle to see if they would be interested in relocating in that country. One of the selling points of their presentation was the country's product liability laws.

There are those who argue that the threat of large punitive damages is what makes America's products safe. This argument is fundamentally flawed. What makes American products the best in the world is not a lottery-style product liability legal system. The American consumer operating in a free market, who demands quality and excellence, is what makes American manufactured products the most high-quality products in the world today. However, the impact of our current product liability system is beginning to take its toll. If we do not take action now, we will be in danger of losing our competitive edge.

Even the most adamant defenders of our current system certainly cannot say that it is expedient. A GAO report shows that product liability cases take an average of 2½ years to move from filing to verdict. One case cited took nearly 10 years to move through the judicial process.

The cynical result of these delays is that both parties are ultimately forced to negotiate compromises because they are overwhelmed with legal costs. These compromises often have little to do with guilt or innocence and much to do with predatory lawyers and a bizarre patchwork of legal standards and procedures.

Mr. President, I am an attorney. Many of my distinguished colleagues are attorneys. I am not here to attack lawyers. However, in the legal industry, as in any industry, there are those who lack scruples. There are those who will pursue personal financial interests above ethical considerations. In civil liability cases, lawyer's fees account for 61 percent of funds expended on product liability claims. These expenses include both defendant and plaintiff costs. The net effect of this incredible statistic is that realistic accessibility to the legal system and legal defense is a mere myth in most situations.

Mr. President, clearly there is a need for fundamental reform to the product liability legal system. We have debated this issue since I came to Washington.

Fundamental product liability reform offers the hope of removing one of America's most destructive obstacles to job growth. When frivolous suits are traded, when weak cases are brought, when litigation explodes, our economy is crippled. New technology never comes to market. Medical costs increase. The doors to factories close. Insurance costs increase. American products are unable to compete around the world. Perhaps most sorrily, a legal system that was once the envy of the world, has been twisted and distorted to a point where the very principles on which it was originally constructed cannot even be recognized. We must turn this tide.

A Rand Corp. study found that most of the money awarded in injury cases is taken by the legal process itself. Less than half actually gets through to victims. According to a GAO study, 50 percent or more of payments made by defendants in a product liability trial goes to lawyers. Victims get less than 50 percent. This same report discovered that when a case is appealed, defense costs can actually double.

Estimates vary, but one professor at the University of Virginia has estimated that when all the costs are finally counted, a mere 15 percent of injury litigation awards go to a victim.

Innocent victims must find relief and the help they deserve—and this bill preserves that obligation. But a runaway legal system must not be allowed to make victims of us all.

The current state of product liability law does not work for victims, it does not work for manufacturers, for consumers, for America.

Like so many of the reforms that we have already passed and stand to take action on, product liability reform is long overdue and at a critical stage. For the sake of our workers, for our economy, and for the victims trapped in a legal morass, I urge my colleagues to support this legislation.

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SANTORUM). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GORTON. Mr. President, by consent of all parties, I ask for action on the Gorton-Rockefeller-Dole amendment.

VOTE ON AMENDMENT NO. 709, AS MODIFIED

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment No. 709, as modified.

The amendment (No. 709), as modified, was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KYL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I ask unanimous consent to proceed as in morning business for the next 15 minutes.

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

Mr. DOLE. I thank the Chair.

(The remarks of Mr. DOLE pertaining to the introduction of S. 770 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GORTON. Mr. President, I ask unanimous consent that it be in order for me to offer the amendment I have in my hand which the Democrats have also seen and it be in order notwithstanding the provisions of rule XXII. This is the so-called additur fix amendment requested by the White House.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Mr. President, on behalf of Senator HOLLINGS, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. GORTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HEFLIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HEFLIN. Mr. President, during the course of debate in discussing the breadth of the products liability bill, I mentioned that a nuclear power plant or a component part thereof could be included within the purview of the products liability bill. I also stated that maybe the bill might not cover a nuclear power plant or a component part thereof.

I, in effect, raise two issues: One being the issue of pain and suffering, and the other being the statute of repose. In regard to these issues, I mention the Chernobyl melt-down.

Since that time, my office has been contacted by reliable and informed individuals who feel that I misspoke on this issue.

First, they say the difference between design and operation of the United States and Soviet plants make a Chernobyl-style accident virtually impossible.

Second, they state that the bill would not in any way prohibit compensation for injured parties in the event of a nuclear accident regardless of the time of the manufacture of the plant or components. They particularly point out that Congress has provided a sure and certain recovery system for any member of the public injured as a result of a nuclear power plant accident—the Price-Anderson Act—and, further, that Congress in 1988 increased the amount of funds available for claims to more than $6.8 billion and pledged to review the situation in the case of an accident where more funds were needed to compensate the injured. The nuclear power industry, I am told, has willingly agreed to be assessed up to $63 million against each licensed reactor in order to pay damage claims. The nuclear power industry has met this obligation to provide a clear and reliable source of liability compensation when it is justified.

While I have not researched this issue completely, I do find that following the case of *Klick* v. *Metropolitan Edison Co.* (1986, CA3 Pa) 784 F2d 490, which limited certain damages to an ''extraordinary nuclear occurrence,'' Congress did amend the Price-Anderson Act to include a ''nuclear incident.''

In the exclusion clause of the products liability bill there is a statement to the effect that the bill does not supersede any Federal law.

I have great confidence in the knowledge and reliability of the individuals who have brought this to my attention, and I would like to put the record straight. I will continue to research this matter; and if there is anything different from what I have been told, I will make it known to the Senate.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. DEWINE). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BURNS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BURNS. Mr. President, I ask unanimous consent that I may be allowed to proceed as in morning business for the next 10 minutes.

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

(The remarks of Mr. BURNS pertaining to the introduction of S. 768 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. BURNS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

UNITED STATES-JAPAN TRADE RELATIONS

Mr. BYRD. Mr. President, I have a Senate resolution which has been cleared with both leaders, and they are both cosponsors. I have the clearance from them to take up the resolution and proceed with its immediate consideration. I therefore send a Senate resolution to the desk and I ask unanimous consent that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will read the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 118) concerning United States-Japan Trade Relations.

The Senate proceeded to consider the resolution.

Mr. BYRD. Mr. President, this resolution is being jointly cosponsored by Senators DOLE, DASCHLE, BAUCUS, REID, ASHCROFT, WARNER, LEVIN, HOLLINGS, PRESSLER, DORGAN, BROWN, and SARBANES.

Mr. President, the long and difficult negotiations between the United States and Japan over United States access to the Japanese automotive market collapsed last Friday, May 5, 1995, in Whistler, Canada. Japan simply cannot kick the habit of a closed automotive market, that is the antithesis of free trade. It is not clear as to whether the Japanese will return to the negotiating table with a changed position, or whether Japan's automakers will themselves announce an agreement with specific measures of progress to allow American products to compete fairly there. Let us hope that they do break the impasse, but this disappointing result of strenuous, long-term efforts by the United States to get fair access to this lucrative market brings us to a watershed in our trading relations with Japan. This blow cannot help our overall relationship with a nation that we have worked with for decades to promote our mutual goals of security, stability, and peace in the Pacific.

My distinguished colleague from West Virginia, Senator ROCKEFELLER, stated on this floor this past Wednesday that the nature of the difficult problem in getting fair access to Japan's market. Japan rigs her market against us, despite economic pressures to be more open. Despite the recent increase in the value of the yen, which would make United States products more competitive in Japan, Japan keeps her market closed to cheaper imports and overprices goods offered to the Japanese consumer. Increased savings which should be passed on to Japanese consumers, resulting from the increased strength of the yen vis-a-vis other currencies are never passed on to the Japanese consumer. The increased profits which are accumulated by Japanese producers are used to subsidize exports, keeping prices for those same goods artificially low here in the United States, making Japan artificially