both of those cases the courts held there was no duty to warn where the dangers are of common knowledge.

Mr. MCCONNELL. This basic principle is part of case law and it is also set forth in the Restatement of Torts, at section 402A, which I would like to include in the RECORD. The relevant part provides that defendants

> Are not required to warn with respect to products, or ingredients in them, which are only dangerous, or potentially so, when consumed in excessive quantity, or over a long period of time, when the danger, or potentiality of danger, is generally known and recognized. Again the dangers of alcoholic beverages, are an example, as are also those foods containing such substances as saturated fats, which may over a period of time have a deleterious effect upon the human heart.

I thank my colleague for responding to my inquiries.

Mr. GORTON. I am glad we clarified the meaning of section 106.

Mr. HOLLINGS. Mr. President, I have been at the Budget Committee all afternoon, and so I have not been able to monitor all the nuances, but we are now hearing that reasoned objections need not be given to this provision because the distinguished Senators say that they are going to take care of this issue in conference.

That could be. I have served on many a conference committee and I have learned that you are never able really to control it. Each Senator is given a vote, along with the House Members.

Be that as it may, I will not give the reasons why I am concerned about this provision at this particular time, other than to say that I am also honestly objecting. I am courteously objecting. I do not know how to say it any better than that.

When the proponents make a request, a unanimous-consent request, and assume that theirs is the only honest request, courteous request, and sincere request, and how they can be more honest, then that constrains me to stand and say that I am just as courteously objecting and honestly objecting as I know how to object. And I object.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

UNANIMOUS CONSENT AGREEMENTS

Mr. DOLE. Mr. President, I ask unanimous consent that notwithstanding rule XXII, that the following amendments be the only remaining amendments in order to H.R. 956, and not be in order after the hour of 11 o'clock a.m. on Wednesday: Harkin, punitive damages; Boxer, harm to women; Dorgan, punitive cap; Heflin-Shelby, Alabama wrongful death cases; Heflin, punitive damage insurance.

I ask unanimous consent that the vote occur in relation to the Shelby-Heflin amendment number 693 at 9:45 a.m. on Wednesday, to be followed by a vote on or in relation to the Harkin amendment.

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

Mr. DOLE. I further ask that following the disposition of the above listed votes, if no other Senator on the list is seeking recognition to offer their amendment, the Senate proceed to the adoption of the Coverdell-Dole substitute, as amended, the Gorton substitute, and the bill be advanced to third reading without any intervening action or debate.

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

Mr. DOLE. I further ask that following third reading, the following Members be recognized for the following allotted times, to be followed immediately by a vote on H.R. 956, as amended:

Senator HEFLIN, followed by Senator ROCKEFELLER, 15 minutes each; followed by Senator GORTON, 15 minutes; followed by Senator HOLLINGS, 15 minutes; and followed by Senator LEVIN, 10 minutes.

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

ORDER TO PROCEED TO S. 534

Mr. DOLE. Mr. President, I ask unanimous consent, and this has been cleared by the Democratic leader, at 12 noon on Wednesday, May 10, the Senate proceed to calendar 74, S. 534, the Solid Waste Disposal Act.

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

Mr. DOLE. Mr. President, I think Senator HARKIN plans to offer his amendment in about 20 minutes, at 7 o'clock. I am not certain whether the amendments by Senator BOXER or DORGAN will be offered.

We have the agreement, in any event. I want to thank my colleagues on both sides of the aisle. This means no more votes tonight. We can alert our colleagues but there will be debate on the Harkin amendment, and I assume other amendments if they want to be called up. I thank the Chair.

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. ABRAHAM. 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. ABRAHAM. I thank the Chair.

Mr. President, I rise this evening in support of the product liability reform bill now under consideration, and I would like to just preface my remarks by offering my compliments to the bill's managers for their tenacity in sticking with this process as we have moved through all the various perspectives to find a point of common agreement between 60 Members of the Senate. I think both Senator ROCKEFELLER and Senator GORTON worked very effectively on this product liability reform effort.

I believe the bill represents an excellent start at reforming our civil justice system, a system that eats up over $300 billion a year in legal and court costs, awards, and litigants' lost time, not to mention the loss to consumers and the economy from higher prices for products, innovations and improvements not on the market, and unnecessarily high insurance costs.

By placing reasonable limitations on punitive damages in product liability suits, this legislation will begin the process of reforming our litigation lottery without harming anyone's right to recover for damages suffered.

I am especially pleased that the bill now includes a special provision limiting punitive damages for individuals with assets of less than $500,000 and for small businesses with fewer than 25 employees. This provision is modeled on a proposal that Senator DEWINE and I cosponsored and provides that the maximum award against such individuals or entities is the lesser of $250,000 or twice compensatory damages.

Mr. President, no one benefits when businesses go bankrupt because of arbitrary punitive damage awards. Small businesses are particularly susceptible to such problems as are the millions of Americans employed by them.

The bill will also eliminate joint liability for noneconomic damages in product liability cases. Thus the bill would end the costly and unjust practice of making a company pay for all damages when it is only responsible for, say, 20 percent just because the other defendants are somehow judgment proof.

The bill would replace the outmoded joint liability doctrine with proportionate fault in which each defendant would have to pay only the amount necessary to cover the damage for which he or she was responsible.

The bill also creates some important limitations on the liability of sellers of products generally as well as on the liability of suppliers of raw materials critical to the production of lifesaving medical devices.

These provisions go a good way toward restoring individual responsibility as the cornerstone of tort law. They also recognize an important fact about our legal system. Ultimately, in its current form, it is profoundly anticonsumer. By raising the prices of many important goods, our legal system makes them unavailable to poor individuals who cannot afford them when an exorbitant tort tax has been added. And in extreme cases our legal system can literally lead to death or misery by driving off the market drugs that, if properly used, can cure terrible but rare diseases or medical devices for which raw materials are unavailable on account of liability risks.

These are important reforms, Mr. President; reforms that will increase product availability, decrease prices and save jobs.

When we allow our tort system to stifle production and innovation the real losers are consumers—who must pay higher prices and choose between fewer and less advanced goods—and workers—whose job opportunities disappear.

By eating up 4.5 percent of our Gross Domestic Product, the tort system costs jobs. Besides causing companies to discontinue or not introduce products, it also hurts American businesses overall by making them less competitive in the world market.

A 1994 Business Roundtable survey of 20 major U.S. corporations reveals that they receive 55 percent of their revenue from inside our country, but incur 88 percent of their total legal costs here. Clearly such discrepancies in legal costs put our companies at a disadvantage in the world marketplace.

It is no secret that I wish we had gone farther with this bill, to protect the nonprofit organizations, the towns and villages and the ordinary Americans who remain victims of our current broken legal system. I hope that Members of this body who support this legislation but at this time do not want to apply its reforms more broadly will on further reflection see their way clear to taking the next step; to enact similar reforms to assist homeowners, accountants, farmers, volunteer groups, charitable organizations, all small businesses, State and local governments, architects, engineers, doctors and patients, employers and employees. But I feel strongly that the legislation under consideration, even limited to its present scope, is an important step toward making our civil justice system fair and efficient and improving the lives of our citizens. I urge its prompt final passage.

I urge its prompt final passage.

Mr. President, as I say, I hope that we will go further in the days ahead, whether in the form of independent legislation or as part of further discussions of legal reform that may come before the Senate in the context of securities litigation or some other issue before us, because I think that we need an overall and comprehensive reform of the system.

I know that I speak for a number of the Senators who are active and working on this bill in saying that we are delighted with the progress we have made so far and, while we may not think we are yet close to our final destination, we have taken a good first step. And, most importantly, I can say that, at least for this Senator, I am dedicated and committed to continuing the fight to keeping this whole issue of reforming our legal system before the Senate and I remain hopeful that we will enact more reforms in the months ahead.

Mr. President, I yield the floor, and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. ABRAHAM). Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I ask unanimous consent that the pending amendment be set aside.

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

Mr. HARKIN. Mr. President, I ask unanimous consent that the amendment I am about to send to the desk be made in order.

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

AMENDMENT NO. 749 TO AMENDMENT NO. 690

(Purpose: To adjust the limitations on punitive damages that may be awarded against certain defendants)

Mr. HARKIN. 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 Iowa [Mr. HARKIN] proposes an amendment numbered 749 to amendment No. 690.

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

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

The amendment is as follows:

In section 107(b) of the amendment as amended by amendment No. 709 insert the following:

''(6)(i) Notwithstanding paragraph (1), the amount of punitive damages that may be awarded in any product liability action that is subject to this title against an owner of an unincorporated business, or any partnership, corporation, unit of local government, or organization that has 25 or more full-time employees shall be the greater of—

''(I) an amount determined under paragraph (1); or

''(II) 2 times the average value of the annual compensation of the chief executive officer (or the equivalent employee) of such entity during the 3 full fiscal years of the entity immediately preceding the date on which the award of punitive damages is made.

''(ii) For the purposes of this subparagraph, the term 'compensation' includes the value of any salary, benefit, bonus, grant, stock option, insurance policy, club membership, or any other matter having pecuniary value.''.

Mr. HARKIN. Mr. President, this is a very straightforward amendment. It simply provides that the caps on punitive damages that are in the amendment will not apply in cases where a business is sued and the chief executive officer's salary over the previous 3 years is greater than the total compensatory damages in the case for businesses with 25 or more employees.

This is less than 13 percent of all businesses, according to the Census Bureau. In those instances, the cap on punitive damages, in my amendment, would be raised to twice the compensation of the chief executive officer for 1 year averaged over the last 3 years.

Again, let me try to put it in plain English. What my amendment provides is that if a corporation is sued and it has over 25 employees, then the cap on punitive damages that is in the Gorton substitute amendment will not apply. The formula to be used would be that punitive damages would be capped at twice—just twice—the annual compensation of the chief executive officer of that corporation and that annual compensation would be determined by averaging the last 3 years.

Mr. President, we all agree that punitive damages that are paid should not be disproportionate, but proportionate to what? This legislation basically says that a multibillion-dollar corporation can consciously and flagrantly disregard the safety of others and have that conduct proven, not just by a preponderance of the evidence but by clear and convincing evidence. So what this means is that the legislation before us says this multibillion-dollar corporation can consciously, flagrantly disregard the safety of others, be sued and go to court, have it proven that they consciously and flagrantly disregarded the safety of others by clear and convincing evidence, and the maximum punitive damages for this kind of heinous conduct is only twice the compensatory damages of the plaintiff, even if those damages are such a small amount that they are only a tiny proportion of the company's profits and assets.

I believe the more important comparison in punitive damage cases is the proportion of the damages to the size and the financial strength of the business.

The compensation package of the CEO of a company with at least 25 employees, as my amendment provides, is inevitably going to be a reasonably fair proportion of the total cash flow of the company. Now, I have chosen to have it apply to only those businesses that have 25 or more employees so that a small business, a sole proprietor, who retains all of the profits of the company as his or her compensation is not affected.

There is only one purpose for punitive damages, and that is deterrence. That is the only purpose of punitive damages, to deter that flagrant, irresponsible action, that disregard from the safety of others, from happening in the future. Yet, who believes that a punitive damages award of a few hundred thousand dollars is going to have a significant impact on a company the size of, say, a major motor company, a multibillion-dollar corporation?

The CEO's of some companies make $250,000 a week. So how great of a deterrent will it be to a big corporation if their total punitive damages is $250,000? That is what they pay their CEO for 1 week.

So why did I choose the compensation packages of the CEO's of these large companies? Because I believe that unless executive compensation is

ruinously disproportionate to the resources of the company—and that is seldom the case—twice that compensation package will not be so large that it will cause the company to close. No one can argue that a multibillion-dollar corporation that pays its CEO, say, $5 million a year is going to close its doors because a punitive damage award comes to $10 million or 2 years' salary.

The other reason I have chosen executive compensation is because it is something that is entirely within the control and discretion of the company's management. And it also takes into account the cash flow of the company. It is, therefore, more fair than a system based on the total assets of the company which may be fixed productive resources.

Mr. President, let me read a few examples of the compensation packages in a few of the major corporations. This is from the recent issue of Forbes Magazine in the May 22 issue. The cover says ''Pigging it up: Corporate management who subdues their directors into submission.'' In this issue it says 800 chief executives are paid $1.3 million per year. That would be one of the lower ones. Some of them are extremely high. I am just going to read a few. These are some of the companies that may be involved in the potential lawsuit we are talking about here.

Here is the compensation of the CEO of General Electric: $8.6 million per year. Let us see now; that would come out to be about $300,000 every 2 weeks, or about $600,000 a month. So you can see, if General Electric were to make a product that they knew consciously, flagrantly disregarded the safety of others—and this was proven in a court of law by clear and convincing evidence—under the bill before us, they get $250,000, or twice the compensatory damages. Well, as I showed you, the CEO makes almost $250,000 a week. So what kind of a deterrent is that going to be?

Here is Trinity Industries. The CEO there makes $6.2 million a year. That is about $250,000 every couple of weeks.

Here is Morton International, where the CEO makes $7.5 million a year.

Here is Chrysler, where the CEO, Mr. Eaton, makes $6.2 million a year.

Here is Premark International. I do not even know what they do. They pay their CEO $12.121 million a year. Well, let us see, that is a million dollars a month. That is $250,000 a week, I guess. So if Premark consciously, flagrantly made a product in disregard of the health and safety of others and were sued and taken to court, and that was proved by clear and convincing evidence, one of the highest standards, they could have their damages capped for a figure as low as what their CEO makes in 1 week.

Do you think that is a deterrent? That is not a deterrent at all. They would laugh that off.

Here is Colgate-Palmolive. Mr. Mark makes $13.460 million a year as the CEO. I think you get the picture.

Here is Mattel Toys. Their CEO makes $7.6 million per year. Yet, we are going to say that some kid who got injured by a toy, permanently disabled for life—and again, let us think again; is it just some kid who got hurt by a toy because they were misusing it? No, they have to go to court and prove that the company flagrantly and consciously disregarded the safety of that child in making that toy. It has to be not by a preponderance of the evidence but by clear and convincing evidence, a higher standard. After all that, we will slap their hands and cap the punitive damages at a small fraction of their company's worth.

So, again, I think, Mr. President, you get the picture. There are 800 companies here. I am not going to run through them all. Again, I am not mentioning these companies because I want to cast aspersion on these companies. I have nothing against them. In fact, they are probably pretty decent, good companies. I have had dealings with some of them before. I am sure they want to be good citizens and want to employ people, and they want to make our country great. I am not saying these companies are bad. I am just using this as an example of the kinds of compensation they pay their CEOs.

Again, my amendment says that if you go through all of these hoops and you get punitive damages, we are going to cap it just at twice the annual compensation of the CEO. Mr. President, here is an article from the Tampa, Florida, Tribune, April 13th. I want to read the first couple of paragraphs. It says:

> The Nation's corporate chief executives find their jobs an enriching experience these days. ''Greed clearly is back in style,'' says Robert Mongs, a principal of Lenz, Inc., an activist investment fund in Washington. ''There is almost a feeling among CEO's that the money is there to be taken.''

If these companies want to pay their CEO's $12 million a year, or $7 million a year, that is their business. I believe it is our business as lawmakers charged with responsibility to provide for the general welfare of our people.

Now, Mr. President, the word ''welfare'' appears twice in the Constitution of the United States. Most people do not know that. It first appears in the Preamble of the Constitution, which is part of the Constitution, where it lays out the reasons for the Constitution. One of the reasons is to promote the general welfare. It does not say stand back and let the States do it. It charges Congress with promoting the general welfare of our people.

Then in article I, section 8, which lays out the duties and responsibilities of Congress to lay and impose duties and customs, to regulate the Army and Navy—it has a whole list—to regulate commerce, a whole list of things that Congress is specifically charged to do, in article I, section 8.

One of those is to provide for the common welfare of the people. That is our responsibility. We are charged by that when we raise our hand and swear our oath to uphold and defend the Constitution.

The Constitution says clearly that we are to provide for the general welfare. In providing for the general welfare, we want to make sure that people—average citizens of this country—have the assurance that when they buy a product, consume a product, or use a product, when they travel on our highways, that they can be reasonably certain that what they are using, what they are buying, what they are consuming, is not going to harm them. That is our responsibility.

That is why we pass safety and health laws. That is why we put stoplights on our intersections. Now a stoplight, Mr. President, restricts my freedom. I want to go down that street. I do not want to stop at a stoplight but that stoplight restricts my freedom of movement. We have decided for the public safety that we will regulate the flow of traffic and we put up stoplights.

That is why we have food inspection laws. That is why we have all kinds of safety laws. And that is another reason why we have left untouched in our country for these 200-plus years the common law that we inherited from Great Britain that goes back over 600 years, the concept of tort feasor, the concept that someone must take due care and concern that his actions do not harm others. If those actions do harm others, I am held accountable and responsible.

I believe it promotes responsibility. It makes people think twice about their actions and about what we make, how we act, and what we do. That is why I find this bill before the Senate so out of step with what we have been doing for 600 years and so out of line with what we in our offices and in our speeches say we want. We want people to act responsibly. We say if someone is not responsible we want them held accountable.

In the bill as it is, a corporation could make something, hurt somebody. As I pointed out, they could be maimed for life. How are they held accountable in terms of deterrence and punitive damages if we have these low caps?

I believe that is a modest amendment. It is not going to bust any company. There is no company—no company in this magazine, not one company—could say that if they had to give up 2 years of their CEO's compensation, that they will go broke. If they are, their board of directors will fire everybody running that company.

I believe that at least 2 years of compensation of what a CEO makes could be a deterrent to that company in terms of their future actions. Certainly, $250,000 is not a deterrent.

Does any person think that a company with the resources to pay one person $12 million a year would flinch from paying even $1 million in punitive damages? Some of the individuals make as much money as the salaries of

all the United States Senators combined, and no one thinks we are undercompensated here.

We all agree with the Dole proportionality of punitive damages award. It ought to be apportioned to the damages caused and the pain and suffering and the injury to the person. It also ought to be apportioned to the resources of the person or the company that caused that injury. This goal of proportionality has been served for centuries by the jury system, under the watchful eye of a judge.

Mr. President, I must also say that this bill surprises me. Many of the proponents of the bill keep talking about returning power to the local level. It does not get any more local than putting a decision in the hands of a jury of one's peers. These are not people who ran for office. These are not people who went through years of law school or other special training for their jobs.

The people who the proponents of this bill apparently think can apparently no longer be trusted to come up with fair verdicts are good citizens, the ones who serve on juries, pay their taxes, and go to the polls.

Now we are being told by the proponents of this bill, ''We cannot trust you.'' Well, considering that everyone here was put here by those same citizens who sit on the juries, how can we now doubt their wisdom? Juries, by and large, are fair and come up with reasonable verdicts. And they have been doing it since the dawn of our democracy.

What is it about juries that now makes them constantly make these so-called foolish decisions that the bill's proponents have been reading? Will the proponents of this bill say that the people who serve on juries are ignorant? If so, stand up and say so. Will the proponents of this bill say that the people who serve on juries are easily misled? If so, let them stand up and say so. Do the proponents of this bill say that the people who serve on juries lack common sense or they have no sense of fairness? If so, let them get up and say so. Do the proponents of this bill say that a jury cannot look at a person who has had a serious injury and then go on to decide that the product that was involved was not negligently manufactured? Do the proponents say that? If they believe so, let them get up and say it.

The facts are just the opposite. In fact, juries decide against plaintiffs about half the time. Juries have had a long track record in dispensing wisdom, a record about three or four times as long as the U.S. Senate.

I find it very interesting that the proponents of this legislation, some of them are the strongest voices about returning government to the local level, giving power back to the local level. There is nothing more local than a jury of your peers. Now the proponents of this bill are saying, ''We cannot trust you to make these kind of decisions. We will take it out of your hands.''

As far as I know, there is nothing more fair, there is nothing that dispenses wisdom and justice more evenly, than juries of our peers. I may not agree with every jury verdict. Sometimes I believe a jury makes a mistake. But I was not sitting there. I did not listen to all the testimony. I was not able to weigh all the pros and cons.

So what I read in the paper may upset me. I can honestly say that there are times when I have heard of jury decisions that make me mad. But then after I dig into it, find out about it, and read more about it, then I find out why the jury reached the decision they did.

So juries are not ignorant. Juries are our neighbors, our relatives, our friends, the people who put Members in this body in the first place.

All I say, Mr. President, is that I have opposed caps on damages, but if we are going to have a cap, and this bill says we are going to have a cap, let it at least be high enough that punitive damages can serve their purpose to deter truly heinous actions by the largest companies in this country.

We should not make it so that they would be so high as to bankrupt a company. We should not make it so that it would put small businesses out. That is why I have exempted those businesses of less than 25 employees.

I believe that the amendment I have offered accomplishes that fine balance and the balance of deterrence, punitive damages high enough to really deter that kind of action in the future. Not high enough to bankrupt the company. And not so low as in this bill as to where companies will just laugh it off. Just laugh it off—$250,000.

Now, I know the proponents of the bill will say, well, the judge can raise the $250,000 if he wants. True. But then the defendant can say, well, I do not like it. I want to go back to another trial and go right back to the process again. And again these multibillion-dollar corporations will get to write off, of course, all the attorney's fees and expenses as an ordinary business expense, and we taxpayers pick that up. They go right back through the process again. Thus, the cycle just keeps going. So really what we really have in this bill is a $250,000 cap. That is not enough to be a deterrence.

I believe this amendment will be a deterrence, I believe it is fair, and I believe it is reasonable.

Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, the Senator from Iowa assumes the question of deterrence, misconstrues the actual impact of punitive damages, and totally misstates the provision that he purports to amend. There is no $250,000 punitive damage cap. In the case of serious injuries, for anything other than the small business, which is exempted both in the bill and in the amendment of the Senator from Iowa, for anything other than a small business, the cap is $250,000 only if the damages to the plaintiff are minimal. In the cases repeatedly cited by the Senator from Iowa, the individual maimed for life—that was the last quotation I remember—it is obvious that the economic damages to that individual together with the award for pain and suffering, unlimited by any feature of this bill, added together and multiplied by two is infinitely greater than $250,000.

Every week in the United States we have compensatory damage awards well up into the millions of dollars, and in each of those cases, except for the very, very small business, the maximum award of punitive damages on the part of the jury under the bill as it exists now is twice whatever those damages are. The $250,000 figure was only put back into this proposal to say that you could go that high in case of a jury award for actual damages that was extremely small. And, Mr. President, if a claimant goes all the way through a trial and proves that his or her damages are only $10,000, why should we allow a $4 million punitive damage award? That is, of course, the essence of what this debate is about.

Moreover, even the figure twice the sum of economic and noneconomic or pain and suffering damages contained in the bill has an exception pursuant to which the judge can increase that award, if the judge finds the conduct of the defendant to be as egregious as the description propounded to us by the Senator from Iowa. The Senator from West Virginia and I have said that this bill in its final form will not contain any automatic new trial right for a defendant in any such cases.

So, Mr. President, the present bill that we are being asked to vote on does not have any ultimate cap at all on punitive damages in that extraordinarily rare case in which a judge felt that a very, very high such award was appropriate. So the Senator from Iowa is wrong that a badly injured, maimed individual is not going to have a $250,000 cap on punitive damages when an injury was caused by the deliberate acts or the outrageous acts of the large corporation. In fact, that individual is not going to be subject to any cap at all if he or she can prove the kind of case which was given us here as this horror story. But what we are doing in this bill is to provide some remote connection between the actual losses an individual suffers and how much can be added to that amount by a jury acting without any rules or instructions whatsoever. It is neither more nor less than that.

We should not have the legal system of the United States of America as a national lottery where, under certain circumstances with a handful of juries

in modest cases with almost no damages, the lottery can create a bonanza partly for an individual but basically, this is what the debate is all about—for the lawyer class in this country who find these actions to bring.

More fundamentally, and we have not gotten back to this point recently in this debate, and I speak not just of the remarks of the Senator from Iowa but of all of the opponents of this bill, none has shown that their slogans about deterrence have any true meaning. No single study has ever shown that punitive damages, the lottery of a huge punitive damage award, has any real effect on deterrence or on safety.

I am astounded that a Member of this body who believes so firmly in the presence of government in our life and of its regulatory capacities has so little faith in the ability of all of the statutes of the United States and of all of the statutes of the States dealing with safety in the production of products to cause them actually to be safe. We passed measures on automobile safety, on toy safety, and on all other kinds of product safety, and on the way in which we license drugs and the way in which we build airplanes to see to it that they are safe and effective. Yet, apparently, according to the opponents of this bill, nothing would be safe in America if we did not have unlimited punitive damages. That is the only way we can see to it that corporations behave, that we can have a reasonable society.

Mr. President, retired Justice Powell said—and I paraphrase him but I agree with him—the jury system of litigation taken as a whole is the most irrational method of business regulation imaginable.

It is not a criticism of a particular jury to say so, Mr. President. That jury deals with a single instance. It does not know what other instances there are in many cases. The Congress of the United States, the legislatures of the several States, when they determine on regulation, determine it on the basis of all of the evidence, of all of the weighing of how much we want to encourage certain kinds of production and what kind of cautions we put on them. This is the way in which the job is done.

No study shows that punitive damages do anything other than have an utterly irrational impact of telling many companies it is not worthwhile going into a new line of business—it is not worthwhile, as one of our major companies has said, to try to go into the business of finding a new drug which helps AIDS. We cannot make enough money on it to risk that lottery that some lawyer someplace will persuade some jury to whack us with a $25 million punitive damage award.

So we have had dozens of companies get out of the business of producing the vaccine against whooping cough. Is that a triumph of the American system, that the cost of whooping cough vaccine has gone up 500 percent and only one or two companies are even willing to make it?

Is it a triumph of the American system that 18 of the 20 companies that used to manufacture football helmets are not in the business anymore because it just simply is not worthwhile? Is it a vindication of the American system that a large company which produces plastic piping for heart implants, on which it might possibly make $1 million in a several-year period, has paid close to 40 times that in defending successfully product liability actions, and looks at the bottom line and says, what in the world are we doing this for? Why should we produce this particular product? Those legal fees adhere to defendants who win just as much as they do to those who lose. And when the company says it is just costing us too much, we will abandon this line of research; we will abandon this product; the American people are not benefited. Who is benefited? A tiny handful of lucky players and a larger group of trial lawyers.

So what we do in this bill, much more modestly than I would prefer, is to say at least in the great bulk of cases there ought to be some relationship to how badly the plaintiff or claimant is actually damaged and what the maximum punitive damages are. Let there be a ratio. If in fact the individual is maimed for life, then they are going to be entitled to huge punitive damages. But if in fact they are damaged $10,000 or $500, why should they win the lottery when there is no evidence that this does anything but to constrict our economy?

I say once again, the State immediately adjacent to the State of the Senator from Iowa, Nebraska, like my own State of Washington, just does not have punitive damages in the kind of cases we are talking about here. It does not allow them at all. Why? Because the Constitution of the United States protects anyone accused of a crime. They have fifth amendment rights. The case against them has to be proven beyond a reasonable doubt. There is a maximum sentence. But those who uphold those constitutional protections as fundamental to our system of justice say, oh, no, but a civil jury can punish without any limitation or without any guidelines whatsoever, rationally or totally or temporarily. There just is no connection between those two.

Moreover, there is also no relationship at all between the responsibility of business enterprises, the safety with which they build their products, that is related to whether or not they operate in a State which has punitive damages or one which bans punitive damages. Not a scintilla of evidence, not any instance has been imparted to this body that oh, boy, we better keep punitive damages because look at how irresponsible companies are that operate in Nebraska or Washington or one of the other States. Not a peep, Mr. President, about that.

The bottom line is we are dealing with a system that is a great system for a handful of lawyers in this country. They and their sidekicks get 60 percent of all of the money that goes into this product liability system. Claimants get 40 percent of it. We want to make it a little bit more rational.

The Harkin amendment does not make it more rational. The Harkin amendment does not even recognize the nature of the $250,000 cap, which does not apply to anything he talked about, or the fact that there is no cap at all when the judge finds that the conduct of the defendant has been particularly egregious, and the Harkin amendment should therefore be rejected.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER (Mr. ASHCROFT). The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, not only do I agree with everything that my able colleague from the State of Washington has said, the Harkin amendment adds a new section to the bill for setting punitive damages against businesses with 25 or more employees. It has to be greater than the amount recorded or using a formula laid out in the compromise bill which is twice compensatory damages or $250,000, whichever is greater, or twice the value of annual compensation of the business' chief executive officer.

Well, that last one obviously is an eye-catcher, ear-catcher. It sounds innocent enough—and fun. It is kind of fun, cute. But we are on a deadly serious bill. The people who voted today to make sure that we would continue to discuss and amend product liability reform were not trying to have fun with this.

We have been on this bill for several weeks now. I have been doing this for 9 years. I am sure the Senator from the State of Washington has been doing it for longer than that. There is nothing in any of my efforts to sort of do something to amuse myself, enjoy myself. I am trying to make America better. I am trying to help defendants who cannot get their claims in time. I am helping to make things more predictable for businesses so we can strike a balance between consumers and business.

One thing this is not is just kind of fun. When I say it is deadly serious, I mean deadly serious because I truly believe there are products not being developed today which could save lives, and that people are dying because that is not happening.

There are a couple of facts which I think are relevant. There is not a $250,000 cap in the Gorton-Rockefeller compromise on product liability reform, as suggested by the Senator from Iowa. There is not that cap.

I suggest to those who do read the bill, in product liability cases, if the jury agrees that the punitive damages should be awarded, the jury can, and under the bill punitive damages will,

set an alternative ceiling of $250,000, or twice the amount of compensatory damages. And then the judge, under the additur provision, decides if that is not enough, to take it up. So there is no floor.

We are not talking about treating people unfairly. In fact, I think we are trying to talk, for the first time in a long time, about treating people fairly.

To highlight some more information about the suggestion of the Senator from Iowa that there is any sort of special protection for businesses which are tempted to make defective or unsafe products, everybody needs to remember that juries under our bill can award compensatory damages in amounts that span from hundreds of dollars to millions and millions of dollars.

I have made this point several times, but I will make it again and I will give you a few more examples this time. I have already talked about the State of the Senator from Washington, not even considering punitive damages at all, and within the last 5 or 6 weeks there was an award of $40 million. I have no idea what the circumstances were. But that was economic plus noneconomic—compensatory damages, $40 million.

You do not need punitive damages to get a big award. I am for the punitive damages, but you do not need them to get major awards.

There was a $70 million compensatory award, again, not even considering punitive, to the family of a woman who died when a defective helicopter crashed—in, as it turns out, Missouri. But that did not stop the jury from awarding $70 million. So we are not kidding here. We are not doing anything fun here.

There was a $15 million compensatory award—again, not even considering punitive damages; but a compensatory award—to a boy in a case involving a defective seat belt. Now, I do not know the circumstances. This was in Los Angeles County, 1993. I do not know the circumstances, but this is just compensatory award.

Almost $20 million, Mr. President, in compensatory damages was awarded to a man injured in some circumstances in which a motorcycle spun around on the ground during a turn. My eloquence cannot exceed that, unfortunately, because I do not know what it was. But the man was injured by a motorcycle and got almost $20 million—I say again, in compensatory damages alone.

So there is no kind of joking around here. We are trying to do the right thing.

I might say, on the other side of it—and I do not want to stretch this out—that there are a lot of things that are not happening in this country because of the fact that our punitive damages situation is scaring people away from new products, new research, new improvements, or whatever.

I have used this case before and I will use it again, because I think it is devastatingly powerful.

I care a lot about health care and I have worked a lot on health care. I have been into kidney dialysis clinics. They are not a lot of fun to go into. The former Governor of Missouri knows what I am talking about, the Presiding Officer. It is kind of dark and people are lying back in chairs, and their blood is being completely changed. It is kind of depressing to be there. I do not think they enjoy it much. Nobody is talking to anybody else. They cannot work. They are tied into these huge machines which rise up beside them and behind them.

This was carried a little step further and they developed a dialysis machine that you could take home with you so that if you worked within 2 or 3 miles, or 4 or 5 miles away, you could come home to that dialysis machine, do it yourself and then go back to work. It was a tremendous improvement, because you could go back to work, if your work was close enough so that you could come back two or three times to do that.

But then Union Carbide comes along and really comes up with the answer. They put the whole thing into a suitcase-sized dialysis machine that you can take to your job with you and do the dialysis on the job.

My 15-year-old son has one of his best friends who, a couple of years ago, we discovered had diabetes. That is not a lot of fun for a young kid to find something like that out. I cannot get over the way that young man, 12 years old at the time, simply adjusted to his new circumstances and was able to give himself insulin; just disappear for a few minutes and do it. His courage—he actually grew, grew in my eyes, and I think he grew in his own realization in the sense of mortality and what he could do and how precious everything was. He is a remarkable boy. In fact, I think his aunt is Madeleine Albright, our Ambassador to the United Nations—a wonderful boy.

But Union Carbide, when they came up with this same kind of you-can-do-it-right-on-the-spot kidney dialysis machine, had to sell their business to a foreign company where uniform product liability laws did not give the same litigation potential because Union Carbide, an enormous company, determined that the potential liability risk made the product uneconomical.

So I have to assume there are hundreds of thousands of people who need these blood changes in this country who are deprived of that now because Union Carbide could not do that.

I have 20 examples. I will not give them. It is late.

So I know that the amendment has sort of a nice, populist ring to it—CEO's salary. But this is dead-serious business that we are involved in.

Product liability reform is something I have fought for as a nonlawyer because I want to see people's lives get better and I want to see products developed and I want to see—just on personal grounds, my mother spent years dying from Alzheimer's disease. There is a cure out there, but somebody has to put the money up to find that cure. It is probably not going to be the Federal Government, because we are cutting back.

So all of this is deadly serious. This is not a bill that should be used to beat up on business. This is a bill that should be used to beat up on a legal system which is failing us and, as the Senator from Washington said, in which the lawyers get 50 to 70 percent of the money. I do not respect that. I do not like that. I want to change that.

And for that, among other reasons, I oppose the amendment of the Senator from Iowa.

I thank the Chair.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

MORNING BUSINESS

Mr. GORTON. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 5 minutes each.

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

NOMINATION OF JOHN DEUTCH TO BE DIRECTOR OF CENTRAL INTELLIGENCE [DCI]

Mr. GLENN. Mr. President, I rise in strong support of the nomination of John Deutch to become Director of Central Intelligence [DCI]. As a longtime member of the Senate Armed Services Committee, I have enjoyed working with him in his various roles at the Department of Defense—and I look forward to working with him as DCI. Dr. Deutch has an extremely impressive résumé, and I ask unanimous consent that a copy of his biography be included in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. GLENN. Mr. President, his background and training clearly indicates that Dr. Deutch brings a broad background to the DCI position. His scientific background makes him particularly prepared to deal with the many, formidable technical issues confronting the Intelligence Community from satellites to signals intelligence [SIGINT]. Dr. Deutch also brings significant administrative and national security expertise to the DCI job from his past and current senior management experiences at the Defense Department. His toughness in making difficult decisions and his knowledge of, and experience in, national security matters will make him a very capable manager of the U.S. Intelligence Community.

I have been especially pleased with the principal purposes Dr. Deutch has articulated for the Intelligence Community: Striving to assure that the President and other national leaders