GUN POSSESSION

Mr. LAUTENBERG. Mr. President, I want to talk about a piece of legislation that I have proposed that was approved here in this body by a vote of 97 to 2. They approved an amendment that I sponsored to ban wife beaters and child abusers from owning guns, from possessing guns. Yet, over the past couple of days, behind closed doors, there has been a determined effort to gut my proposal and to expose the battered woman and the abused child to an enraged man with a gun in his hand.

As I explained yesterday, there has been an attempt to undermine the proposal in four primary ways:

First, some sought to exclude child abusers from the ban by limiting its application only to ''intimate partners.''

Second, they sought to effectively give a waiver to every wife beater and child abuser who was convicted before this legislation goes into effect.

Third, they sought to render the ban entirely ineffective in the future by excusing anyone who did not get notice of the firearm ban when they were originally charged. So that includes all of those who committed domestic abuse, beat up their wives, beat up their kids who weren't told in advance there may be a serious penalty to take away their guns. What a pity. Instead, what they want to do, realistically, is make it prospective only. For those who didn't get notice, they can perhaps dodge out of a charge by saying, well, I did not get effective notice. It is a pity. Under my proposal—the language was in there very specifically, and we are going to insist it be retained.

Fourth, the watered-down language would excuse from the firearm ban anyone who was convicted in a trial heard by a judge only, as opposed to a jury. Now, this also, by itself, would render the gun ban largely meaningless, since most domestic violence cases are heard by judges and not juries.

Mr. President, faced with public criticism, opponents of a real ban have apparently retreated on one of these gutting provisions. They have agreed to language that ostensibly would put child abusers back within the ban.

Mr. President, it is critical to understand that this latest change is merely a figleaf. It is designed to obscure the fact that the watered-down proposal would leave virtually all wife beaters and child abusers with the ability to legally possess guns. It is purely a legislative sham, and no one should be fooled into believing otherwise.

Let me tell those who are within earshot what this sham is all about. First, under their proposed modifications of my legislation, no wife beater or child abuser would be prohibited from having firearms unless they had been told about the ban when they were originally charged. What a device for a clever defense—well, he didn't hear it, he didn't understand it, or his language wasn't up to snuff. My goodness.

The first effect of this language, Mr. President, is to completely excuse every wife beater and child abuser who has been convicted until this time. They would all be off the hook completely. We didn't know, we weren't aware, we weren't told; so, therefore, forget it. OK, be careful next time you hit your wife. Next time, don't have a gun present. They would all be off the hook completely. All of their battered wives and abused children would remain at risk of gun violence.

Mr. President, it would be bad enough if this extreme proposal only grandfathered in all currently convicted wife beaters and child abusers. But this notification language goes much further. It would also, in effect, leave most future wife beaters and child abusers free to have guns.

There is nothing in the watered-down language that requires anyone to tell the accused wife beaters and child abuser that they could lose their guns. As a matter of fact, with a wink of the eye, they can say, ''He isn't a bad guy.'' As a practical matter, most abusers are unlikely to get such advance notice. Under this latest proposal, they would, thus, remain entirely free to keep their guns.

Nor is there any reason to limit the ban to those who get advance notice, Mr. President. After all, we do not make a requirement for anyone else accused of a crime to have previous knowledge of the prospective penalty. Felons are prohibited from having guns, regardless of whether they have been officially given notice or not. For them, ignorance of the law is no excuse. But under this latest proposal, it would be an excuse for a wife beater.

Mr. President, in essence, what has happened here is we proposed that no wife beater, no child abuser, whether retrospectively, retroactively, or in the future, ought to be able to have a gun, because we learned one thing—that the difference between a murdered wife and a battered wife is often the presence of a gun. In the couple of million cases every year that are reported about domestic abuse, in 150,000 cases that we are aware of, a gun was present, a gun was held to the temple of a battered wife or perhaps a child. And if that isn't trauma enough, the prospect of the pulled trigger could finally complete the task.

So, Mr. President, when we proposed this, and it was voted 97 to 2 favorably on this floor, and a couple of months before, in July, it had gone through here 100 to 0. It was unanimous, and it was a voice vote.

I hope those who would defeat this legislation are willing to face the American public and tell the truth of what they are about. They are supporting the NRA, and not the families of America.

I thank the Chair.

CIVIL JUSTICE REFORM: STILL DESPERATELY NEEDED

Mr. HATCH. Mr. President, I rise today to speak about civil justice reform. Many of us had high hopes for tort reform in the 104th Congress, which has been desperately needed for so many years. Unfortunately, President Clinton has blocked our litigation reform efforts with his stubborn defense of the status quo.

I was deeply disappointed with President Clinton's decisions to veto the securities litigation reform bill and then the product liability reform bill. Fortunately, Congress was able to override the securities veto and those important reforms became law over the President's tenacious opposition.

That was not the case with product liability reform. Despite over 15 years of bipartisan work in the Congress and despite the tireless efforts of Democrats like Senators ROCKEFELLER and LIEBERMAN, along with Republicans like Senators GORTON and PRESSLER, we have not been able to make one iota of progress in addressing the product liability crisis facing Americans.

Unfortunately, we have learned that President Clinton is unalterably opposed to tort reform and other litigation reform measures, no matter how badly needed they may be and no matter how much litigation is costing American consumers.

We should all be very clear about what happens here: Each time President Clinton sides with America's extremely powerful trial lawyers, America's consumers lose. And once again, President Clinton's rhetoric dismally fails to match his actions.

Litigation reforms are no less needed now than at the start of the 104th Congress. We simply have got to take some steps forward to alleviate the litigation tax that burdens American consumers, workers, small businesses, and others who ultimately pay the price imposed by high-cost lawsuits.

Litigation reform continues to be supported by the overwhelming majority of Americans. They have indicated their frustration over crazy lawsuits, outrageous punitive damage awards, and abusive litigation. They want change from a status quo that has been unfair and that has encouraged irresponsible litigation in this country. But because of the President's actions, they will not get the meaningful litigation relief they need from this Congress.

The costs of lawsuits in this country are extreme and are eating up valuable resources. These costs are passed along to consumers in the form of higher prices and higher insurance premiums. They are passed along to workers in the form of fewer job opportunities, and fewer and lesser pay and benefit increases. They are passed along to shareholders in the form of lesser dividends. These costs stifle the development of new products. Everyone in America pays a steep price for President Clinton's stubborn defense of a

small but powerful group of trial lawyers.

When the product liability bill was on the floor last spring, we heard that 20 percent of the price of a ladder goes to pay for litigation and liability insurance, that one-half of the price of a football helmet goes to liability insurance, that needed medical devices are not on the market because of liability concerns and on and on. We heard about millions of dollars for spilled coffee and millions for a refinished paint job on a BMW.

I can go on and on about ridiculous liability cases that Americans are sick and tired of. I have spoken at length about such cases on the floor before.

What is frustrating to me is that little has changed. We pass legislation to deal with this abuse of our legal system, but the President vetoes it.

And it is not surprising that those who benefit from this litigation explosion—the trial lawyers—think they have found a safe harbor at 1600 Pennsylvania Avenue. They think they can get away with business as usual because President Clinton will veto any attempt to stop them.

They obviously don't get it.

Let me just mention a few examples of developments in the case law following the President's May 10 veto of product liability reform.

In June, a Pennsylvania appellate court upheld an absolutely outrageous punitive damage award. In the case, a former Kmart worker in Pennsylvania won $1.5 million in damages from Kmart after being fired for allegedly eating a bag of the store's potato chips without paying for them.

The plaintiff had sued for defamation of character based on her employer's telling her coworkers that she had eaten the potato chips without paying for them—which constituted stealing in violation of company policy. She was awarded $90,000 in compensatory damages, and an astonishing $1.4 million in punitive damages. That is absolutely outrageous and unjustified.

Even if the employer had said anything wrongfully about her and the potato chips—and I say even if, because I do not think it is clear that the employer did anything wrong—I submit that there is simply no way to justify an award of $1.5 million for saying that you thought someone ate a bag of potato chips without paying for it. That is just crazy.

On appeal, the court upheld the award. The dissenting judge, Judge Popovich, called the punitive damages award ''patently unreasonable given the facts before us.''

Judge Popovich got right to the heart of it when he wrote, ''I do not understand how appellant's act of informing appellee's co-workers that she was dismissed for misappropriating a bag of potato chips was sufficiently outrageous conduct to warrant a punitive damages award of $1.4 million.'' That judge is absolutely correct.

I wish that was it, but there are more cases.

In a case in Alabama in June, the Liberty National Life Insurance Co. was held liable in a case in which the plaintiff claimed that the company failed to pay her $20,000 in death benefits following her husband's death.

The company claimed that it was not liable to pay the $20,000 in benefits because the couple had not disclosed the husband's health problems when they obtained the life insurance policy about a year before the husband died.

The jury found the insurer liable and awarded the plaintiff $330,000 in compensatory damages, including emotional distress. There may be an argument that this may be a bit high on its own, but what happened in terms of punitive damages is truly astonishing.

The jury went on to award the plaintiff a mind-boggling $17.2 million in punitive damages.

Now, the insurance company in this case may have been right or it may have been wrong. My point is that even if the company was wrong and even if the company should have paid out the $20,000 in death benefits, an award of $17.2 million in punitive damages—17.2 million dollars—on the basis of these facts is outrageous and simply cannot be justified.

And people wonder why their insurance premiums are so high. Personally, I find it hard to swallow that even one dime of an individual's insurance premium is subsidizing court ordered windfalls like this one.

Take another case. This one came down in August.

A jury awarded a plaintiff $7 million in punitive damages on a claim that the defendant had sold the plaintiff unnecessary insurance on a mobile home; compensatory damages were $100,000.

Seven million dollars for selling unnecessary insurance and causing at most—at most—$100,000 worth of harm? How can that be?

In another highly publicized and widely criticized case, which also came down following the President's veto of product liability reform legislation, the largest damages verdict ever rendered against General Motors was handed down by an Alabama jury.

In that case, the plaintiff was seriously injured when he had an accident in his Chevy Blazer.

I do not dispute that the plaintiff's injuries were severe or that his accident was a tragedy.

However, there was evidence that the plaintiff had been drinking before the accident and was not wearing a seatbelt. The plaintiff told the first person on the scene and others that he had fallen asleep at the wheel. The plaintiff's lawyers' principal argument to the jury was that, even though the plaintiff was not wearing a seatbelt, the plaintiff was thrown out of the car because the door latch allegedly failed.

However, there was evidence that the door latch worked fine after the accident and that the plaintiff was actually thrown out through the car window. This is also a vehicle that had passed federal safety standards.

But let's say there was some sort of problem with the plaintiff's particular door latch. I am even willing to assume that. My problem is with the shocking amount of punitive damages that were awarded.

The jury awarded not only $50 million in compensatory damages, but went on to award $100 million—you heard it correctly—$100 million in punitive damages.

Punitive damages are designed to punish egregious conduct, and I just don't see the showing of egregious conduct here. The very equivocal evidence in that case just cannot warrant such a shocking amount of punitive damages. Where is the egregious conduct here?

I just don't see it. Instead, I see one more example of a punitive damage system that is out-of-control. And there are more examples like these, many of them in the past few months.

The sobering fact is that this problem isn't going away. Instead, it is snowballing out-of-control.

I know that it is too late during this Congress to do anything more about the litigation crisis. And, it is too futile given the President's commitment to vetoing civil justice reform.

But I implore my colleagues to come back next Congress committed to addressing the problem of out-of-control punitive damages and other abuses in our civil justice system.

Our large and small businesses and our consumers and workers are being overwhelmed with litigation abuse. The vice president of the Otis Elevator Corp. provided us with information indicating that his company is sued on the average of once a day. Once a day.

We cannot address these problems comprehensively without a uniform, nationwide solution to put a ceiling on at least the most abusive litigation tactics.

We need to protect citizens of some States from the litigation costs imposed on them by other States' legal systems.

In May, in the BMW versus Gore case, the U.S. Supreme Court recognized that excessive punitive damages ''implicate the Federal interest in preventing individual States from imposing undue burdens on interstate commerce.''

While that decision for the first time recognized some outside limits on punitive damage awards, legislative reforms are desperately needed to set up the appropriate boundaries.

The Supreme Court's decision in the BMW versus Gore case leaves ample room for legislative action. That case acknowledged that there are constitutional bounds beyond which extreme punitive damage awards will violate due process; at the same time, the decision reinforces the legitimacy and primacy of legislative decisionmaking in regulating the civil justice system.

The BMW versus Gore case was brought by a doctor who had purchased a BMW automobile for $40,000 and later discovered that the car had been partially refinished prior to sale. He sued

the manufacturer in Alabama State court on a theory of fraud, seeking compensatory and punitive damages.

The jury found BMW liable for $4,000 in compensatory damages and an astonishing $4 million in punitive damages. On appeal, the Alabama Supreme Court reduced the punitive damages award to $2 million.

The Supreme Court held, in a 5 to 4 decision, that the $2 million punitive damages award was grossly excessive and therefore violated the due process clause of the 14th amendment. The Court remanded the case. The majority opinion set out three guideposts for assessing the excessiveness of a punitive damages award: the reprehensibility of the conduct being punished; the ratio between compensatory and punitive damages; and the difference between the punitive award and criminal or civil sanctions that could be imposed for comparable conduct.

Justice Breyer, in a concurring opinion joined by Justices O'Connor and Souter, emphasized that, although constitutional due process protections generally cover purely procedural protections, the narrow circumstances of this case justify added protections to ensure that legal standards providing for discretion are adequately enforced so as to provide for the ''application of law, rather than a decisionmaker's caprice.''

Congress has a similar responsibility to ensure fairness in the litigation system and the application of law in that system. Notably, Justice Ginsburg's separate dissent, joined by the Chief Justice, argued not that the amount of punitive damages awarded in the case was proper, but suggested instead that the majority had intruded upon matters best left to State courts and legislatures.

Clearly, it is high time for Congress to provide specific guidance to courts on the appropriate level of damage awards and to address other issues in the civil litigation system.

We need to encourage common sense, responsible and fair litigation by reforming the system that leads to sky-high punitive damages in cases of little actual loss and by introducing fairness into the system.

These lawsuits-for-profit demean the lofty ideals of our judicial system. There are people out there with legitimate grievances that deserve the time and attention of judges and juries, but the courts are clogged up with these ridiculous cases and claims. That isn't fair.

The American people should know that we have been unable to enact meaningful civil justice reform because the President chooses to stand with this Nation's trial lawyers. His action is permitting litigation abuses and excesses to go on.

When the American people can't buy new products, can't get needed medical devices, lose jobs they might have had if companies were permitted to grow, or can't afford their insurance costs, they should know that the President chose to do nothing about the litigation explosion in this country.

Let me just close with an example of litigation reform that worked—and one that should have been a model this Congress. That example is the statute of repose for piston-driven aircraft.

In August 1994, Congress passed an 18-year statute of repose for small, general aviation aircraft. At that time, around 90 percent of employment in the piston-driven aircraft industry was gone; around 90 percent of production had disappeared due to product liability lawsuits.

Today, a striking recovery is already underway in that industry. Aircraft manufacturers are planning and constructing new plants, and production and employment have grown tremendously. Cessna alone has created about 3,000 new jobs due to the enactment of that one statue of repose.

When the American people consider the President's vetoes, they should ask themselves: How many new plants and factories will never open? How many new jobs has the President squandered? How many medical innovations won't we see? How much are insurance premiums going to go up?

The bottom line is that I just don't think we can take much more of the present system. I hope we won't have to. I expect litigation reform to be an important part of the agenda of the next Congress, and I want to repeat my commitment to work toward that end.

INSURANCE COVERAGE FOR DRUG TREATMENT

Mr. KENNEDY. Mr. President, Congress has passed and President Clinton will soon sign historic legislation to improve health insurance coverage for individuals with mental illness. This initiative represents a major step forward to eliminate unjustified discrimination between mental health and physical health in insurance coverage.

I especially commend my colleagues, Senator DOMENICI and Senator WELLSTONE, on their legislative success. Through tireless advocacy and effective leadership, they have convinced the Senate of the wisdom of ending insurance discrimination against the mentally ill.

Enactment of this measure is gratifying, but it is only a first step. Our work in this area is far from complete. When the Labor Committee reported a health insurance bill in 1994, our provision on mental health parity included coverage for the related disorder of substance abuse. Regrettably, that aspect of the earlier proposal was dropped in the recent compromise.

Every year, despite a desperate desire to overcome their addiction, a large number of Americans forgo needed treatment for substance abuse because their health insurance does not cover the cost of this treatment. Despite faithful and regular payment of their premiums, these citizens are denied coverage for this debilitating and chronic illness.

Ironically, such coverage was dropped, even though the war on drugs is once again the subject of intense media attention in this election year. Government surveys report that teenage drug use is on the rise. While resources for law enforcement efforts to reduce the supply of drugs have grown dramatically in recent years, resources for treatment have decreased. In 1996, Congress slashed substance abuse treatment and prevention programs by 60 percent, and attempted to cut the Safe and Drug Free Schools Program in half. The House has proposed only minimal increases for fiscal year 1997 over these drastically reduced levels.

Publicly supported treatment will never meet the needs of all those who would benefit from treatment. The private sector must play a significant role through insurance coverage for such treatment.

More than 70 percent of drug users are employed. Many of these drug users have private health insurance. Yet, treatment for their addiction is rarely covered. Even when private plans cover treatment for substance abuse, benefits are limited. Since drug use is a chronic, recurrent condition, like diabetes or hypertension, addicts quickly exceed their coverage limit. Due to the nature of substance abuse, those who do not obtain treatment often lose their jobs. They are then forced into the already over-burdened public treatment system.

Extending insurance coverage to those seeking to free themselves from substance abuse would improve productivity and decrease drug-related crime. That would constitute real progress in the war on drugs.

Parity for treatment of substance abuse would also be cost effective. A 1994 study by the State of California shows that for every $1 spent on treatment, $7 in costs are saved. Treatment reduces employer health care costs, because treated employees and members of their families use fewer health services.

Parity would also drive down non-health care costs to the employer by reducing absenteeism, disability payments and disciplinary problems.

These benefits come at a bargain price. According to the actuarial firm of Milliman and Robertson, substance abuse parity will increase overall health insurance premiums by only one-half of 1 percent.

Again, I congratulate my colleagues for passage of the mental health parity compromise. I look forward to working with them to build on this achievement. I hope that one of our highest priorities in the next Congress will be to take this needed step to fight drug abuse.

Mr. COVERDELL. Madam President, I ask unanimous consent that the period for morning business be extended for up to 4 minutes.