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Senate

The Senate met at 10 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Abraham Lincoln expressed his dependence on prayer to sustain and strengthen him in difficult and challenging times. He said, ''I have been driven many times to my knees by the overwhelming conviction that I had nowhere to go but to prayer. My own wisdom and that of those all about me seemed insufficient for the day.''

Gracious Father, thank You for the gift of prayer. When problems pile up and pressures mount, we are so grateful that we, too, have a place to turn. And You are there waiting for us, offering Your grace for grim days and Your strength for our struggles. How good it is to know that we are not alone. We can be honest with You about our insufficiencies and discover the sufficiency of Your wisdom given in very specific and practical answers to our deepest needs. Lord, help us to spend more time listening to Your answers than we do in our lengthy explanations to You of our problems. We dedicate this day to seek Your guidance, to follow Your direction, and to do our best to lead this Nation according to Your will. We humbly confess our profound need for You and praise You for Your faithfulness to give us exactly what we need for all the challenges of the day ahead. Lead on Lord. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized, the Senator from Washington State.

SCHEDULE

Mr. GORTON. Mr. President, this morning the Senate will immediately begin consideration of the conference report accompanying H.R. 956, the product liability bill.

Under the consent agreement reached last night, there will be 5 hours of debate, equally divided, which will end just after 3 p.m. today. At that time, the Senate will begin a vote on invoking cloture on the conference report, to be immediately followed by a cloture vote on the motion to proceed to the Whitewater legislation.

As a reminder, under a previous order, if cloture is invoked today on the product liability conference report, there will be an additional 3 hours of debate tomorrow morning at 9 a.m., with a vote on the adoption of the conference report at 12 noon on Thursday. Following the cloture votes scheduled at 3 o'clock today, the Senate will begin consideration of S. 1459, the grazing fees legislation. Additional votes are, therefore, to be expected today in regard to the grazing fees bill.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. CAMPBELL). Under the previous order, leadership time is reserved.

COMMON SENSE PRODUCT LIABILITY LEGAL REFORM ACT OF 1996—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the conference report to accompany H.R. 956.

The clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 956), a bill to establish legal standards and procedures for product liability litigation, and for other purposes, having met, after full and fair conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The Senate resumed consideration of the conference report.

Mr. GORTON. Mr. President, I am pleased, after a lapse of almost 1 year, to present to the Senate and to support the conference report on H.R. 956, the Common Sense Product Liability Legal Reform Act of 1996. This is a bipartisan proposal reflecting, essentially, the decisions made here in the U.S. Senate last year, without the broader additions that were passed by the House of Representatives.

Mr. President, during the course of this 5 hours today, there will be many statements—passionately held—about what the future holds with respect to both our legal system and our economic system, and whether this bill should pass. As a consequence, Mr. President, I want to start my remarks with a statement about what has already happened as a result of a very modest product liability reform that was passed by the Congress of the United States, and signed by the President, just 2 or 3 years ago. I am going to do that because that action speaks louder than any words we can say about the desirability of this broader legislation.

On August 17, 1994, President Clinton signed the General Aviation Revitalization Act of 1994. That act created an 18-year statute of repose on general aviation, piston-driven aircraft. That single provision, in less than 2 years, has already had a magnificently positive impact on the general aviation industry.

Since the enactment of the bill, the general aviation industry has recorded its best year in more than a decade. In 1986, as a result largely of product liability litigation, Cessna, a famous name in aviation, stopped producing piston-driven aircraft. It has now reentered that field. In July, Cessna will

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

open a new $40 million facility in Kansas and, once again, will begin to produce piston-driven aircraft. The facility will employ about

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open a new $40 million facility in Kansas and, once again, will begin to produce piston-driven aircraft. The facility will employ about 2,000 people.

Cessna is not alone in this connection, Mr. President. Piper Aircraft, just 2 years ago, was having an extremely difficult time getting out of a bankruptcy proceeding to which it had been subjected. No investor wanted to come to the rescue of that famous American company because it would have to assume its liability risks. Since the enactment of that simple piece of legislation, however, investors have come forward. The Piper Aircraft Co. has come out of bankruptcy, and its employment has increased by 30 percent. More generally, employment is up at every general aviation manufacturing facility in the United States by 15 percent. We went to the Internet last week to find the kind of job openings that have resulted from this resurgence in general aviation activity. Here is a brief list of some of the jobs we found: Avionics technician, Cessna; computer control technician, Cessna; systems designer, Cessna; weights engineer, Cessna; senior cost accountant, Raytheon; senior engineer, software systems certification, Raytheon. Exactly the kind of high-skill, high-wage jobs that the United States needs in order to continue its leadership in world technology, and in order to provide jobs for coming generations.

Mr. President, that bill less than 2 years ago was criticized as restricting the rights of plaintiffs. Yet, Mr. President, I am confident when I say that there is not a single Member of this body—or, for that matter, of the House of Representatives—who ever, in the course of a political campaign or to meet an obligation, turned down a ride in a Cessna aircraft on the grounds that those aircraft were negligently manufactured. Those who most eloquently defend the present legal system—a system which for all practical purposes bankrupted Cessna and Piper by reason of lawsuits claiming negligent manufacture—never once acted on that and said, ''Oh, no, I cannot get on the plane; it was negligently manufactured.''

Mr. President, I cannot imagine that there is a Member of this body, or of the House of Representatives, who ever said, ''I won't allow my child to get a whooping cough vaccination because the materials in that vaccination were negligently manufactured.'' And yet they will stand up here today and say, ''We cannot change the law. We cannot protect those manufacturers against lawsuits like that because it would be unwise to do so.''

The present system has driven every such manufacturer—except one—out of the business, and has caused the cost of that vaccine to be multiplied by 400 percent. It is less available and more expensive because of the insistence that we continue to allow absurd lawsuits to be brought against those manufacturers. The people of the United States deserve, we all agree, a system that is fair and efficient, yields reasonably predictable results, holds parties responsible in accordance with their fault, and perhaps most importantly reduces the wasteful transaction costs associated with all kinds of litigation, but in this case product liability litigation.

Estimates of total tort costs of litigation and associated activities range from some $80 to $117 billion a year. Every dollar of these costs is forced back on consumers through higher prices on products used every day, and not at all, incidentally, limits the choice of those products as well.

Listen to just a few facts about today's product liability system in America. The current system accounts for about 20 percent of the cost of a ladder. It accounts for 50 percent of the cost of a football helmet. Injured parties, on the other hand, receive less than half of the money spent on product liability actions, with the other half going to lawyers and their associated expenses. Nearly 90 percent of all of the companies in the United States can expect to become a defendant in a product liability case at least once—90 percent of all of the companies in the United States. Are 90 percent of them negligent manufacturers or product sellers? No. Many win these lawsuits, but they have to pay their attorney fees and they have to pay their insurance costs, in any event.

Product liability insurance costs 15 times as much in the United States as it does in Japan and 20 times more than it does in Europe. Are their manufacturers, as a result, automatically negligent and indifferent to their consumers? Under the present laws in most of the States of the United States, manufacturers can be sued for products manufactured in the 1800's—manufactured a century ago.

The present system costs too much. In a book published 5 years ago by the Brookings Institution the following note appears:

> Regardless of the trends in tort verdicts, most studies in this area have concluded that, after adjusting for inflation and population, liability costs have risen dramatically in the last 30 years, and most especially in the last decade.

I have already spoken to the proposition that more of the money in the system goes to the lawyers and to their associates than goes to victims. Liability insurance costs affect every manufacturer in the United States.

One example from my own State is a water ski manufacturer, Connelly Water Skis of Lynnwood, WA, pays an annual premium every year of $345,000 for product liability insurance even though it has never lost a case. It has never lost a case—but still has to pay that huge premium.

The present system takes forever—years—to settle cases. Compensation, ironically, is unfair. The smaller the amount of damages, the larger the percentage of recovery. The larger the actual damages, the actual losses to an individual, the lower the percentage of actual recovery.

Unpredictability. Last year in a hearing before the Commerce Committee a Virginia law professor, Jeffrey O'Connell, explained:

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

What is the effect of a broken down system on people in the United States today? First, it is increased costs. I have already referred to the fact that one manufacturer of vaccines has raised its price 400 percent, from $2.80 to $11.40, solely to recover the cost of increased lawsuits, and that in 1984 two of the three companies manufacturing the DPT vaccine decided to stop production because it just simply was not worth it, by reason of the cost of the product liability. Later in that year, the Centers for Disease Control recommended that doctors stop vaccinating children over the age of 1 in order to conserve limited supplies of that vaccine.

Second, it is very clear that the fear of product liability litigation hinders the development of new products in the United States, and the marketing of those products once they are developed. In an American Medical Association report entitled ''The Impact of Product Liability on the Development of New Medical Technologies,'' they wrote:

> Innovative new products are not being developed, or are being withheld from the market because of liability concerns, or the inability to obtain adequate insurance. Certain older technologies have been removed from the market not because of sound scientific evidence indicating lack of safety or efficacy but because product liability suits have exposes manufacturers to unacceptable financial risk.

Rawlings Sporting Goods, one of the leading manufacturers of competitive football equipment for more than 80 years, announced in 1988 that it would no longer manufacture, distribute, or sell football helmets. Two manufacturers in the United States out of 20 that were in this business in 1975 remain in that business today.

A recent article in Science magazine reported that a careful examination of the current state of research to develop an AIDS vaccine ''shows liability concerns have had negative effects.''

It points out that Genentech halted its AIDS vaccine research after the California legislature failed to enact State tort reform. Only after a favorable ruling did they renew or resume that research.

On that same topic, consider a recent comment by Dr. Jonas Salk, the inventor of the polio vaccine. I quote Dr. Salk:

> If I develop an AIDS vaccine, I do not believe a U.S. manufacturer will market it because of the current punitive damage system.

Not only does the current system hurt medical innovation, it also inhibits its small companies from producing everyday goods. For example, again in my own State, Washington Auto Carriage in Spokane distributes various kinds of truck equipment throughout the United States. Here is what its owner, Cliff King, says, and I quote him.

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

Many arguments are made against this proposal on the basis of federalism. The United States is a single market, however, a single market now with 51 different product liability regimes. As a result, one of the associations that is most interested in a devolution of power to the States, the National Governors' Association, recognizes that the current patchwork of U.S. product liability law is too costly, time consuming, unpredictable and counterproductive, resulting in severely adverse effects on the American consumer, workers' competitiveness, innovation and competence.

Mr. President, we will have a considerable period of time today during which to debate details of this legislation, but I wish to return just for a moment to the point with which I began this explanation of the bill.

First, the Members of the Senate, even those who argue most passionately and eloquently to retain the present broken down system, do they act in their own lives as if these manufacturers were engaged in nefarious activities indifferent to the safety of their consumers? Did they, during all of the years in which Cessna and Piper were being driven out of business by the system they defended, refuse to fly on their airplanes? No. Do they tell their families or do they themselves refuse the latest medical devices, the latest serums, the costs of which have been driven sky high by product liability litigation? No, they do not. They use them. They use them for their children. Do we have an example of what even modest reform in this field means to the American economy? Yes, we do, in the general aviation industry. And so I am convinced that we can and should pass this modest product liability reform, and we can expect an immodest and positive result: more competition, better goods and services, lower prices, fewer lawsuits, and a higher degree of justice for the American people as a whole.

This issue has been debated in this body for more than a decade at this point. It is time to bring that debate to a close, to pass this legislation, and to see the relief that the American consumer, the American manufacturer, and American competitiveness needs to be successful in the world of the 21st century. As a consequence, I urgently ask my fellow Senators promptly to pass this bill and send it to the House and then to the President of the United States.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina, [Mr. HOLLINGS], is recognized.

Mr. HOLLINGS. I yield so much time as will be necessary.

I am thoroughly bemused by my friend from the State of Washington starting off on aircraft with the very categorical statement that no one ever got on a plane saying that Cessna's planes were unsafe or the manufacturer was negligent. If they thought so, they were not going to get on the plane. They would not have to say it. Come on. Who are we kidding?

By coincidence, just last Thursday, I saw it reported that a Cessna plane down in Florida took off with the Blackburn family from my hometown and it had barely gotten off, I observed, to fly over the waters, and it turned and went down in about 5 to 10 feet of water at the most. We saw the pictures of them trying to save the family. The husband and wife and two of the children were lost, the pilot was lost, and the little 11-year-old hangs on as we talk.

Being an observer, I wondered what had happened. Stories have come again and again that the pilot was most experienced. Someone saw the engine streaming smoke. I cannot tell. You cannot. No one can at the moment. But it appears that it is a product liability situation. There is not any question in my mind. It occurs again and again.

It brings me right to the point, Mr. President, of the shabby nature of this whole proceeding. I say that because we passed this bill in the Senate last May and finally agreed to a conference on the House side in November. They had one short, brief meeting. Under the rules in the House, you have to at least have a meeting. But thereafter there was nothing.

It really bemuses me when the distinguished Senator says we are now to consider the conference report. We now consider the conspiracy report. It is not a conference. I never conferred. I was appointed by the distinguished Presiding Officer of the Senate as a member of the conference but was never told, never consented, never conferred, and not any on our side of the aisle or our staff were invited other than the distinguished Senator from West Virginia.

Here is what is happening in the Congress of the United States. I am going on my 30th year now, and this is the first time I have ever seen this happen this year and last year where they fixed the jury; namely, they get together on what they want and, since they are the majority party, can pick up a vote or two. They then go and bicycle around: Now, Senator, will this please you if we change this little word? And you have a ''gerrybuilt'' bill in front of you that never would pass muster in a conference.

Having fixed the vote, they went ahead and we heard last week that something was happening. In fact, I could tell it. On Thursday night Richard Threlkeld on CBS came in at 7:20 and he said the U.S. Congress is about to consider these dastardly, ridiculous lawsuits, and he went on to talk about a man in the men's restroom where women came in and he was insulted. The proponents talk about the coffee case from McDonald's, and they have these anecdotal, nonsensical matters that never tell the complete facts. And the truth of the matter is, since we mention the coffee case, I have the finding right here that confirms that the jury did award $3 million. But the judge reduced that. After all, judges do have sense. Jurors do have sense. All wisdom is not vested in the Senate. And they reduced that amount to $640,000 and the lady who was hospitalized with third-degree burns, requiring skin grafts, settled for even a lesser amount. But you hear on CBS national news, ''All you have to do is spill coffee and run up and get your money.'' Come on.

Regarding all the planes, now they are back in business and everything. We always allocate to ourselves that everything begins and ends right here with the wisdom of the U.S. Senate. They want to tell how we passed a good budget bill that has corporate America going like gangbusters, the stock market through the roof, and, yes, people are buying planes, but they do not want to talk about the budget we passed that none of them ever voted for. Categorically, one Senator on the other side of the aisle said, just 2 years ago, that if we pass this budget they would be hunting us down like dogs in the street and shooting us, the economy would collapse, there would be a depression; everything would go wrong.

Here now the stock market sets record levels, corporate America is as affluent as it has ever been, and they are buying airplanes. And my colleagues want to attribute that to themselves passing a bill? Come on.

The next thing the proponents say is the present system costs too much. Mr. President, it is like a college education. A college education is most expensive. The only thing more expensive is not having a college education. If product liability costs, which it does very little, the worst would be to not have product liability, because injuries occur. We have a safe America.

I wish I had time to go down through a list of these injuries. When I say the conference was ''a shabby procedure,'' I mean that last week I was struggling on Friday to try to find the bill. The bill's supporters were changing words down to the last minute. They filed a cloture motion at the time they filed the bill, which means they have the votes for cloture, and the jury is fixed

before they hear any arguments. And thereby they can come in with the fixed jury and say, bam, bam, they have cloture—today I was

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before they hear any arguments. And thereby they can come in with the fixed jury and say, bam, bam, they have cloture—today I was limited to an hour postcloture. They could have called for the cloture vote in the next 20 minutes, since we came in at 10 o'clock. So you are under the gun when they offer you only a few hours of debate. You are not allowed to talk sense.

Oh, boy, we could spend an afternoon pointing out the good that product liability has done. We do not get blown up by that Pinto gas tank. Cars all have antilock brakes. That elevator is checked. The steps are marked. Little children do not burn up in flammable pajamas. The women of America are not threatened with Dalkon shields. And football helmets are much safer—yes, we have had some wonderful decisions against their unsafe nature. When you and I played football, Mr. President, we ran into the line and there was just a piece of leather and what you would get, many, many a time, was traumatic cataracts. That does not occur now in high school and college ball, because of the better construction of football helmets—and product liability.

We could go all afternoon and try to explain the wisdom of a tort system that is working at the State level. But the proponents do not give you time to do that. They come up here with the anecdotal stuff, that it is costing too much. Let me cite some reports about what it costs, because the Rand Corp. and the Conference Board have studied these matters. The Rand Corp. said that less than 1 percent of product liability injuries ever result in a lawsuit. Over 50 percent of civil cases are business suits, incidentally. Business is suing business, like gangbusters. Pennzoil against Texaco, a $10.2 billion verdict, that one business against business result is more than all the product liability for personal injuries in the last 20 years, that one case. And they are talking about, ''It costs too much.''

But what did the Conference Board do? They interviewed 232 risk managers. We have it in the RECORD. The Conference Board interviewed 232 risk managers, of the blue chip, Fortune 500 companies, who said that less than 1 percent of the cost of the product was due to product liability. It was not a problem.

The proponents knew this. They come in here because they have Victor Schwartz and there is still a movement against lawyers. This is pollster driven. We all come here per political poll. Lawyers get rid of the lawyers.

Ah, Mr. President, ''the trial lawyers have paid them off.'' Yes. The proponents had a news conference even before the bill was called up. You see they have radio, TV shows, news conferences, before we even call the bill, and before those who oppose it have even a chance to say so. That is why I say it is a shabby operation. But I will quote, because you have to get the news clips about how two of the Senators:

> . . . who will appear on the ballot with Clinton in West Virginia this fall responded angrily to Clinton's weekend threat to veto the House-Senate compromise of a bill that limits damage awards in product liability cases. The two gave an ''unusually harsh accusation'' to the President, saying Clinton was ''rewarding'' the trial lawyers who are ''bankrolling his reelection bid.''

That is from the Baltimore Sun.

Come on, it takes a bankroller to find a bankroller. Let us go to the individual Senators, namely this Senator. I hope I have gotten some contributions from the trial lawyers. I have been one. But I have been a business lawyer, too. I have handled antitrust cases. I have sued a corporation before the Securities and Exchange Commission. When you come from a relatively small town like I grew up in, you represent all sides. And look at the record. I have been elected six times to the U.S. Senate. I will guarantee I have gotten more business contributions than trial lawyer contributions. So let us dispel this notion about what you are doing for the trial lawyers. We are thinking of the Constitution in this case. That is one of the big reasons the American Bar Association opposes it.

We are thinking of that seventh amendment. We are thinking of what the bill's supporters said in the original instance about simplicity, transactional costs, but how this particular measure now increases the transaction cost and makes complex the so-called simplicity, if there ever one was.

More than anything else, let us go to the original doctrine of the Contract With America crowd, from the 1994 election. Oh, they won on account of the contract. Did you not get the message of the contract?

They have a bunch of children Senators running around, hollering, ''The contract,'' and ''We gave our pledge.'' This Senator was elected, too, on a pledge: To stop a lot of this nonsense if he possibly could.

None other than the distinguished majority leader said, at the beginning of this particular Congress:

> America has reconnected us with the hopes for a nation made free by demanding a Government that is more limited. Reining in our government will be my mandate, and I hope it will be the purpose and principal accomplishment of the 104th Congress.

Senator ROBERT DOLE, now the Republican nominee for the Presidency here in November. I further quote Senator DOLE:

> . . . We do not have all the answers in Washington, DC. Why should we tell Idaho, or the State of South Dakota, or the State of Oregon, or any other State that we are going to pass this Federal law and that we are going to require you to do certain things . . .?

The majority leader then went on to say.

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

Those powers not reserved under the Constitution are hereby delegated to the several States.

Here we go with the devolution group. We started off with unfunded mandates. They said we had to give everything back to the States. Every measure that has come up here says, ''Send welfare back, send the health problem back''—of course, it is all political pap. It is trying to get rid of responsibility. They do not want to pay the bill.

We have been spending $250 billion more than we have taken in each year and both budgets—the President's and the Republican budget—will call again for another $250 billion in expenditures with less than $250 billion in revenues. So they do not want to speak the truth. They want to get boiled up into term limits, and we have gotten the lawyers now because this says ''kill all the lawyers,'' as the butcher said in Henry VI.

People do not realize how he said it. He said anarchy cannot predominate unless we get rid of all the lawyers. The lawyers, Mr. President, have been the bulwark of this great democracy. Every President from Washington up to Lincoln was a lawyer. They are the ones who founded this country, gave thought and wisdom and direction and growth.

I hearken the words of Patrick Henry: ''I know not what course others may take, but as for me, give me liberty or give me death.'' A Virginia lawyer.

Another Virginia lawyer, a 34-year-old lawyer sitting there and penning, ''All men are created equal.'' Thomas Jefferson.

James Madison foresaw our problem right here this minute 200-some years ago. He said, ''But what is Government save the best of reflection on human nature. If man were angels, there would be no need for Government, and if angels governed man, there would be no need for controls over the Government. The task in formulating a government to be administered by a man over man is first frame that government with the power to control the governed and thereupon oblige that same government to control itself.'' James Madison, the lawyer.

This Government is out of fiscal control, and no one wants to talk about it. I wish you would pick up the business section this morning. They do not talk about that. They said, ''Well, the idea of deficits now has gone sort of out of style.'' Why? I can tell the Washington Post why.

For all last year the Republicans had a fraudulent budget, 7 years to balance. It was a fraud. It did not balance. Finally, President Clinton said, ''Well, monkey see monkey do. I will put out a fraudulent budget, too.'' So when he put one out, they said, ''Ah-ha, fraud.''

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He said, ''No, that's what you have,'' and that is why they stopped talking, because neither side can possibly balance the budget without an increase in taxes, and both sides are trying to buy—trying to buy—the vote in November with a tax cut.

Sheer nonsense, but that is what is going on. That is why they do not talk about deficits anymore, because you cannot realistically talk about it and give a tax cut at the same time. So they are moving on to abortion, immigration, they pick up lawyers—term limits—any kind of sidebar that is not a national problem to get by the election.

It is all applesauce. It is all Presidential politics. We are spinning our wheels, and it is a shabby process to come and bring this without any debate, limited as we are to talk about a national need that every one of the States over the years has addressed—the distinguished Senator from Rhode Island got up on the floor and talked about the years we have been discussing this. He is right. We have been discussing it for years and years, and the reason it has not passed is because the States have long since taken care of the problem, whether the problem was the inability of finding insurance, whether it was trying to get uniformity, whether it was international competition—you can go down the list, like Sealtest ice cream, the flavor of the week, they had a different reason every time.

Every time that the law professors looked at it, they came en masse and testified, ''For Heaven's sake, don't pass this measure.''

Every time the State legislators came, or the State attorneys general came, they said, ''Look, we're doing the job. It's a nonproblem.''

Every time the chief justices of the States—the States that they revere so much in devolution but that are totally repudiated here—the Association of State Chief Justices came and said, ''Don't pass this.''

The American Bar came and said, ''Don't pass this.''

I do not know who they represent other than themselves trying to get reelected on a pollster hot button. That is all it is. We can go down the list of those who oppose this measure still.

The AFL–CIO, do you not think they represent working Americans? Find me a working American who says this is a good bill.

The Coalition for Consumer Rights; the Consumer Federation of America; the National Conference of State Legislatures; Public Citizen—I can go right down the list.

Mr. President, I challenge the supporters of this bill to say what group, other than the Business Advisory Council and Victor Schwartz, wants it. I represent people in business, and I can tell you about the cost of it.

So the Senator mentions the cost. Then he gets into the amount of lawyers. Since we are talking about the lawyers, I should have completed my thought. Again, it was a lawyer, Abraham Lincoln, who made the Emancipation Proclamation. Franklin Roosevelt in the darkest days of the Depression, a lawyer, said: ''All we have to fear is fear itself.''

I was admitted to practice before the U.S. Supreme Court in December 1952, Mr. President. We had then the school segregation cases. Brown versus Board of Education of Topeka—actually the lead case was Briggs versus Chaney. We had John W. Davis, the former Solicitor General, argue on behalf of the State. Thurgood Marshall, the lead attorney arguing not the Kansas case but the Briggs versus Chaney case. I can see Justice Marshall, a lawyer, standing there now talking about freedom and bringing this Congress and the people in this land to equal justice under law.

''Get rid of the lawyers,'' they say. I can go to Ralph Nader, I can go to Morris Dees, and all the others. I can go down and then I can come to the 60,000—did you hear the figure?—60,000 registered to practice downtown in the District, all on billable hours, hardly any in a court, all fixing us politicians, $200 an hour, $400 an hour.

I have talked to some with ethics charges, and they have gone broke. They have not paid their bills yet. They got rid of the ethics charge, but to go back to all the records, they had to pay lawyers $400 an hour to come and just look over the records in the office.

The billable hour crowd is behind this bill. That is one group. They do not want to mention it. Lawyers, yeah, they have the Persian rugs, mahogany desks, and the drapes. They never worked. The trial lawyers have to convince 12 jurors in their community, all 12—all 12—and have to withstand judicial review, as the coffee case did where it was cut. They did not get paid anything. The presumption is, on the amount to the lawyers, that these injured parties without a lawyer would get the money. That is why they are having a product liability case, because they are denying payment. They are denying payment.

But, yes, we had in the committee—I will read about who gets what, and that this is just a plaintiff's lawyer—people ought to know about defendants' lawyers and about the billable hours thing. It is wonderful. We are talking about the time it takes and the backlog. Who is interested in time and backlog? Then there is the insurance company lawyer out there on the 20th or 30th floor, and the Persian rugs. He could care less. He gets his money. If the insurer can put the claim off and never pay it, at least when they do pay it, it will be in inflated dollars. The insurance lawyers are the ones who are asking for continuances and motions and who call their secretary and tell her to put 52 interrogatories in. Then, they get the discovery going. All they do is just sit there and answer the phone and go out to the club and eat lunch and have their martinis and say how smart they are. And they get paid.

Plaintiffs' lawyers, the defendants' lawyers. I read from the committee report:

> According to calculations derived from the survey conducted by the insurance services officer of the Institute for Civil Justice, for every dollar paid to claimants, insurance paid an average of an additional 42 cents in defense costs. While for every dollar awarded to a plaintiff, the plaintiff pays an average contingent fee of 33 cents out of that dollar. Thus, in cases in which plaintiffs prevail, out of each $1.42 in total litigation costs, including damages, about half of that goes to attorney's fees, with the defendant's attorneys on average paid better than the plaintiff's attorneys. Of course, defendant's attorneys are paid regardless of the outcome of the case, while the plaintiff's attorneys are paid only if they win their case; otherwise, they take a loss for the time and expenses they have incurred.

Mr. President, coming to the Senate, I left a lot of money on the table. I can say that poor person now in the Boland case—this guy had broken down between Georgetown and Charleston. As he went back to get the spare tire out of the trunk, the bus rammed him, dead. The family did not have any money, whatever it was. I said, ''Well, I'll take it.'' We spent quite a bit of time and money, won the case, took the case on appeal, trying to chase down to Florida the particular defendants in that case, everything else of that kind. We just had to leave that.

Plaintiff's attorneys understand that is the cost of doing business. Otherwise, how is poor America ever going to be represented? I take my hat off to trial lawyers. Heavens above, yes, if they make it, some are making in these class actions, I guess, healthy amounts. But the experience is otherwise. As we have heard in the hearings and everything else like that, the cost is not trial lawyers, the cost is because of the defense lawyer.

The cost of the enactment of this particular so-called conference, what I call conspiracy, report, is that individual rights would be seriously, seriously inhibited. There is not any question about the matter of the studies that we have had. In 1991, the Rand Corp. showed that only 2 percent of product liability cases are ever filed. The majority of the 2 percent are business; 90 percent never get to court.

I have already mentioned the Conference Board. The Rand study said that less than 1 percent of corporate America is ever named in a particular lawsuit. Of course, Cornell University's most updated study shows that in the decades of the 1980's, coming into the 1990's, there has been a decline of litigation. There used to be what they call, I forget now, but they had a panic that they just had a plethora of suits. Actually under the Cornell study the suits have declined 44 percent.

The States have moved in. They have moved in a responsible fashion. And here we come—in the State of Arizona, for example, they had a referendum on

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this. This bill abolishes the public vote of the people of Arizona. If that is not senatorial arrogance, if that is not congressional arrogance, if that is not Washington Government at its worst—everybody's campaigning on the stump, Republican and Democrat, that we are going to get rid of that kind of Washington Government—if that is not it, I do not know what is.

I could go on, Mr. President, into the matter of the bill itself. The very interesting thing is that they are talking, oh, so reasonable, about how they are struggling and how it works and how they have balance. I hope they do not use that word ''balance'' because I heard that in the caucus yesterday. Balance, my Aunt Edith. This does not apply to the business of the majority of people bringing product liability cases. Oh, no. Hum-mm. No. It does not apply to coming back on punitive damages and having a separate hearing nor to joint and several liability. None of this balance talk is about pain and suffering, none of this at all—

Oh, look through this obstacle course they have here for the poor, injured party. Not an injured business, no. United Airlines is looking at suing the Dallas manufacturer, I take it, of the baggage handler out there in Denver. No. This bill will not apply to them. That is a corporation. No, siree. That military airplane that crashed—oh, boy, I think we have had 31 of those F–14's in a period of a few months or years. We put those planes on line 23 years ago. That last crash killed, I think, two or three people on the ground there in Nashville. No case under this bill. No case because they have been exempted.

You have to read this thing. I am proud to stand here and tell the truth and expose this nonsense, this conspiracy, that has taken on, on the one hand, a political poll hot button issue, that is a nonproblem, and expose the movement that is in behind it and continues and continues because who is paid, when they talk about the trial lawyers and being bankrolled, who is paid and bankrolling this?

So you have two classes of injured parties. If you are a business injured, do not worry. If you are instead an individual who struggles because you not only have to get the investigation cost, you have to get your medical cost, you have to get it all assumed by that rascally trial lawyer, and he is assuming the plat to be made, the diagrams, the photographs and everything else to bring the truth to the 12 men and women on the jury and suffer all the legal motions and everything else. The trial lawyers are bankrolling injured parties, for an average, I would say, of anywhere from 1½ to 2 years at least on these cases.

If they do not prevail with all 12 or with the supreme court of the State on appeal, they are goners. They are goners. That has happened time and time again.

But you have two classes. There the bill's supporters have been very, very careful to talk about fairness and trying so long. You have two classes of individual parties: the CEO and the fellow who is working in the plant. The CEO makes $5 million. Ask AT&T; I think the CEO got up to $16 million. If he comes in and he gets an injury, he can get twice times the economic damages. So, if he is out for a year, he can get $32 million in punitive damages.

But if the same fellow in the car that is driving with the CEO—if the CEO will give him a ride—that fellow will only get $250,000 in punitive damages. Oh, boy, what a fair bill. It is so studied, so nice, so pleasant. We have been holding it up because trial lawyers have been bankrolling everybody, and everything else of that kind.

I wish this crowd would sober up and read this thing. You have the poor women. You have two classes there. If you have the breadwinner, the man in the family, he can get all his economic damages and everything else, but she can be expecting a baby and lose that baby and never be able to produce a child again, but that is not economic damage, that is pain and suffering. So there is going to be a separate hearing there.

Mr. President, later, if the time permits, I want to get to the uniformity and the global competition that they talk about, because with respect to, say, the State of Washington which does not have punitive damages, this law would not apply. To my State of South Carolina that does have punitive damages, this law shall apply. They call that uniformity. They call that uniformity.

Interstate commerce is a many splendored thing and the lawyers are bolixing it up. As for global competition—I have foreign industries coming in like gangbusters. I have been in the game at least 35, nearly 40 years. This is why I challenged the distinguished Senator from North Carolina; I know his State; we compete together. We have never had the blue chip corporations that we have today—I have Firestone, several GE's, I have several DuPont, American industries. Right here in the last 2 or 3 months, we have BMW, we have roller bearings, Hoffmann-La Rouche, the most wonderful pharmaceutical firm that you have ever seen. Companies from everywhere—Hitachi, in the TV industry.

I want to thank publicly the Washington Post for that Outlook article on Sunday. I have been trying to bring this trade issue to the U.S. Senate now—this is the 30th year, this so-called protectionism. President Ronald Reagan, under section 301, started moving in these cases and got voluntary restraint agreements. As a result of the voluntary restraint agreements in things like Sematech—protectionism, if you please—we are not only holding on to the old jobs but we are getting new jobs.

I remember the Republican primary campaign in South Carolina, when the former Governor said, ''Free trade, free trade. Look at this, BMW taking Senator DOLE through its new plant. It was there on account of free trade.'' It was there on account of protectionism. When we got voluntary restraints, that is how we got Honda, how we got Toyota, how we got BMW. Who is kidding whom?

When the distinguished Senator from Alaska, Senator STEVENS and I, put into the defense bill the Buy America provision on roller bearings, we got Koyo and INF up in York County. That is why they are there. Voluntary restraint agreements on steel, voluntary restraint agreements with respect to semiconductors, Sematech, Hitachi. You can go down the list, Mr. President. Trial lawyers, protectionism. Competition is what America is interested in at this particular moment, not the tort system being handled by the States, not term limits and all the other fanciful games played in political polls. They want America. They want this Congress to get competitive.

There is nothing wrong with the industrial work of America. The industrial work of America is the most competitive. What is not competing is us up here, where we have a failed policy of the cold war that we had to enact trying to keep the alliance together. Now with the fall of the wall is the time to build up our economy. Now is the time to go forward with the protectionism that we have for the environment that they are trying to get rid of—clean air, clean water, proper trial at the State level.

I have to read aloud the seventh amendment because I do not believe they have ever read it. You ought to see what it says. The seventh amendment to the Constitution:

> In suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, according to the rules of the common law.

They have reexamined the amendment in here where they say, ''Mr. Trial Judge, do not tell the jury about that $250,000 cap, but if they come in, then you go and you factually proceed in violation of the Constitution and come out with your trying of the facts in your decision.'' Come on.

They say now they have worked over the many years to pass a product liability bill, and the general aviation bill lets manufacturers sell airplanes that are working so well. Global competition, we have to get into the global competition. I am going to write a follow-up piece for publication. Over half of what is coming in here in imports is American multinational generated. We are competing with ourselves. The multinationals that have lost their country as far as business imports are concerned have gone overseas and they are coming back in and the foreign entities, foreign governments are coming in here with a historic chant. It is devastating our economy. Everybody can see it but us politicians. Everybody can see it but us politicians.

It is a given in manufacturing that 30 percent of volume is the cost of the employees, the workers; now we call them the associates. It is a given, further, that you can save as much as 20 percent of sales volume by going to a low-wage country in manufacturing.

So if you have $5 million in a sales corporation you can keep your executive office, your sales force, but move your manufacturing offshore to a low-wage country and save $100 million, or you can continue to work your own people and go broke. That is not greedy corporations. That is a stupid Congress that allows that to happen.

If I ran a corporation and my competition headed overseas and started cutting his costs that much, I am forced to leave. We have a veritable hemorrhage of industries leaving. I pointed out that Baxter Medical that I brought here years ago, with 830 workers, has just gone to Malaysia. Secretary Reich says, and the Congress says, now what we have to do is retraining, retraining, retraining. Come on. I have skilled training coming out of my ears. We can train them to do anything. We do not need a Federal program. We have BMW without a Federal retraining program, and all these other industries.

But assume they are right and they are retrained into wonderful computer operators, 830 of them, the next day. The average age is 45. Do you think they will hire the 45-year-old computer operator or the 25-year-old? With the cost of retirement, with the medical costs and everything, the answer is obvious.

What we are dealing with here is not a cost of doing business. I am identifying our injury. Our injury is the failure to, as Lincoln said, ''disenthrall'' ourselves from free trade, free trade, free trade. There is no such thing as free trade. In the 1930's, we had reciprocal trade, and tariffs as the instrumentality—protectionism. Everybody wants to flatten the income tax—flat tax, flat tax, flat tax, is something else going on. Well, we lived on tariffs and protectionism from the beginning of the republic up until 1913. A country, an economic giant, built on protectionism. But they are all running around here like children and hollering, ''Protectionism, protectionism, free trade, free trade. Product liability is such a weight on doing business.'' And all of the business statistics, findings, insurance company results and everything else of that kind show otherwise.

I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. THOMAS). Who yields time?

PRIVILEGE OF THE FLOOR

Mr. GORTON. Mr. President, I ask unanimous consent that Craig Williams, a fellow on the staff of Senator MCCAIN, be granted the privilege of the floor during the Senate session today.

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

Mr. GORTON. Mr. President, I yield to the Senator from West Virginia such time as he may desire.

Mr. ROCKEFELLER. Mr. President, I thank the Senator from Washington.

Mr. President, I am very happy that the Senate, at long last, is taking this bill up. We have been here before; we have been here many times before. I wish we could have gotten here sooner this year. Nevertheless, I am glad we are here. I think there is a natural tendency in Congress to wait until absolutely the last minute before important decisions are made, and that is what we are doing again this time. But so be it.

I am here to report to my colleagues that the Senate product liability bill has maintained the Senate's standard, which is products only. It has to be fair. It cannot include a whole lot of extra things that the Contract With America wanted, or that others wanted, or, indeed, that earlier generations within this body tried to add on to this bill. It was always my intention—and it was always the intention of the Senator from the State of Washington—to keep this bill disciplined, on products only, not to expand and include all kinds of other subjects, so that we could keep faith with our colleagues. I believe we have done that. All of this is now embodied in H.R. 956, the commonsense product liability legal reform bill.

I am enormously proud of the fact that the Senate really does want to see meaningful product liability reform, to fix our broken products system. Most of those on the other side of the aisle feel that way. There is a merry band of us on our side of the aisle who feel that way, and we have for a long time.

We can announce to our colleagues that we have done what we promised we would do—hold to the Senate position in virtually every respect, to preserve the balanced, reasonable Senate product liability reform provisions that will provide Federal uniformity to the hodgepodge of State laws, which deal with product liability today. This will improve the product liability system for consumers and for business alike.

There is a feeling sometimes in here that the bill has to either be just for consumers or just for business, and that you are over here or you are over here. This bill is trying to reach to both sides. We do some things to help manufacturers, and we do some things to help consumers. That was the point—to make it a balanced system. The statute of limitations is one that occurs to me mightily. California, for example, has a 1-year statute of limitations, and that means, in California, I presume—and I am not a lawyer—that if you are injured and wish to sue, you have 1 year within which to do it, and after a year is passed, you cannot sue. I consider that to be anticonsumer, and I consider those who are defending the status quo to be defending an anticonsumer position, which is, in fact, virulently anticonsumer.

Our bill says that one has the right to go 2 years after one discovers, first, that one is injured and, second, what the cause of the injury was, so that one knows who to sue. Now, in an era of drugs and toxics—and we are seeing this, for example, in the Persian Gulf war with the so-called mystery illness, which is no mystery to me, but what seems to be a mystery to the Department of Defense—sometimes it takes 4 or 5 years. Sometimes it takes 15 or 20 years for a toxic or a drug to show up as an injury. So then you know that you are injured.

But under our bill, that is not enough. You have to know what the cause of the injury was so you know who to sue. Now, that is clearly proconsumer, and those who are defending the status quo—that is, those who oppose this legislation—wish heartily to deny consumers that window to get into the courthouse door. I find that stunning. I find that, in many ways, shocking. I am very proud that we have that in our bill.

Opponents of this legislation have, I believe—and this has been true in the past—used gross distortions and out and out misstatements about this bill to try to suggest that it has been significantly changed from the Senate-passed product liability bill. We are spending our time running around taking examples, which are patently false, which have been raised as though they were patently true. That is not a distinguished aspect of Senate life on this bill.

The fact is that this report is virtually identical to the Senate bill in every single respect—virtually. Senator GORTON and I, in what I thought was a rather extraordinary colloquy from the floor, delivered on our blood oath, in which we both said that if we did not deliver on this promise, we would vote against proceeding to the bill or vote against the bill; and that was that we promised to delete the provision providing a defendant with a right to a new trial under the ''additional amount'' provision. That was an issue. We pledged to remove it. We did. We also took the House timeframe on the statute of repose. That was the one change that we made, maintaining the Senate bill's limited scope, importantly, to durable goods in the workplace.

Now, again, some of the distortions being used are that by reducing the statute of repose, which was the only area in which we gave the House what they wanted—we gave them the 15 years, but we did not give them what they really wanted. They wanted this to include everything, not just durable goods in the workplace. We maintained the Senate position even on that.

Beyond that, no substantive changes were really made. Technical and conforming drafting changes were made, as in any report of this sort. But that is it. That is the sum of the changes from the Senate-passed bill, no matter what the opponents of the reform will assert, and will assert this day. My colleagues need to know that, and they

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should be reassured that this means that the product liability report is yet one more opportunity to go on record in support of moderate and beneficial reform of our product liability law.

Senator GORTON has gone through, and will continue to go through, a detailed legal analysis for the minor changes that were made, conforming changes. He will also rebut—certainly better than I—the outrageous claims that are being circulated by the opponents of the reform. I heard them in the Democratic caucus yesterday, and I am sure I will hear them on the floor today. However, as coauthor of the Senate product liability bill, I would like to go on record with my own analysis of the opponents' wild claim about the report. It is not in legalese because I am not a lawyer. But it is in English. I want this RECORD to reflect what is actually in the bill, rather than what the other side will, as I have said, continue to misinform Members about during this crucial debate.

There is a lot of confusing misinformation being circulated. Here are the facts.

Fact No. 1: There is no cap on economic or noneconomic damages—no cap on economic or noneconomic damages. Claimants will continue to be able to recover whatever they are awarded in a court.

Fact No. 2: The statute of repose remains limited to durable goods in the workplace only—only. Statements being made that they now cover all goods are wrong.

Fact No. 3: Product sellers, lessors, or renters will not be protected from negligent liability. That is precisely why the negligent entrustment exception was moved to the product sellers' section of this bill.

Fact No. 4: Dow-Corning and other companies who made, or make, breast implants will not be shielded from liability—will not be shielded from liability. We went through this last year, and groups, in particular, women's groups, gave impassioned, very emotional press conferences in which they said they would be included and that they would be shielded by this bill. It was not true last year. It is not true this year. Whether or not they supplied the silicon, they remain as liable as any other manufacturers who produce a defective product, if they do.

Fact No. 5: And this is very important because this involves a subject which has struck a number of people on my side of the aisle deeply, and it has to do with a letter that Mothers Against Drunk Driving—obviously an incredibly excellent and wonderful group—have circulated. But we have been trying to reach them to get them to make a retraction because they have made a mistake. It is a mistake which has been persuasive, unfortunately, to at least two Members on our side that I can think of.

I repeat, drunk drivers, gun users, et cetera, will not be protected from liability in any way. Opponents are intentionally trying to confuse harm caused by a product—that is, harm caused by a product which is covered in the bill—and harm caused by the product's use by a person, or persons, which is not covered in the bill and remains totally subject to existing State law. Specifically, for those inclined that way, section 101(15) and 101(a)(1), definition of ''product liability action,'' includes only ''harm caused by a product, not use.'' That is an enormous difference.

If I have leased a car and then stopped off at several bars and become drunk and then cause damage to somebody, I, as a person, can certainly be sued, but the use of the car, if the car is not defective, is not actionable under this bill, nor should it be, because this is a products-only bill. It is the products we are talking about, not the use, or the user.

Fact No. 6: In all States that permit punitive damages, they will continue to be available and the additional amount provision—we used to call that judge additur, but we now call it additional amount provision—will apply in all those States regardless of whether caps are higher or lower in that State.

Fact No. 7: Tolling, this was raised in our caucus yesterday; it has been raised since. Tolling of the statute of limitations will be covered as they are now by applicable State and Federal law. For example, for those so inclined, see 11 U.S. Code 108(c), ''automatic tolling in bankruptcy cases.''

Nothing in the bill, Mr. President, or omitted from the bill, will change State law on tolling. That is a fact.

Fact No. 8: State law will continue to control whether or not electricity, steam, et cetera, is considered a product or not.

Fact No. 9: This is not a one-way preemption bill but a mix of State and Federal rules, as it ought to be, in a bill which is moderate. Products are in interstate commerce—we have said this over the years so many times—70 percent. There was a day when things that were manufactured in California were probably sold in California for the most part. Today, on a national average, 70 percent of all things that are manufactured are interstate and are sold outside the borders of that State and thus are in interstate commerce, and they should be subject to more uniform rules for business and consumers.

Let me just say again, as I did last year, that the European Economic Community—which is close to 400 million people and an enormous competitor for the United States of America economically—all 13 countries have a single product liability law, a uniform product liability law—all 13 countries, not provinces within those countries but the whole country.

Japan has just adopted a uniform product liability law, a law uniform for the country, but we have 51. We have 51 different laws. For example, in the case of punitive damages, I think about 80 percent of all punitive damages come from three States—California, Texas, and Alabama. Why is that? Probably because of something called forum shopping. Because we have so many different laws—51 different laws—people can simply try to find the place which is most effective for their particular case, and there they go. So this is not a one-way preemption.

Fact No. 10: On joint and several liability—there has been a lot of talk about that and this is an extremely important issue—30 States have modified joint and several liability at this point. The Federal proposal follows the California law affecting only noneconomic damages. It is interesting on this point; the States clearly recognize that there are things they want to change in joint and several liability. Twelve States have eliminated joint liability altogether. Two States have eliminated joint liability for noneconomic damages. That is California and Nebraska. Ten States have otherwise limited the availability of joint liability as to noneconomic damages or damages generally, with the result being it is significantly less likely that noneconomic damages would be subject to joint liability. Three States have eliminated joint liability in cases in which the plaintiff is negligent and five States have capped awards of noneconomic damages. In all, 30 States have done this, and these include 8 of the 9 largest States in the Nation.

For the remainder of my time I wish to remind my colleagues and whoever else might be listening why some of us have wanted so much to act on this legislation and to outline the opportunity that this reform in fact holds for this country and for our people as consumers and as human beings.

Product liability reform has a very long history in the Congress. Members in both Houses and on both sides of the aisle have been trying to reform the product liability rules for over a decade, in fact for substantially longer than that, and we have done it for the most part by working together, Republicans and Democrats. No matter what anyone says to try and hone this issue as truly partisan or divisive, the idea of product liability reform is a legislative idea with a complete, thorough, aboveboard, open, and honest history of hearings, of markups, of floor debate, of cloture votes, and everything and anything else that one could call the way to legislate.

Yes, we have been persistent, those of us who want to see this law enacted. We have been dogged. We have been focused because we think this country and its people need the change. The status quo is hurting American workers, American business, American consumers, and American competitiveness. When products by definition cross State lines—at least 70 percent of them—it makes no sense, absolutely no sense for product liability rules to be different in all 50 States, which they are—50 different sets of rules. It breeds unpredictability, delay, confusion, and

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Senator GORTON and I introduced a bill last year, once again to reform product liability. And I have to say I have enjoyed enormously a true partnership in spearheading this effort with Senator GORTON. Because I said everything good I could think of last year and ran out of the English language, I can simply thank him once again for his legal acumen, extraordinary integrity, and extraordinary sincerity in trying to enact reform.

Different legislation was passed in the House earlier in the year, as people know, and fortunately one part of it was product liability reform. In the discussions, many of my colleagues in the House and some in the Senate deeply wanted to pursue nonproduct liability legal reforms—nonproduct liability legal reforms, all kinds of ideas—making it available to all civil torts, putting it on medical malpractice, which I personally favor but which has no place in a products bill. This is a products bill. The problem was that the Senate did not have companion legislation to consider or to conference on the House's ideas for malpractice reforms or legal reforms beyond product liability. While I am not opposed to looking at other kinds of legal reforms, I believe I owe it to my colleagues to whom I and Senator GORTON and others have made this pledge and to the legislative process to have the Senate first take up legislation through the relevant committees and the regular process.

The history of product liability reform legislation makes it obvious that it is still a very contentious subject, and I always say to my good friend, Senator HOLLINGS, that I do not like disagreeing with him on anything, on anything, but I think there is an immensely compelling, urgent, and clearcut case for product liability reform.

Senator GORTON and I introduced a bill that is bipartisan, moderate, balanced, and focused as a way to begin fixing the problems in the product liability system. The report is in essence the same bill with improvements suggested by the administration—I repeat, with improvements suggested by the administration—and others interested in getting responsible product liability enacted into law. Even the National Governors' Association, usually the most insistent that the job should be left to the States, which we have seen in Medicaid and welfare reform and many other things, even in these last 10 months, has said in formal resolutions that ''uniform standards'' are needed in product liability. They have so said. One of those resolutions was passed.

In fact, the original task force on product liability—one of the members was then Governor Bill Clinton, and he was the leading force at NGA—had a unanimous report in favor of uniform standards and twice the President of the United States voted to support that position.

Last August, the Economic Strategy Institute, the organization headed by Clyde Pressler, with whom I believe the Senator from South Carolina generally agrees, and a voice for tough action on trade and other areas, issued a report called—and this is not what I would call the best title I have ever read in my life, but it is called ''Tortuous Road to Product Liability Reform.''

To paraphrase, when the institute issued the findings of its recent research, it said that America's unique approach to product liability has brought enormous and growing costs to the resolution of disputes, and the costs are borne by consumers and U.S. business alike.

It goes on to say that costs are eating up money that could be spent on wages, on research and development, on training and other investments to be competitive with the rest of the world where our principal economic opponents have adopted uniform product liability standards. The institute's report underscores that product liability reform would significantly benefit consumers and business.

I think everybody knows that I obviously am disappointed by the President's recent statements indicating that he intends to veto this report, particularly when the administration issued a statement by the President on May 4, when the Senate was debating amendments to expand our product liability reform bill, that concluded with the final paragraph which I think shows how much consensus we have managed to develop over the years on the point that action on product liability is needed. It said in that statement, ''The administration supports the enactment of limited but meaningful product liability reform at the Federal level. Any legislation must fairly balance the interests of consumers with those of manufacturers and sellers.''

It was this President who just 2 years ago signed legislation providing the American aviation industry and its consumers with provisions very much like what is in the current report for product liability reform. That bill, the general aviation bill, thoroughly described by Senator GORTON, has helped the small plane industry make a major comeback since its enactment, and the President when he signed it said he felt that this would create many, many jobs for Americans. The President was correct then in arguing for reform, and I hope, hope and hope and pray, that he will seize the opportunity of moderate, balanced reform that our conference report presents to him now.

Mr. President, I believe this conference report is the legislation the President was calling for last May. I truly believe that it is. I consulted with the administration every step of the way during this long process to meet its parameters and those of many of my Democratic colleagues. I felt an obligation to so do. I think and believe that my colleagues know how hard I have fought to stay within these parameters.

Now we are voting on the conference report that produces the product liability reform the Democrats and Republicans in both Houses have toiled in the vineyards to achieve these many years. At a time when America clearly faces threats to our jobs and economic growth across the world, where they do not have the same maze of conflicting laws, we should do everything we can to suit up, not surrender. Consumers should not have to bear the costs of ridiculous delays or be denied the breakthrough drugs or other innovations that the current system scares off.

So I think this conference report, in concluding, Mr. President, has earned the votes of those who support meaningful product liability reform in good faith, those who sincerely mean it. The final decision, of course, is the President's. He said he is going to veto it. Having so said, obviously, he has a chance to hear this debate, to rethink his position, and to change his position itself and, in fact, to sign the bill. He could still do that.

As I have said, I hope he will take that time and see this vote as a reason to reconsider his position.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. Mr. President, I yield 25 minutes to the distinguished Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 25 minutes.

Mr. HEFLIN. Mr. President, Senator ROCKEFELLER, I am sure, has endeavored to live up to his commitments to not expand the conference report, to the best of his knowledge, but being a nonlawyer, I am afraid some of his advisers who are writing it did not explain to him the vast expansion of this report over what the Senate passed before. There are numerous changes, subtle changes in many instances—for example, the changing of the word ''and'' to ''or,'' which greatly expanded the bill.

The proponents are referring to the various special interests who have concerns about this legislation. You know to whom they are referring—trial lawyers and advocates on behalf of the American consumer. But there are a lot of other special interests that are involved, particularly those who have been endeavoring to save money and to make a bigger profit. In that category could be many elements of business from manufacturers to wholesalers, distributors, retail sellers and also including the insurance industry. These can certainly be called special interests.

This report's section on punitive damages has, with regard to small businesses, a provision about ''the lesser amount'' and therefore providing a maximum cap on punitive damages of

$250,000 if a business has less than 25 employees. I doubt if there is any company that has 25 employees that does not carry substantial excess liability insurance over and above $250,000. Most businesses carry liability insurance in large amounts, and the relationship of employees to the policy of insurance that is carried, that protects them, is not really germane at all.

The conference report is greatly expanded by lowering by 25 percent, from 20 to 15 years, the statute of repose. For example, the statute of repose will apply to a bridge. Most contractors' negligence and the defects in the production of a bridge do not occur during the first 5 years, 10 years, or even 15 years of a bridge's use. A defect in a part or component product of a bridge manifests itself by a bridge collapsing, or giving way after a period of time in excess of 15 years.

Under the definition of the term ''products,'' it is anything that is used in the construction of a bridge under this bill, and there are many component products that are manufactured for the purpose of lasting many, many years.

So, as we see in particular mountainous areas where bridges span big gaps, or cross between mountains, you will have a real danger after 15 years of a collapse and under the statute of repose of 15 years, an insured person or his estate is outright prohibited from bringing a suit to determine fault. Also, consider that it is 15 years from the date of the delivery to the first purchaser that the statute begins to run. There are many consumer items, products that are delivered to the first purchaser, which is not the consumer, that may stay on the shelf 2 or 3 years. What do we have? The statute running even sooner against unwary consumers.

We should also consider workplace products and their safeguards that are supposed to protect innocent workers. What you protect is a person, a farmer from losing a hand in a corn machine, which harvests corn. Or you can have any type of other situations where there is an absence of or defect in safeguards associated with machinery. I have charts to show the various items of where safeguards are left off. Consider a plastic injection molding machine or a tractor, manufactured more than 15 years prior to the accident where a 34-year-old person was killed, and where the manufacturer failed to equip it with rollover protection system. Consider a punch press which lacked guards and safety devices. All of these items illustrate how an innocent person could be adversely affected by the 15 year statute of repose contained in this conference report.

Then the statute of repose has some language that says ''not caused by a toxic material.'' The issue arises in regard to whether or not, for example, asbestos is a toxic harm or toxic material. There are various and sundry people who would say a position can be taken that asbestos is not a toxin or a poison, but that breathing it, is unlike poisons like chlorine or benzene. They say that asbestos is simply a rock fiber and asbestosis, the most prevalent asbestos-related disease, is caused not from toxic interaction between the asbestos fibers and cells but, instead, because the needle-like asbestos fibers pierce and destroy air sacs in the lungs.

It takes generally 15 or 20 years of exposure to asbestos material before the disease develops. But under the statute of repose, you do not have a right to bring any suit. You are forever barred from bringing a suit after the passage of 15 years from the date of delivery to the first purchaser.

Now tell me this is fair. This, to me, is a great expansion of the conference report from the Senate-passed bill. But let us look at some of the other expansions in this report.

The report has a change of a slight word about a standard of liability other than negligence. For years and years, product liability bills have excluded natural gas and electricity, but this report comes back from conference with a change in language providing that if natural gas or electricity is subject to a different standard than negligence, then it is subject to all of provisions of this legislation—this is a vast expansion.

Now, natural gas and electricity are looked upon, in practically all States, to be highly dangerous and are subject to laws that say that if they are sold, the producer and seller must be held to the highest standard of care in order to protect the public. But the conference report contains an expansion for the first time in about 18 years. Was this merely an inadvertence or was it intended?

Natural gas is odorless, and producers have to add a fluid to it for people to smell it in order to detect it. It is generally referred to as ''skunk juice.'' But if somebody fails to add it or fails to put the proper amount in and a devastating accident occurs, are those in the production chain allowed to reap the benefits of this legislation's protections, say, as to the caps on punitive damages? Is that not a great expansion of the conference report? I just wonder how many homes are heated with natural gas, and there is a particular case that just occurred recently, a Seminole natural gas case out in Texas where there was an explosion and three people were killed and many were injured. Punitive damages were awarded by a jury.

Obviously, that brought to mind a very crafty, highly intelligent drafter, who now says we can take care of similar situations by a little sleight of pen and make these type of these cases come within the ambit of the bill. I am sure that the distinguished proponents of this legislation did not realize or never were told about this particular change, but it greatly expands the bill, make no mistake about it.

Consider the provision regarding negligent entrustment. There was a provision in the Senate-passed bill that said that the limitations of this bill shall not apply to any suit brought for negligent entrustment. The Mothers Against Drunk Driving had insisted that that provision be in the Senate bill. That is where you have the State dram shop laws, where liability is provided where tavern or bar owner sells whiskey to a minor or to a drunk who then drives a car under drunken conditions and kills an innocent victim. Under the Senate-passed bill, a defendant was not provided with the limitations of this bill such as the caps on punitive damages. But now a defendant could come within the limitations contained in the conference report. Gun dealers, who have been subject to negligent entrustment actions on the State level for selling guns to known incompetents or criminals, would now benefit from the subtle change between the Senate-passed bill and the conference report which is now before the Senate.

The negligent entrustment provision was moved from one place in the Senate-passed bill to another place in the conference report, and this subtle change allows defendants in negligent entrustment actions to avail themselves of the limitations in this conference report. The Mothers Against Drunk Driving are utterly opposed to this report and are urging Senators to vote against cloture.

Then there is the issue of the statute of limitations of 2 years where a court orders an injunction, like a company goes into bankruptcy and you, therefore, are enjoined by law from filing a product liability suit. Under the bill that was passed by the Senate, that time did not count—the statute of limitations was suspended or tolled. It said that that time did not count on your statute of limitation running of 2 years.

But, by sleight of hand, it is removed from the bill and it is no longer there. The President, in his veto message that he sent, points that out. I had read the bill, and I had not discovered that. I went back and read it again, and I saw how craftily that had been omitted from the conference. So, therefore, if your company goes into bankruptcy, there is an automatic stay against being able to file a civil suit. Therefore, that provision that gave you protection against the running of time is removed.

I mentioned a definition of durable goods, how the adding of a ''comma'' in the durable goods section now brings in many, many household goods—baby cribs, lawn mowers, razors, electric razors that are used—any type of thing that has a projected life of 3 years is now in it. Before in it, it had to be related to a business. No longer does it. But it includes household goods that are there.

There is another change about remediation relating to Superfund in regards to the environment. I am not sure that I understand it, but it was

changed for some reason. The conferees did not make these changes unless they are trying to give some sort of protection to some company.

Another change to me that was unusual was the conferees changed the name of the bill. When the bill was in the Senate and passed the Senate it was called the Product Liability Fairness Act of 1995. I made a speech about it and said that was the biggest misnomer and pointed out the unfair provisions. For example, business can sue for commercial loss, and they are not subject to these provisions. The report exempts business in their suits against each other. But they contain provisions that it would apply to individuals, to injured parties. But if you are an injured business, you can sue for loss of profits, you can sue and are not subject to the bill's limitations.

For example, you have a statute of limitations for 2 years here, while in most States the statute of limitations, under the Uniform Commercial Code, is anywhere from 4 to 6 years, just for example. Business suits are not subject to it. Yet the biggest verdicts that have been rendered relative to punitive damages are business cases. Pennzoil versus Texaco and so on. But anyway the proponents changed the name to the Commonsense Product Liability Legal Reform Act of 1996.

I just do not believe that it is common sense or fairness either way. I think it is a misnomer. Is it common sense to include governmental entities, the Department of Defense, the GSA, and subject them to the provisions of this, but not subject business by allowing them to be able to sue for their commercial losses? But does it make common sense that in this time of deficits where we are trying to reduce Government spending, to put the Federal Government at a disadvantage as regards this bill?

The Department of Defense has helicopters, tanks, trucks, et cetera. Almost all products that the military buys are built with the idea of having a long life.

But does it make common sense, in these days, to have the Government subjected to the statute of repose of 15 years? Does it make sense, in these days of where we are trying to take care of local governments and not to have unfunded mandates, to impose this bill's limitations upon governmental entities?

Does it make sense, common sense, to allow them to not subtract time from bankruptcy from a statute of limitation? Does it make common sense not to show in a trial in chief that the engineer who designed a railroad bridge was a known alcoholic, and the company knew it, and they still did not take steps to review his works, and a bridge on a railroad collapses? I mean, let us go down the list relative to commonsense matters.

But this idea of fairness is a smokescreen for patent unfairness. When you get movements, say, started, and the questioning of all the trial lawyers, therefore it gives you an opportunity not to just maybe address one issue or two issues, but it addresses all of these issues that you have lost cases on. So therefore you want to protect the insurance company and you start adding and adding.

I think there is also the question of fairness where the issue of a separate trial on punitive damages is requested. If a separate trial has been requested, it is automatically granted. But the report says you cannot show the conduct of the defendant which exhibits a conscious, flagrant indifference to the safety of others. That is the standard in this report that allows for punitive damages.

A claimant cannot show that type of conduct in the trial in chief for compensatory damages—that is the trial for economic nor noneconomic damages. Remember noneconomic damages include pain and suffering that may be caused by conscious, flagrant indifference to one's safety. Is that fair to a person who has been badly disfigured, scarred, or suffered a loss of limb by a product whose manufacturer knew of its defect but refused to take steps to recall the product.

I would like to give this illustration of commercial loss. There are two commercial airplanes, one of them Delta, one of them American. They collide and we will just say here, for a hypothetical viewpoint, the American is at fault. The passengers that are killed in any one of them are subject to the limitations of this act. But Delta can sue for the loss of profits which are not limited and can have a different statute of repose or statute of limitations; it can sue with no limit on punitive damages for their commercial loss relative to this accident.

But the passengers are limited under the provisions of this report. Is it fair that businesses have a double standard? If it is good for the goose, it ought to be good for the gander. But why do the proponents exclude civil actions for commercial loss? That shows how one sided this legislation is.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HEFLIN. I ask unanimous consent for 2 more minutes.

The PRESIDING OFFICER. The Senator is yielded 2 more minutes, if there is no objection. Without objection, it is so ordered.

Mr. HEFLIN. If that plane falls on Yankee Stadium, and has killed or injured people—they are bound by the limitations of this act. But the owner of Yankee Stadium can sue for the loss of profits due to the destruction of his grandstand. None of the provisions pertain to him.

So this is a grossly unfair bill, and it does not make common sense. The conference bill greatly expands the Senate passed bill. It is extreme in its provisions. It denies an injured party rights. It is particularly harmful to women in title II's provisions regarding biomaterial suppliers, giving a complete immunity or bar to suit to such suppliers. I wish I had time to go into all of that, and I urge them to review title II carefully. I urge that my colleagues vote against cloture on this bill.

The PRESIDING OFFICER (Mr. ASHCROFT). The Senator from Washington.

Mr. GORTON. I yield such time as the Senator from Connecticut desires.

Mr. LIEBERMAN. I thank my friend and colleague from the State of Washington.

Mr. President, I rise as an enthusiastic supporter of the conference report accompanying H.R. 956, called the Commonsense Product Liability Legal Reform Act of 1996. In this case, it is not just a title. This bill is full of common sense. It is reform. This is a moderate bill. It is a thoughtful bill. It reflects compromise. It reflects years of effort to solve a real problem.

Sometimes when we get into the back and forth of the arcane legal concepts involved here, we may lose sight of the fact, as Senator GORTON pointed out in his excellent opening statement, and Senator ROCKEFELLER, there is a real problem out there. Our tort system, our system for compensating those who were injured as a result of other's negligence, has gone off the track. People in this country know there is too much litigation. People know that they are not benefiting from it. They are actually paying more for it in higher consumer prices and lost opportunity for jobs and lost opportunity to use new products that require some risk. People in this country, businesses, are afraid to take that risk. Why? Because they are worried about being bludgeoned by a lawsuit, regardless of whether they are negligent or not.

I have to tell you when I was attorney general of the State of Connecticut, I was involved—and my friend and occupant of the chair may have gone through the same experience—I was at a national meeting of the attorneys general. I recall voting for a resolution that spoke out against product liability reform. I did not know much about it. We were oriented in a different direction. I started going around the State of Connecticut. I made it a practice to visit businesses, particularly small businesses in the State. People out there are the heroes. They are out there, day in, day out. They are not making big money. They took a risk. They are working hard. Maybe they have 10, 20, 30, 40, 50 people, maybe a few more, in their business.

I am interested always in knowing, how did you get started? How did you raise the money to get into it? How are you doing? What can I do to help you? Over and over again, right there at the top, one, two, or three, ''Do something about all this litigation. We are constantly being sued, and even though we are not negligent we have to pay so much money to lawyers.'' Or, ''We get

frightened because they come after us not just to pay the cost of an injury, medical, lost wages, et cetera, but the intangibles of pain and suffering, or so-called punitive damages which go well beyond the specific injuries suffered. Please help us with this.'' That is how I got into this battle.

It seemed to me this was a real problem. There is a real problem out there. The bill that comes out of conference is a real commonsense solution to that problem. It puts some very moderate limits and lines and parameters on the existing system. It does not deny an injured plaintiff the right to recover any wages lost, any medical expenses; indeed, even the so-called noneconomic intangibles of pain and suffering, loss of consortium, et cetera. What it does, basically, is to say in the category of punitive damages, punishment, I guess created at the outset for probably a good reason, which was to add to this civil justice system some sort of extra punishment to a truly negligent producer of a product, to get that person not to do that anymore. It is almost a kind of criminal penalty; in fact, it is quasi-criminal.

What has happened with this presumably well-intentioned concept of punitive damages, it has become a club held over the head of defendants, worried that juries may come in with multimillion-dollar verdicts. So they settle regardless of whether they are negligent or not. So it is a limitation of the greater of $250,000, no small amount, or twice the compensatory damage that is economic and noneconomic as we have talked about—that is the basic limit on punitive damages that this bill provides. Very moderate.

Senator GORTON and Senator ROCKEFELLER have spent the 9 months since the Senate passed this bill, saying ''No'' to just about everyone who sought to change the bill passed on the Senate floor last May. They said ''No'' to Democratic Senators; they said, ''No'' to Republican Senators, and they said ''No'' to the House conferees.

What they have produced is a bill that is remarkably similar to what the Senate passed last year with overwhelming Republican and Democratic support. Frankly, Mr. President, I do not understand why anyone who voted for this bill last May will not vote for cloture and vote for this bill today when it comes up.

Senators GORTON and ROCKEFELLER deserve our thanks, but to speak in much more tangible terms—they deserve our votes this afternoon to break this filibuster. They have spent these many months in the disagreeable position of saying ''No'' to so many, specifically so that Senators who voted for the Senate bill last May—we understood the margin was not greatly over the 60 votes required to break a filibuster. Again, not 51 for a majority, but 60 to break a filibuster. They kept saying ''No'' so that the 60-plus votes last May would stay there when the conference report came out.

I think they have achieved what most people thought, frankly, was impossible in the conference report they brought up, because the House yielded to the Senate on almost every proposal, every measure, every item in controversy.

What now do our colleagues, Senators GORTON and ROCKEFELLER, face? Last-minute concerns, distortions, new arguments. I would not blame these two warriors if they were dispirited. I admire them for not being so. Unfortunately, it is what we have come to expect in these debates. The hostile fire keeps coming in from every different direction. It is like having a shot fired; it is defended against; another shot fired on another perimeter; it goes on and on. It is meant to blur over the basic requirement for this bill, and the basic moderation and common sense of the bill before the Senate.

Mr. President, I have a particular interest in title II of this bill, the so-called biomaterials provision. It is almost identical to a bill that I was proud to cosponsor and introduce with our colleague from Arizona, Senator MCCAIN, in 1994. We reintroduced it in 1995. Happily, the Commerce Committee incorporated the bill into the conference report on product liability early last year.

Mr. President, among the attacks that have come up here at the last minute as we come close to finally doing this after 18 years, now, that we have been working at this. I make reference to the Bible. I hope we are not going to have to wander for the 40 years the children of Israel did before they got into the promised land. I am looking at my colleague and dear friend, Senator GORTON, he deserves better than that. Here we are, close to this vote. We look like we have worked out a very sensible bill and now new crossfire comes in after this proposal has been up for years. I want to answer a few charges raised against the biomaterials provision.

In the middle of last week as the final conference report had been under discussion for months, was being completed, we are suddenly confronted with claims that the provision would ''devastate the chances for recovery,'' of claimants in the so-called breast implant cases; that those claimants then presented proposed amendments to fix the allegations that there were problems in the bill. Of course, we have also seen some extraordinarily active lobbying on behalf of those suddenly urgent amendments.

Since so much confusion and concern seem to have been generated as a result, I want to respond. First, the product liability bill and the biomaterials provision is prospective. It does not go into effect until it is enacted.

The bill only applies to civil actions filed after it is adopted. It would have, therefore, no effect on the thousands of breast implant claims already filed, pending—no effect. It would have no effect on claims filed in Dow Chemical's bankruptcy proceeding, past or future. It would have no effect, as Senator ROCKEFELLER pointed out earlier, on the capacity of bankruptcy judges and State judges in product liability cases, including breast implant cases, to toll the statute of limitations, to stop it from going while the bankruptcy proceeding is going on. Finally, to the extent that any claims are filed after this bill becomes law, it would have no effect on the overwhelming majority of those cases, for the following reasons:

First, Dow Corning was the originator and largest single manufacturer of breast implants. The biomaterials title explicitly preserves the liability of manufacturers and sellers of implants like Dow Corning.

In other words, if you are claiming to be a supplier but you are actually a manufacturer or seller, there is no protection under the bill.

Second, the provision has no relevance to litigation in which claimants are seeking to impose liability on Dow Chemical and Corning Corp., the two corporations that own Dow Corning, since neither was a biomaterial supplier under the title II definition of a supplier. To my knowledge, no one has argued that they were biomaterial suppliers.

Third, while Dow Corning invented silicone breast implants and was the single largest manufacturer of them, they also sold silicone gel to other companies that manufactured breast implants. Those companies, generally, are the large pharmaceutical and manufacturing companies. Many claims have been made against them, and the biomaterials provision will have absolutely no effect on those claims.

Now, what if a raw material supplier knew the product might harm the person in whom the medical device was implanted? Will that person be let off? No. Biomaterial suppliers who sell raw materials or components they know are going to hurt somebody will find no protection under the biomaterials provisions of the bill. If the raw material supplier knows its material will cause harm, and fails to disclose it, that supplier cannot be said to be providing the product described in the contract between the manufacturer and the supplier because it departed so substantially from the expectations of the parties. That, too, in the legislation before us, is an exception from the general protection offered to suppliers. They are not protected if, in fact, they are manufacturers, if, in fact, they are suppliers, and if they breach the specifications of the contract with the manufacturers or the description of the product as certified by the FDA. A supplier who provides a product that does not meet contract requirements, or these specifications, is not eligible for protection under the provision.

We have tried to construct a liability scheme where suppliers would have some comfort that they would have the opportunity to prove their innocence early in the litigation. The responsibility of ensuring that a medical device is

safe for the purpose intended should rest with the manufacturer responsible for the design, testing and research of that product, not with the supplier who is supplying a component that, of its own, will have no benefit and cannot be used as an implant for the consumer desiring it.

The suppliers have been sued because they are viewed as ''deep pockets.'' The cases against them have almost always been dismissed without a finding of any liability. Raw materials suppliers are typically supplying generic products with a lot of different uses. I will get into what happened in the field that has generated a need for this provision in a moment.

So let me repeat, Mr. President, that this provision will not preclude present or future breast implant claims filed against these companies. They remain available to satisfy judgments.

Plaintiffs will likely argue that Dow Corning, for instance, was so involved in the creation of the product originally to be a manufacturer in all instances, or they violated applicable contractual requirements or specifications by supplying silicone gel that ''did not constitute the product described in the contract'' because it departed so substantially from the expectations of the parties. Those arguments are consistent with title II, and they will be in order if this bill is enacted into law.

Remember what I said earlier, that the major difference here, even in an extreme biomaterials case, is that the arguments by the suppliers to get out of a case because they are innocent will be able to be made earlier in the litigation. Under our current system, these innocent raw material component suppliers who have supplied small amounts of material and have not been involved in design, testing, or manufacture of medical devices, fear the cost of being kept in these lawsuits for years more than they fear the judgments, because they know they are innocent. We have found very little evidence that such raw materials suppliers are ultimately ever found liable in these cases.

So why the provision in the first place? This, again, is why I say this bill is not just an exercise in legal theory; it responds to a very real crisis out there in the real world.

Title II, the biomaterials provision, is a response to what I would call a genuine public health crisis. It is there to end a frightening, artificially caused biomaterials shortage that doctors, patients, the American Cancer Society, the American College of Cardiology, Paralyzed Veterans of America, and other major medical societies, scientific organizations, and patient and consumer groups have all pleaded with Congress to solve.

What is the cause of this artificial shortage of biomaterials, the stuff that you need to make the devices I am going to describe? It is not because we are running out of those materials. It is because the fear of litigation by the suppliers, who make very little money in supplying the raw materials and component parts for these extraordinary devices, far outweighs any benefit they can incur by selling these devices. It is just not worth it to them. But it is worth it to the 8 million people whose lives are either being sustained or made normal by the miraculous array of medical devices that technology makes possible today.

What are we talking about? Pacemakers, hip and knee joints, hydrocephalic shunts for children, balloon angioplasty catheters, defibrillators, vascular grafts, and even, in some cases, sutures used in common surgery. We all know people whose lives are either being sustained or made better by these unbelievable devices. Fifty years ago, who would have guessed that life could be sustained by these devices? The fact is—and we have heard testimony before committees of Congress—that the people who make these devices obviously need raw materials to make them. They need resins, plastics, rubber, and other component parts. And the suppliers either have cut back or have given them a warning they are about to do it by a date certain. The most recent date is January 1, 1997, next January, because they cannot afford the millions of dollars that they have to pay to defend lawsuits for supplying a nickel's worth, a dime's worth, or a quarter's worth of plastic resin or rubber.

The problem is not a genuine shortage. It is an unnatural shortage caused by a system of litigation that has gone wild. The economics of the decision that these raw materials suppliers make are unfortunately understandable because of the small amount of money that they make on these devices. The fact is that since 1994 12 raw material suppliers, including three major chemical companies, have decided to simply stop selling to medical device manufacturers. The medical device manufacturers are scrambling to find substitute products but sometimes they are simply not available.

If you doubt whether this is a crisis just check the congressional testimony. Listen to the father of the young man—boy—who passed out because he had water on the brain. They put in a hydrocephalus shunt that takes the water out of the brain. The child was living a normal life. He actually came and testified before one committee hearing which I had. He is a wonderful looking young man, and very active. Periodically they have to replace that shunt. And, if there is not the raw materials to do that, this young boy faces a tragedy, and his family with him.

It is worth noting that the administration in the statement of policy issued by the President over the weekend opposing the product liability bill singled out the biomaterials provision for praise and acknowledged the importance of ensuring that ''biomaterials suppliers will continue to provide sufficient quantities of their products to medical device manufacturers.''

Contrary to what some of our colleagues I am afraid may have heard in the last week or so from those opposed to this bill, this provision is not a trick nor a ruse to protect bad suppliers from legitimate claims. This is an effort to respond to a genuine public health crisis, one that is well documented, and, as I say, acknowledged by the administration in its praise, in its statement of policy.

The biomaterials provision does nothing to reduce the liability of manufacturers, or other responsible parties but consistent with the fundamental and fair premise of this legislation—this conference report—it places responsibility where it ought to be—on those who do wrong, and protects from unnecessary harassment and enormous cost those who have done no wrong.

Mr. President, this bill actually in that sense so fundamentally relates to the broader questions of values in our society and the fear that people often have that our legal system has gone astray, that those who do wrong are not punished and too often those who have done no wrong suffer. We most often hear that cry about the criminal justice system. But it has unfortunately become true in our civil justice system as well. The guilty parties do not pay enough. The innocent parties pay too much. And all of us end up paying, and the price we pay for consumer goods and lost jobs are paying for this irrational a system.

Mr. President, that is what this bill is all about. There are those who oppose the bill who describe it in ''either/or'' terms. Either you are probusiness or proconsumer. You are either proinnovation or prosafety. That rhetoric misses the point—preventing us from dealing with the central issue. The fact is that this bill is probusiness and proconsumer. It is proinnovation and prosafety. It is aimed at putting liability back where it should be—on the parties who are actually responsible for any harm and so are best able to prevent injury.

It is aimed at protecting the defendants from being frightened by lawyers and lawsuits into paying legal fees and settlement costs when they are in fact not responsible for any harm.

All of that contributes to the cynicism and mistrust of our legal system which is so fundamentally corrosive to the way we live in our country, and so costly to our society.

Mr. President, I ask unanimous consent that a list of raw material suppliers and their action withdrawing various products from the market be printed in the RECORD.

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

SUPPLIER WITHDRAWAL AS OF DECEMBER 1995

Supplier	Raw material	Withdrawal date	Device affected
Allied Signal Chemicals	ACCUFLOR CFx fluorinated carbon	May 1995	Pacemaker batteries.
Altec	Surgical stainless steel	Summer 1994	
Ausimont USA	Fluoropolymers	January 20, 1994	Pacemakers.
BASF Corp	PEKEEK, Ultrapek polymer	December 1994	Production of spinal implants.
Dow Chemical	Medical grade resins and film products	April 1992	Cardiac prosthetic devices and long-term implants.
	Pellethane®, polyurethane and Isoplast	April 1995	Pacemaker leads.
Dow Corning	Silastic® silicone	December 1993	No sales for medical implants or use in obstetrical, gynecological, contraceptive applications, or load-bearing or drug-loaded implants.
du Pont	All polymers TEFLON® (tetrafluoroethylene), DACRON® polyester, DELRIN® acetyl.	January 31, 1994	
Furakawa (Japanese vendor)	Nickel/titanium memory metal	December 1994	Scoliosis correction implant system.
Industrial Techtronics	Tantalum X-ray market beads	January 1995	
Montell Polyolefins	UHMW polyethelene	1995	Biomet Co. (orthopedic implants) polyethelene coats the surface of artificial joints.
Owychem	Alathon® polyethelene resin		
Rehau	Silicone adhesives	March 1995	
Shell	PET	February 1994	
Victrex	PEEK (polyether ether ketone) & PEK (polyether ketone)	1994	

Mr. LIEBERMAN. Mr. President, I did not always support a national approach to product liability reform and I can well understand the hesitancy, particularly of newer Members, to support Federal involvement in what traditionally has been the province of state law. In fact, as attorney general of Connecticut and a member of the National Association of Attorneys General, I voted for resolutions opposing earlier Federal product liability legislation that would have swept away virtually all State product liability laws and repealed the doctrine of strict liability for product defects.

But as I traveled around the State of Connecticut, this problem—product liability litigation—kept coming up in my discussions with small business men and women, with small and large manufacturing companies, and with plant managers. They told me of problems they had experienced with the product liability system, of the expense of defending yourself even when you win, of the cost of settlements to avoid paying litigation costs, and of the time and energy that product liability suits diverted away from the business of designing new products and bringing them to market.

At a time when we need to be rebuilding our country's manufacturing base, to be promoting innovation in our manufacturing sector, to be designing, building, and bringing to market the next generation of high-quality, high-value added products the world will need, our liability system chills innovation.

The debate should really center around consumers, because it is consumers who suffer because of this system, not simply businesses. Consumers are the ones who have to pay higher prices in order to cover product-liability-related costs. If a ladder costs 20 percent more because of liability-related costs, consumers—not businesses—end up paying that 20 percent premium.

The best interests of consumers as a whole are not always identical to the interests of people who are seeking compensation. The people who suffer or die because a new drug or medical device was never developed, or was delayed in its development, are hurt as surely as those who suffer because a device malfunctioned or a drug was improperly designed. These silent victims of our product liability system's chilling effect on innovation are consumers whose interests also deserve protection.

Of course, even for its intended beneficiaries, people who are injured by defective products, the legal system hardly can be said to work well. GAO, in its 5-State survey, found that product liability cases took an average of 2½ years just to reach trial. If the case was appealed, it took, on average, another year to resolve. This is a very long time for an injured person to wait for compensation.

In some instances, too, our product liability laws have erected barriers to suit that just do not make sense. For example, in some States, the statute of limitations—the time within which a lawsuit can be brought—begins to run even though the injured person did not know they were injured and could not have known that the product was the cause. In those States, the time in which to bring a suit can expire before the claimant knows or could ever know there is a suit to bring.

Mr. President, no one will argue that this bill will cure all the ills in our product liability system. That would require a gargantuan overhaul and we are not likely to reach reach agreement in the near future as to what that would look like.

I make no secret of the fact that I would have preferred a broader bill. Product liability cases are only a part of the problems in our civil justice system. I have very real concerns that when we fix some of the problems there, some lawyers will just target nonmanufacturing clients, like financial service providers, municipalities, nonprofit organizations. I would have preferred a bill that covered much more, but clearly that was not to be.

By working incrementally to eliminate the worst aspects of our current system with respect to product liability, perhaps we can begin to create a record that will allow us to restore some balance to our tort system overall. The enactment of the Federal General Aviation Revitalization Act of 1994 has demonstrated that reform does not mean that injured people will go uncompensated and bad actors unpunished, but that reform means more jobs and safer aircraft. I hope we will have the same chance to build the same foundation for more reform with this modest, balanced product liability bill.

For people injured by defective products, this bill makes a set of very important and beneficial changes. First, it enacts uniform, nationwide statute of limitations of 2 years from the date the claimant knew or should have discovered both the fact he or she was injured and the cause of the injury. Injured people will no longer lose the right to sue before they knew both that they were hurt and that a specific product caused their injury.

Second, this bill will force defendants to enter alternative dispute resolution processes which can resolve a case in months rather than years. If the defendant unreasonably refuses to enter into ADR, it can be liable for all of claimant's costs and attorney's fees. On the other hand, if a plaintiff unreasonably refuses to enter ADR, they will suffer no penalty.

For workers who face possible injury in the workplace, this bill will reform the product liability system to give employers a stronger incentive to provide a safe workplace. Under current law, an employer is often permitted to recoup the entire amount of workers compensation benefits paid to an employee who was injured by a defective machine, even if the employer contributed significantly to the injury by, for example, running the machine at excessive speeds or removing safety equipment. This essentially means that an employer can end up paying nothing despite the fact that their misconduct was a significant cause of the injury.

This bill would change this. When an employer is found, by clear and convincing evidence, to be partly responsible for an injury, the employer loses recoupment in proportion to its contribution to the injury. This does not change the amount of money going to the injured person, but it makes the employer responsible for its conduct.

Manufacturers of durable goods—goods with life expectancy over 3 years that are used in the workplace—will also be assured that they cannot be sued more than 20 years after they deliver a product. This will bring an end to suits such as the one in which Otis Elevator was sued over a 75-year-old elevator that had been modified and

maintained by a number of different owners and repair persons through the decades. By the way, this same provision will not apply to household goods such as refrigerators, and is only intended to cover those workplace injuries that are already covered by workers compensation.

Manufacturers will also have some protection against deep pocket liability. While the bill still permits States to hold all defendants jointly liable for economic damages such as lost wages, foregone future earnings, past and future medical bills, and cost of replacement services, noneconomic damages such as pain and suffering will be apportioned among codefendants on the basis of each defendant's contribution to the harm.

For wholesalers and retailers, they will, in the majority of cases, be relieved of the threat that they can be held liable for the actions of others. Under current law, for example, the owner of the corner hardware store could be sued for injuries resulting from a power saw just as if she was the manufacturer of a power saw, even if she had no input in the design or assembly of the power saw and had done nothing other than to inspect a sample to make sure there were no obvious flaws and to put the items on the shelf.

For our American economy and industrial base, passage of this product liability reform legislation will move us back to promoting innovation and the development and commercialization of new products. Passing this bill will create and save jobs here, not overseas.

Mr. President, let me reiterate that I believe this bill can be a win-win situation. It provides real balance. It balances the scales of justice to ensure that the victims of defective products will continue to be compensated while consumers receive the best products available. It is incremental reform. Frankly, it is a lot less than I had hoped for and that I voted for. But I think it is incremental because it is hoped that is the way to begin the road to genuine legal reform in our country.

In this debate today, we hear a lot of charges, countercharges, and attacks coming from every which direction as we come close to the vote. One thing should not be lost. This bill does not absolve a company that has not made a safe product. If a company has made a defective product, it will and must be held fully accountable, period. But when a company does follow the rules and makes a safe product, it should not have to settle frivolous claims simply to avoid the expense of litigation and protect against the risk that a huge and irrational judgment will be awarded against it.

Mr. President, once again I thank my colleagues, Senators GORTON and ROCKEFELLER, who have really been extraordinarily able and honorable in this task.

I honestly believe that what is on the line here today in this vote is not just the fate of this product liability bill, but it is a broader question of whether this Congress is able to function on a bipartisan basis and get something done to respond to a real problem as we have described out in society.

The critics who say—I hear this all the time when I go home—''Why are you folks all so political? Why don't you get together and get something done, and respond to some real problems? Why don't you compromise?'' A compromise is not just to reward the people who send us here to serve them. Compromise is getting something done.

Senators GORTON and ROCKEFELLER—Republican and Democrat working hard for years now but particularly the last year and 3 months—bipartisan, and willing to accept compromise, get the bill past the hurdle of breaking a filibuster here in the Senate with over 60 votes, get it passed, take it to the conference committee, again compromise, get something done to start us down the road to a response, to a real problem, and now we are faced with these last-minute attacks and a threat of a veto by the President.

I think what is on the line here is whether, with all the procedural intricacies at work, we can produce. I hope that the answer is yes. I hope that we will vote this afternoon to break the filibuster, that we will then tomorrow pass this bill and that President Clinton will then reconsider his decision to veto it.

This is a moment of opportunity. It is a moment of test for this institution, and it may not come again in this way for quite a long time.

I thank the Chair.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I am sure the distinguished Senator from Connecticut would also include me in his thanks but, of course, not being in the conference and not making any contribution I am not due any thanks at all. We just could not participate.

I was rather interested to hear for the first time that the House gave in on all of these things because we never conferred on any House giving into anything.

Just highlighting, of course, the nature of this endeavor, the fact is this Senator spoke and shepherded over a 3-year period a communications bill that passed this Senate on a bipartisan vote of 91 Senators. So I know how to work in a bipartisan fashion. But this thing is a hijacking, if I have ever participated in one.

I yield 10 minutes to the distinguished Senator from Louisiana.

Mr. BREAUX. Mr. President, I thank the Chair. I thank very much the senior ranking member of the committee for yielding, and for the work he has put in over the years on this issue.

Mr. President, I rise in opposition to the legislation for a number of reasons but principally because it is bad policy. It is bad public policy. And, second, it is not necessary. It is not needed. There are some who have argued that there is a rash of product liability suits and everybody who makes a product in America is just about on the verge of not making products anymore because they fear they may get sued if they make bad products that injure people, whether they do it with gross negligence, or it is just the egregious nature of what they are doing; but they may get sued and put people out of business.

The facts are just the opposite, and that is one of the issues I wish to focus on, plus the punitive damages question.

First of all, is there so much litigation out there that companies are not producing products? No. The legislation is trying to fix a problem that does not exist. Product liability cases account for only 4 percent of all of the injury cases that are filed in this country—4 percent. Only 4 percent of the cases dealt with defective products. There is not an explosion of product liability cases.

Then if you look at the statistics, out of 762,000 civil cases resolved in the Nation's 75 most populous counties in the whole country in 1991 and 1992, only 360 cases out of 762,000 cases dealt with defective products. Is there an explosion of litigation from products? I think the facts are just the opposite.

Something else. In all of those 360 product cases, do you know how many had punitive damages awarded? Three. Three. And yet the principal focus of this legislation that is before the Senate is that we have to pass this legislation because the country is in chaos because of product liability suits, when the truth is that only 4 percent of all of the civil cases filed are product liability cases.

The second point I wish to focus on is this part of the bill that says Washington knows best. Our Republican colleagues want to block grant just about everything in Washington to the States and let them decide—Medicaid, welfare, you name it. ''Give it to the States; Washington does not know what it is talking about'' is the statement that I hear from my colleagues on this side of the aisle except when it comes to this legislation, it is just the opposite. Their position on this legislation is that the States do not know anything, that the States are messing it up so bad that we are going to have Washington decide what is the appropriate remedy for people in the various States who are injured by defective products back in their States. Welfare, we are going to do it in the States; Medicaid, we are going to do it in the States, but when it comes to product liability we are going to do it here in Washington.

This legislation says that no matter how egregious the actions of a person or a company that makes a product, the cap on damages, punitive damages is $250,000. My friend from Connecticut

said that is really a lot. Let me give you an example of the problem. The $250,000 figure is out of the air. It is something that they just picked up. It has no basis in fact. This legislation says that if a person is going to be entitled to punitive damages against a company for the most egregious type of behavior that we have ever heard of, the cap is going to be $250,000 or two times the economic damages.

The courts have said that unlike damages which are awarded to compensate an individual for his injuries, punitive damages are unique because they are based on an entirely different public policy consideration, that of punishing the wrongdoer to change that wrongdoer's behavior, and, second, to set an example to others that you should not do that type of behavior. Punitive damages are generally awarded for egregious, morally repugnant conduct, conduct that is so offensive to the average American that we say that person who has done this should not do it again. We have to make an example of this type of morally repugnant behavior so that others who may think about doing it will not do it again.

That is what punitive damages is all about. And that is on what this bill arbitrarily sets a cap of $250,000. Let me tell you what is wrong with that, why it is not based on anything.

Say you have a person, I call him Joe Six-Pack in this case, and Joe Six-Pack is just as mean and ornery a fellow as you ever want to meet. And one day Joe Six-Pack is walking down the street in his hometown and a guy is coming in the opposite direction, and when he gets next to Joe, Joe just hauls off and knocks the ever-living everything out of the guy because he did not like the way he looked. He smashes his fist into the guy's face, and he breaks his cranial bones, permanently disfigures him and sends him to the hospital. They have to do surgery to reconstruct this individual's face.

The individual, after he finally recovers, says, ''I am going to sue Joe. I want him to pay for my suffering, my hospital bills.'' And the court says he is right; that was repugnant, morally offensive behavior. We are also going to assess punitive damages because we do not want this to happen again. So how much is the right amount? OK, they take a look at what Joe Six-Pack is worth. Say Joe Six-Pack is worth $10,000. That is the savings, the money he has. If the court says we are going to fine him maybe half a percent of his assets, that is a $50 fine.

Does anybody think a $50 fine is going to change Joe Six-Pack's behavior? Is that enough to tell Joe that he should not do that again? Probably not. The court could say, ''Well, let's fine Joe 1 percent of his assets.'' Is that enough to change Joe's behavior and set an example for others they should not do it? That is a $100 fine. I doubt whether that really will affect Joe's behavior. He may do it again just because he is an ornery fellow or he does not care.

The court may say, ''Well, maybe punitive damages are 5 percent. Let's fine him $500.'' Is that enough to change Joe's behavior? Probably getting close. Probably he will think a second time before he walks up to the next person and smashes him in the face if he knows the court said, ''Joe, that's morally repugnant behavior. You are fined $500.'' Joe is going to say, ''I don't think I am going to do that again.''

So let us take another example. How about a Corp. Let us call it XYZ Corp. It is a small Corp., with only $50 million of assets. And I say small because of the Fortune 500, the number 500 company on the Fortune 500 list has assets of $4 billion. So XYZ Corp. with $50 million of assets is pretty small.

Let us assume XYZ Corp. starts making a product. Let us say they make pajamas for children, and when they make those pajamas for children their engineers say, ''Mr. CEO, we just found out that these pajamas that you make for children are flammable; these pajamas catch on fire very easily, and we are making them for children. We could fix that by adding this retardant chemical to it so it will not catch on fire.'' The president and the board says, ''Forget it; we have this whole warehouse full of them. We are going to sell them. We don't care; we'll take our chances.''

XYZ Corp. starts selling their pajamas all over the United States, and, lo and behold, the inevitable happens; a child catches on fire walking in front of the fireplace, is horribly burned and disfigured for life. The engineers come back to the chairman and the board and say, ''Look, we told you that was going to happen. This is our study. We saw it. It's flammable. Let's change it.''

The president and the board say, ''No way. We still have half a warehouse full of pajamas. We are going to sell the rest of them. We don't care. We don't think it's going to happen again. We don't care what your studies say. Forget them. File them away.''

Sure enough, a second child who is wearing the same pajamas catches on fire in front of a fireplace, is horribly disfigured and burned, with economic damages, pain and suffering, disfigured for the rest of that person's life, and they file suit against XYZ Corp. The court says, ''Your behavior is morally repugnant to this country. Your behavior is indefensible. Your behavior needs to be punished. How much should we punish XYZ Corp.?''

Well, if we said half a percent was not enough to affect Joe Six-Pack because it would only be $50 of his assets, a half a percent of XYZ Corp. would be $250,000. That is the cap in this bill. That is the cap in this bill. And if we said that that was not enough to affect Joe Six-Pack's behavior, a $50 fine, why should the same percentage be enough to change XYZ Corp.'s position in manufacturing defective products that they know are defective?

We said that a 1-percent fine of $100 was not enough to affect old Joe. Joe was still going to do whatever Joe was wanting to do, smashing people in the face. It was not enough to change his behavior. How about a 1-percent fine for the XYZ Corp.? That is $500,000. We said it would not have an effect, but it is also twice the cap in this bill. We cannot even do that under this legislation.

So we say 5 percent was probably getting pretty close to affect Joe's behavior. That is what, $500. That probably changes his mind about his social behavior and society. How about XYZ Corp.? A 5-percent fine is $2.5 million. But forget it when this legislation is passed, because somebody in Washington has decided that $250,000 is the magical number.

Let me show you something. The No. 500 corporation on the Fortune 500 list in this country has assets of $4 billion. If this cap is in place and they make a defective product and they are fined the maximum of $250,000, do you know what percentage of their assets that turns out to be? That is .00625 percent. Does anybody think that a maximum fine that is .00625 percent of that corporation's assets is going to have any effect on their social behavior? I bet they do not even consider it. It is a dot on their asset sheet.

So, if we get back to the point that punitive damages is to tell a reckless defendant, who has had a jury say that this is morally repugnant behavior, if we tell them that from here on out, Congress in Washington, in our wisdom, has decided that the maximum fine is $250,000 and it has no relationship to the ability of a defendant to pay, we are making a serious public policy mistake. We should, I think, be ashamed of this legislation with this type of cap. I am. The States, I think, are doing a good job. It is not a problem. In addition to not being a problem, this arbitrary proposal makes no sense.

You wonder why a lot of the very big businesses think it is a great idea? It is because a cap of that small amount is such a small percentage of their assets, they can continue to make those pajamas. They can continue to say, ''We are not going to listen to our engineers who have told us it is flammable. We are not going to listen to our engineers who told us that children can catch on fire wearing this product and the only thing we have to do to fix it is to add a fire retardant ingredient. Do you know what? We are not going to do it because we still have that warehouse full of pajamas and we are going to keep selling them.''

How many young kids would be in danger? That is just one example. There are literally hundreds of them.

Mr. President, I will conclude simply by saying this legislation is not necessary, it is not needed, there is not a problem. In addition to that, it is a bad public policy statement.

I yield the remainder of my time.

Mr. MCCONNELL. Mr. President, this is a historic day. For more than a decade we have tried to pass product liability reform. In every Congress, until this Congress, the opponents of reform have mounted successful filibusters. But this year we broke through the filibuster, and the Senate passed a modest bill. Now, the conference report is before us, and we must again break a filibuster.

The American people are frustrated with the legal system. Cases take too long to resolve and too many injured don't get fairly compensated, while a few win the lawsuit lottery.

Litigation drains billions from our economy, adding a tort tax to goods and services. For example, the average price of an 8-foot ladder is $119.33, but the actual cost is less than $95.00, with the litigation tax responsible for a 25-percent increase in the cost. Lawsuits drive the price of a heart pacemaker up 20 percent, from $15,000 to $18,000.

If we don't fix the problems of our legal system, consumers will have fewer choices and American companies will have a smaller share of the global market.

This bill is a significant, although imperfect, step in the right direction. But before I mention what the bill does, let me explain what the bill doesn't do. The opponents have scared many into believing that this bill cuts off the right to sue for injuries. But it doesn't. Those who are injured by defective products will be able to sue and recover all of their losses—their lost wages, all medical bills, any costs for home assistance, and even so-called pain and suffering damages.

This bill does not close the courthouse door to any injured party. So, there will be no horror stories as predicted by the opponents, of those injured by cars, household appliances, or workplace machinery shut out of the legal system. It's simply not true.

The bill does contain a modest limitation on punitive damages, which are supposed to punish the responsible party, not be a windfall for the injured party. Punitive damages are limited to the greater of $250,000 or two times compensatory damages. But this bill contains no limitation on economic damages or pain and suffering damages.

The bill also provides some limited protection to those who have nothing to do with the defect in the product, but who sometimes get stuck with the tab in a lawsuit. An injured will be able to recover from those who are responsible for the defects in the products—the manufacturers, and not the sellers who simply put the merchandise on a shelf or in a showroom. And, if the injured party can't find the manufacturer, or if the manufacturer can't be sued, or if a damage award can't be collected from a manufacturer, then a product seller will be responsible. So, injured parties will always be fully compensated for their injuries. The opponents of this bill are only scaring and deceiving consumers when they claim this bill will cutoff the ability of injured persons to recover.

And, this bill make a necessary change in the assessment of pain and suffering damages against multiple defendants. Each defendant will only be responsible for its proportionate share of noneconomic losses. This will, hopefully, discourage suing someone who is only remotely connected to the defective product on the basis of that defendant's deep pockets.

Mr. President, the time for this bill is long overdue. The problems of our legal system—long delays, inefficiency and unpredictability in getting compensation to those injured—are only getting worse. And that means more burdens on productivity and invention in our economy.

I regret that the President has announced his intention to veto this bill, based upon false assumptions about the bill. As I've already said, the bill won't prevent injured from recovering; it won't limit the recovery of damages that compensate victims for their injuries. The President's assertions to the contrary just simply aren't true.

Survey after survey and poll after polls show that the American people are frustrated by our legal system and particularly dissatisfied with the legal profession. Those lawyers who misstate the facts about this bill in an effort to scare the public do their profession a disservice. Not only does this bill protect the injured party's right to compensation, but it would also restore some public confidence in lawyers and the legal system. It is unfortunate there's a failure to understand this fact at the other end of Pennsylvania Avenue.

I urge my colleague to vote for this conference report. Let the American people know that this Congress wants to improve the legal system and protect the injured consumers.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. Mr. President, I yield 10 minutes to the distinguished Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I oppose this conference report for a number of reasons. One of the principal ones is the fact that it does not provide uniformity when it comes to product liability.

The statement of the managers says that one of its purposes—this is on page 3—''* * * is to establish certain uniform legal principles of product liability.'' Its sponsors on the floor have said the same thing, that it is aimed at providing uniformity when it comes to rules governing product liability. But, unfortunately, this bill fails to live up to its own statement of purposes. Indeed, it violates its own statement of purposes because there is no uniformity that is provided in this bill. There is no fair balance among the interests of product users, manufacturers, and product sellers.

This bill has what perhaps could be called a one-way preemption approach. Under this approach, States are allowed to adopt laws that differ from the so-called uniform standards, providing that States are more restrictive on the rights of injured parties. But, if States seek to be less restrictive on the rights of injured parties, they are then prevented from doing so. This is not uniformity. This is not a bill which says that we are going to have a 15-year statute of repose, that is it, that is what injured plaintiffs have, that is what defendants can count on. That would be a uniform standard. This bill does something very, very different from that.

This bill says that if a State wants to be more restrictive than the provisions of this bill, more restrictive in terms of the ability of plaintiffs who are injured persons to recover, that they are allowed to do so. It is only if a State decides they want to be less restrictive on the rights of injured parties that they are prevented from doing so, that they are preempted from doing so. That is not uniformity. That is a one-way street. That is preemption of the rights of injured parties.

I want to go through some of the language in these titles to make this point clearer, to make the point that we are not going to have one law that governs all the States. We are not going to eliminate the patchwork of product liability laws. We are still going to have a patchwork. We are still going to have States that are more restrictive than the particular ceiling which is set forth in this statute. There is not going to be a uniform rule which is fair. There is going to be a so-called rule, which is applied if this passes, but not really. States are allowed to be more restrictive if they choose to do so.

Let us take a look at section 106 of this conference report. Section 106 provides that:

> Subject to paragraphs (2) and (3), no product liability action that is subject to this Act concerning a product, that is a durable good, alleged to have caused harm (other than toxic harm) may be filed after the 15-year period beginning at the time of delivery of the product to the first purchaser. . . .

That sounds pretty uniform. It says, ''Subject to paragraphs (2) and (3), no product liability action * * * may be filed after a 15-year period.'' That is the statute of repose. As a matter of fact, the heading of that section, 106, says ''Uniform Time Limitations on Liability.'' The word ''uniform'' is right in the heading.

Then you read paragraphs (2) and (3). Paragraph (2) says,

> Notwithstanding paragraph (1), if pursuant to an applicable State law, an action described in such paragraph is required to be filed during a period that is shorter than the 15-year period specified in such paragraph, the State law shall apply. . . .

How do the sponsors use the word ''uniform'' in the title, when in fact they permit diversity, providing it is downward, providing it is more restrictive on the rights of injured parties?

That is allowed. The title ''uniform'' is used, although a patchwork of laws is permitted, providing they are more restrictive than the 15-year limit which is provided for in section 106. How is that for a misleading label? Uniform? There is nothing uniform about it.

My dear friend from West Virginia said this morning that when products cross State lines, it makes no sense for product liability rules to be different from State to State. Well, if it makes no sense for product liability rules to be different from State to State, how does it then make sense to allow States to be more restrictive than the 15-year statute of repose?

They cannot be less restrictive. They cannot give more rights to injured parties, only less. But to use the words of my dear friend from West Virginia, if it makes absolutely no sense for liability rules to be different from State to State, why then are States allowed to move in one direction, to be more restrictive under section 106 and section 108 and a whole host of other sections, but they cannot be less restrictive to persons who are injured?

That is not uniformity. That is uniform unfairness. That is a consistent unfairness. That is a one-way street. That is a one-way preemption.

Let us take a look at some other provisions of the law. Section 108 of the conference report contains a provision entitled, again, ''Uniform Standards for Award of Punitive Damages.''

Uniform standards. It is not a uniform standard in section 108. When you read it, it says, and this relates to punitive damages:

Punitive damages may, to the extent permitted by applicable State law—

And then it goes on to say what those punitive damages can be. But State law governs if it is more restrictive. What happens if State law is less restrictive? What happens if State law is more generous to injured parties? What happens if State law is tougher on defendants in terms of punitive damages? That is not allowed. That is preempted. But if a State law is more restrictive, that is, again, allowed.

That is not uniformity, and if it makes sense for product liability rules to be uniform from State to State or, to use the words of the Senator from West Virginia, if it makes no sense for product liability rules to be different from State to State, then it surely makes no sense to allow States to vary from the rule downward to be more restrictive on the rights of injured parties. All they are prevented from doing is to be less restrictive in terms of the rights of plaintiffs and injured parties.

Another section, section 110. Section 110 of the bill contains a provision that limits joint and several liability in product liability suits. The statement of managers explains that this provision is intended to preempt State laws that are more favorable to plaintiffs, but not to preempt State laws that are more favorable to defendants. Here is what the statement of managers says. It says that the House-passed version specified that the section, and here we are talking about the section on joint and several liability, the section—

. . . does not preempt or supersede any State or Federal law to the extent that such law would further limit the application of the theory of joint liability to any kind of damages.

So this section on joint and several liability, according to the House version, is not intended to limit or preempt or supersede any State or Federal law if that law further limits—further limits—the application of joint and several. That is OK. That is OK in the House version, and then we are told by the statement of managers——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LEVIN. If I could have 30 more seconds.

We are told by the statement of managers that the language that I just quoted reflects the conference agreement's intent. It is not just the House provision, it is the conference agreement's intent.

So, Mr. President, what we have here is not uniformity. We have a one-way preemption in this bill that allows the State in section after section after section to be more restrictive of the rights of injured parties. All that they are preempted and prevented from doing at the State level is being less restrictive on the rights of injured parties.

That is not fair. That is not uniform. It is one of the reasons I will vote against this conference report, because even though you can make out an argument for uniformity, I think there is a good intellectual argument that can be made for uniformity, if it is true uniformity, if it applies both ways, to both plaintiffs and defendants, if it is not just a one-way street that allows States to be more restrictive but not less restrictive. That is intellectually defensible.

Whether you agree with it or not, at least it is consistent, at least there is a coherent logic to it. But to provide, as this bill does, that State laws which are more restrictive are preempted but not the ones less restrictive, it is unfair, unbalanced, and it is one of the reasons I will vote against this bill.

Let us look at one example of how this one-way preemption provision would work. The bill would override State laws that provide joint and several liability for noneconomic damages. Joint and several liability is the doctrine under which any one defendant who contributed to the injury may be held responsible for 100 percent of the damages in a case, even if other wrongdoers also contributed to the injury.

The sponsors of this bill, and this amendment, have pointed out that there are problems with joint and several liability. In some cases, a defendant who has only a marginal role in causing the damage ends up holding the bag for all of the damages. That doesn't seem fair.

On the other hand, there are good reasons for the doctrine of joint and several liability. Case and effect often cannot be assigned on a percentage basis with accuracy. There may be many causes of an event, the absence of any one of which would have prevented the event from occurring. Because the injury would not have occurred without each of these so-called but-for causes, each is, in a very real sense, 100 percent responsible for the resulting injury.

This bill, however, does not recognize that in the real world, multiple wrongdoers may each be a cause of the same injury. It insists that responsibility be portioned out, with damages divided up into pieces, and the liability of each defendant limited to a single piece. Under this approach, the more causes the event can be attributed to, the less each defendant will have to pay.

Unless the person who has been injured can successfully sue all parties who contributed to the injury, he or she will not be compensated for his entire loss. The real world result is that most plaintiffs will not be made whole, even if they manage to overcome the burdens of our legal system and prevail in court. Isn't it more fair to say that the wrongdoers, each of whom caused the injury, should bear the risk that one of them might not be able to pay its share than it is for the injured party to bear that risk and remain uncompensated for the harm?

The bill before us completely ignores the complexity of this issue with its one-way approach to Federal preemption. States which are more favorable to defendants are allowed to retain their laws. But State laws that try to reach a balanced approach between plaintiffs and defendants would be preempted.

Roughly half the States choose to protect the injured party through the doctrine of joint and several liability. Another half dozen States have adopted creative approaches to joint and several liability, seeking to balance the rights of plaintiffs and defendants.

Let me give you a few examples.

Louisiana law provides joint and several liability only to the extent necessary for the plaintiff to recover 50 percent of damages; there is no joint and several liability at all in cases where the plaintiff's contributory fault was greater than the defendant's fault.

Mississippi law provides joint and several liability only to the extent necessary for the plaintiff to recover 50 percent of damages, and for any defendant who actively took part in the wrongdoing.

New Jersey law provides joint and several liability in the case of defendants who are 60 percent or more responsible for the harm; joint and several liability for economic loss only in the case of defendants who are 20 to 60 percent responsible; and no joint and several liability at all for defendants who are less than 20 percent responsible.

New York law provides joint and several liability for defendants who are more than 50 percent responsible for the harm; joint and several liability is limited to economic loss in the case of defendants who are less than 50 percent responsible.

South Dakota law provides that a defendant that is less than 50 percent responsible for the harm caused to the claimant may not be liable for more than twice the percentage of fault assigned to it.

Texas law provides joint and several liability only for defendants who are more than 20 percent responsible for the harm caused to the claimant.

All of these State laws are efforts to address a complex problem in a balanced manner, with full recognition of factors unique to the State. To the extent that they are more favorable to the injured party than the approach adopted in this bill, however, they would all be preempted.

On the other hand, other States, which take a more restrictive view of joint and several liability, or even prohibit it altogether, would be allowed to retain their individual State approaches. That just does not make sense.

Mr. President, there is a list of problems in our legal system that we could all go through. Going to court takes too much time and it costs too much money. Some plaintiffs get more than they deserve, while others who suffer injuries may spend years in court but recover nothing at all. As Senator GORTON, one of the lead authors of the bill before us, explained during last year's debate on the Senate bill:

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

I agree with Senator GORTON that there is unfairness in our current legal system. There is unfairness to defendants in some cases, and there is unfairness to plaintiffs in other cases. However, the conference report before us does not even attempt to address the problems faced by plaintiffs. There is absolutely nothing in this bill to assist those who have been hurt by defective products and face the difficult burdens of trying to recover damages through out legal system.

On the contrary, the bill makes every effort to override State laws which attempt to help the victims of defective products. Only laws that make it harder for the injured party to obtain compensation are permitted. That is not uniform, it is not fair, and I cannot support it.

The PRESIDING OFFICER. Who yields time?

Mr. GORTON. I yield such time that the Senator from North Dakota may desire.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I appreciate the Senator yielding time. I would like to ask a series of questions about the bill and about one section of the bill specifically.

I voted for this bill and move the bill to conference. I am inclined to vote for cloture today. But I have reviewed what came out of conference, and one area gives me some concern. I want to go through it with the Senators on the floor, especially Senator GORTON.

There is on page 6 of the bill that the Senate passed an exclusion for the term ''product.'' The bill included on the bottom of page 6 under (ii), the exclusion reading: ''electricity, water delivered by a utility, natural gas or steam.''

We were clearly deciding that these utilities were not covered as products in this bill.

The bill came back from conference with that provision. However, a new clause was added. The same words existed— ''electricity, water delivered by utility, natural gas or steam.'' This is in the part of the bill which is defining what is excluded from the bill. That is what the Senate passed.

But the conference report comes back with the same words but goes on to say: ''except * * *'' In other words, we are excluding utilities ''except to the extent electricity, water delivered by a utility, natural gas or steam are subject, under applicable State law, to a standard of liability other than negligence.''

Forty-four States have such standards; 18 of them have been litigated on the subject of electric utilities. It appears to me that what the conference has done in this section is added utilities as being covered by this bill. I have asked questions of half a dozen experts in the last 24 to 48 hours, and the answers I get are not satisfying. The answers I get are, ''Well, that's what the words say, but that's not what it means.'' I am assuming courts will say this means what it says, not what someone says it means. So I want to go through a couple of questions.

I ask the Senator from the State of Washington, how is the provision that went into conference different from the provision that came out? When it went in, it said ''electricity, water delivered by a utility, natural gas and steam'' are excluded. Period. They are not part of this bill. When it came out, it seems to say they are now a part of this bill, which is a major change.

Mr. President, I ask that we might have an interchange. I ask the Senator from Washington if he can respond to that for me.

Mr. GORTON. I can. I would start by referring the Senator from North Dakota back to page 6 of the original bill, the bill that passed the Commerce Committee, on which both of us serve, and passed this body, the Senate, unchanged and to look at the entire subsection (B), entitled ''EXCLUSION.'' The Senator from North Dakota will see in that exclusion.

The term ''product'' does not include,

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence.

It goes on to say,

[And] (ii) electricity, water delivered by a utility, natural gas, or steam . . .

The next reference that I would make to the Senator from North Dakota is in the Senate committee report on that bill. On page 24 of the Senate committee report on the bill that passed the Senate here, in subsection (ii), the explanation under the term ''product'' there is, for all practical purposes, word for word this exclusionary language, particularly the last two sentences.

The term does not include tissue, organs, blood and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood and blood products, or the provision thereof, are subject under applicable State law to a standard of liability other than negligence.

In other words, the same word is in the statute.

The term also does not include electricity, water delivered by a utility, natural gas or steam.

There is a footnoted comment. And the footnote reads:

Claims for harm caused by tissue, organs, blood and blood products used for therapeutic and medical purposes are, in the view of most courts, claims for negligently performed services and are not subject to strict product liability. The act, thus, respects State law by providing that in those States, the law with respect to harms caused by these substances will not be changed. In the past, however, a few States have held that claims for these substances are subject to a standard of liability other than negligence, and this act does not prevent them from doing so. Such actions would be governed by the act. Actions involving claims for harms caused by electricity, water delivered by a utility, natural gas or steam are treated in the same manner.

When this went to conference—we had the better part of a year to read through every detail—the proposition, the meaning of this bill, as it passed the Senate, showed up in the proposition that this exception appeared in subsection (i) on page 6. It did not appear in subsection (ii). The same words have now been added to subsection (ii), which simply accords with the committee report interpretation of the language that we passed here in the Senate.

So the fundamental answer at this point to the question that is raised by the Senator from North Dakota is that this change does not change the meaning of the act as it was set out in the committee report to the original Senate bill. State law, in other words, in each of these cases, whether it is tissue or electricity, State law will govern.

If a State passes a law that says electricity is a product, yes, it would be

governed. If that State consciously decides to treat electricity as a product, then it would be a product under this bill. But these strict liability States, you know, do not do that. It leaves it entirely up to North Dakota or California or to Washington or West Virginia to make that determination. If it wishes for strict liability, it can impose strict liability. If it wants to call it a product—I do not know of any that do—but if it wants to call it a product, it can bring it up to this bill. That is up to the State.

Mr. DORGAN. You are arguing one of two things. Either you are making the case that utilities are defined as a product under the bill, as originally passed by the Senate, because of a footnote on page 24 of the committee report. In other words, you are saying that utilities would not be excluded from the definition of the term product but, in fact, are covered by this bill. Therefore, what came back from the conference is not a change. That might be what you are arguing. I do not think that is the understanding of most Members of the Senate.

I think, having read what left the Senate on its face—it says on page 6, ''EXCLUSION,'' that is, an exclusion not to be treated as a product includes:

(ii) electricity, water delivered by a utility, natural gas, or steam.

You might be arguing, I think, that although we might have read that as an exclusion, it never really was. Utilities were really going to come under this. We just did not understand the application of the footnote on page 24, or you are making the case now that what has been done in conference has no impact at all on what the language really means. What you are saying then is that utilities are truly excluded, and what you have done comports with the description under ''tissues, organs and blood,'' and your intention is to make sure that utilities are not defined as a product but, in fact, are a service and are, therefore, excluded under the definition section of this bill. I am not sure what you are saying.

Mr. GORTON. I would say the second is correct, with the exception if a State wants to define it as a product and bring it under this bill, they can.

Mr. DORGAN. But that is not what the language says. It says it is excluded unless the State defines it with a standard of strict liability.

I am saying to you that there are 18 States that already have this with respect to electric utility cases alone. Are you saying, the way you have written this, those 18 States have already decided this bill will cover electric utilities? If that is the case, that is a remarkable change from what left the Senate.

Mr. GORTON. I am sorry.

Mr. DORGAN. Let me try it one more time. The Senator is saying the States can make the decision whether utilities are excluded or not. The bill passed by the Senate was very simple. On page 6—it cannot be misread, notwithstanding any other footnotes in some other committee report—it says:

EXCLUSION.—The term [product] does not include—electricity, water delivered by a utility, natural gas or steam.

That is what the Senate passed. I am coming to the floor to ask the question, has that dramatically changed so that in fact utilities are no longer excluded? Did somebody lift up the flap on the tent and utilities snuck in to get a massive exclusion under this bill? If that is the case, then I am very concerned about this. What I am hearing from people is to say, ''no, it kind of reads that way, but that is not really the effect of it.''

I do not have the foggiest notion of how one relates to the contradiction between how something reads and how someone intended it. That is why I am asking the question of, what is your intent? Is it your intent that just as in the bill passed by the Senate, it is your intent that the exclusion means that utilities will be excluded, period?

Mr. GORTON. I am sorry. Repeat it again.

Mr. DORGAN. Is it the intent, just as in the bill that was originally passed by the Senate, that the exclusion under (B), page 6, would still remain, that electricity, water delivered by a utility, natural gas and steam are, in fact, excluded? They are not products? Is that the intent of the people that wrote whatever they wrote in this conference?

Mr. GORTON. Well, first I need to say that no outside group came and asked whatsoever.

Mr. DORGAN. I did not say ''outside group.''

Mr. GORTON. The intent of the conference committee drafters was to see to it that subsection (i) and subsection (ii) read the same way, because we had already described them as having the same meaning in the original Senate bill. There was an inconsistency. There they were described in the Senate bill, conference report, as having exactly the same meaning. So there is a change only to the extent that something was already gone with respect to tissue, organs, and blood.

Mr. DORGAN. But you cannot describe in the conference report what the language means. The language means what it says it means.

My question, first, is, when this language left the Senate, did it mean that utilities were excluded from the definition of products? I thought it meant that. Most Members of the Senate thought it meant that. That is what I think it says. Do you believe that is what it says?

Mr. GORTON. I think that is the case not only with electricity but with respect to tissue, organs, and blood.

Mr. DORGAN. That is fine. I am not interested in those, but I am interested in electricity.

Mr. GORTON. Let me finish. I think it is exactly the same exclusion for both unless a State legislature has determined that they ought to be considered products. That is a privilege that the State legislature has now and retains under this bill.

Mr. DORGAN. That is not what the law says that you are asking us to vote on, as written. You are not talking about whether the State wants to determine if it is a product. You are talking about the question of the standard the State determines, appropriate.

There are certain kinds of things that are very dangerous and high risk that the States determine it wants an elevated standard of liability. It's called a strict liability standard. The way this is written, you are saying that utilities are excluded as products under this bill. They are excluded. They are not involved in this bill, except if a State determines that their standard is one of strict liability, then they are considered as products.

What you have done, you have swept claims against utilities under the bill. My point is, 18 States have already determined that in their courts with respect to claims against electric utilities alone, 14 have permitted strict liability in claims against natural gas utilities and 11 have allowed the same standard of strict liability on water utility cases. The fact is that there have been court cases and legislation on this very point. Thus, it appears it is already determined that claims against utilities are going to fall under the definition of ''products'' under this bill. I am not trying to be antagonistic. I voted for cloture before, and I voted for this bill on final passage. I want to understand whether somebody decided to bring a big moving van here and move something into this bill that no one on the floor understands. The ''moving van'' means loading up utility interests and putting it in.

Let me frame it in as simple a way as I can. Is it the intention of those who wrote this when it left the Senate, is it the intention that utilities shall not be considered a product? Is it the intention that the language as written—it says under ''exclusion'' on page 6 that utilities are not part of this bill. They are not a product. They are excluded, period, end of sentence, just declarative, end of sentence.

If that is the case—I want the answer to that—if that is the case, one says that judgment has not changed, how do we reconcile that with the changed language? That is what I am trying to understand. I am not trying to take up anybody's time or cause trouble. I am trying to understand exactly what this does and means with respect to utilities. I may be putting whoever is listening to sleep, I am sure, but it is very important.

Just parenthetically, while I am asking this question, I think this is one of those interesting issues where there is a little bit of truth on all sides, frankly. I know both sides immediately just separate and say, ''Well, you are wrong; we are right,'' and, ''We are wrong; you are right.'' The fact is there

is a little bit of truth on the product liability issue in general. There are too many lawyers in America too prone to file lawsuits. I understand all that. I do not want to injure anybody's rights to redress for grievance in our court system if they get a defective product.

I have advanced this bill because it was narrow enough, to me, and because I thought it was a reasonable approach. When I see the conference report, first of all, nobody pulled this out for us to say this was a change. However, the more I look at it, the more it occurs to me that something has happened here that is of concern. I am trying to understand what it is because you are dealing with a very large industry—the electricity and the utility industry—and something has changed this definition.

So, I know that the Senator from South Carolina wanted to ask a question, but I have the two questions I want to ask: First, is it the understanding of the folks that wrote this when we originally dealt with it in the Senate that the exclusion—very straightforward on page 6—meant that we were excluding utilities? End of the story. That was my notion. I voted for it. Was that the notion that everyone else had who wrote this? It is pretty hard to misread it. Even if you have page 24 of the conference report, it is not hard to misread what it says. It says:

EXCLUSION.—The term ''product'' does not include electricity, water delivered by utility, natural gas or steam.

Is your understanding the same as mine, that under that bill utilities were excluded? They were not to be considered products for this bill? I ask the Senator from Washington.

Mr. GORTON. My understanding was that it was the meaning as is stated in the conference committee report of the original bill that they were excluded unless the State had defined them as a product and had subjected them to strict liability. That was the meaning of the original bill and the meaning of this bill.

Mr. DORGAN. But the original bill was not written that way or understood that way by this Senator.

Is it your understanding there are many States that have adopted a standard of strict liability, which would mean that the way you interpret the provision in the original bill would redefine utilities as a product and provide for utilities protection under this bill?

Mr. GORTON. Do I have a specific understanding of that or can I name the States? I would have to answer the question ''no.'' The committee report, which I believe to be accurate, says that most of the courts in most States treat these matters as matters that are subject to a negligent standard, not to a strict liability standard. Certainly there are some States treating them as strict liability.

Mr. DORGAN. But those who do adopt a strict liability standard, because these are kinds of activities that have a potential for greater danger and so on, is it the intention of those who have authored this to say for those States that adopted that standard of strict liability that we will offer protection of the utility industry under this bill?

I think, frankly, that is a substantial departure from what most people in this Senate would understand. I had thought originally some, incidentally, whom I have consulted with in the last 2 days or day on this, they say, ''No, you do not understand this. We do not really mean utilities fall under this bill.'' That is comforting to me, except the language seems at odds with that.

I think what Senator GORTON is saying is the way I read it, that those many States who have decided on the standard of strict liability—and there are many of them—will be told by this piece of legislation that utilities, for them, will now be a product whose interests will be protected by the limitations in this bill, and I daresay, I do not think there are two Senators on the floor of the Senate that understand that to be the case.

Can you respond to that? I am not trying to cause trouble for you. I want to understand exactly what we are doing.

Mr. GORTON. The answer to the question of the Senator from North Dakota is that in such States, such States are subject to the restrictions of this bill, exactly as they were under the intention of the bill as it was originally passed by the Senate Commerce Committee and by the Senate itself, as is evidenced by the Senate committee report, and that the change in the statutory language was simply to conform the statutory language with the intention expressed in the committee report.

Mr. DORGAN. We are both on the Senate Commerce Committee. I ask, do you think it was or is the intention of the Senate Commerce Committee to provide protection for utilities under product liability?

Mr. GORTON. Under the same circumstances that it would provide it for any other similarly situated organization, providing product liability provides it for any manufacturer, or for that matter, distributor, no matter how large or how small.

The direction of the bill, the direction of a product liability bill is to provide a degree of predictability and a protection of the consumer interest for the producers of goods—not services in this case—goods. If this is the description that a State uses for its utilities, yes, the committee did intend to provide exactly that protection, and that is exactly what the committee report says.

Mr. DORGAN. Well, the bill that we passed in the Senate Commerce Committee that came to the Senate floor that I supported said this, and said only this; it had no caveats, no exception, no exclusions. It said on page 6, ''EXCLUSION. The term 'product' does not include electricity, water delivered by utility, natural gas or steam.''

The answer I am hearing from the Senator from Washington now is that you would have had to understood more than this language in order to understand the importance of it, because you are saying that this really meant except those 44 States, 18 of whom already had court cases on the issues of standard of strict liability on electric utilities. Those that adopt a standard of strict liability will find that utilities in their States have their products or their services defined as products in this bill.

There is something wrong here. There is something that does not connect. I am trying to understand, because I have been a supporter, and I am trying to understand what does not connect here. What are we trying to avoid by including the exception? I come from a school of nine people in my graduating class, and we did not have the highest math there or advanced reading, but I understand what I read, and it says, ''the term 'product' does not include electricity, water delivered by utility, natural gas or steam.'' Period, end of story.

I voted for that. I say I agree with that. Utilities are not covered as products because they are in the section called ''Exclusion.'' Now I am hearing a description that says, ''No, you only read what was in the law. There was something else behind it.'' So I am just trying to understand where we are. If someone can enlighten me. Where are we with respect to utilities?

Mr. HARKIN. Will the Senator yield for a question?

Mr. HOLLINGS. Will the Senator yield?

Mr. DORGAN. I guess. I do not know that you will enlighten me.

Mr. HARKIN. I have never heard of this. Can I ask a question?

Mr. DORGAN. Well, who has the floor, Mr. President?

The PRESIDING OFFICER (Mr. JEFFORDS). The time is under the control of the Senator from South Carolina.

Mr. HOLLINGS. I will yield on my own time just a minute. I say to Senator DORGAN, he is right on target. In the zeal to avoid using what is intended—namely, the expression of strict liability and nuisance—for utilities, as put in the juxtaposed position in this language, where you have two exceptions, almost like a mathematical case of two negatives making a positive. Yes, positively, utilities are covered, wherein they have strict liability on nuisance tests. I have here in my hand a majority of States that do have it.

I ask unanimous consent to have this printed in the RECORD.

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

THE FOLLOWING CHART INDICATES WHERE A CAUSE OF ACTION UNDER STRICT LIABILITY CAN BE BROUGHT BY AN INJURED PARTY

State	Natural Gas	Electricity	Water
Alabama			
Alaska			State Farm v. Municipality of Anchorage, 788 P.2d 726, 729.
Arizona	Mast v. Standard Oil Co., (1983) 140 Ariz 19; 680 P.2d 155		Ramada Inns., Inc. v. Salt River Valley Water Users' Assn', 523 P.2d 496, 498–99 (Ariz. 1974).
California	Davidson v. American Liquid Gas Corp. (1939) 32 Cal App 2d 382, 89 P2d 1130.	Pierce v. Pacific Gas & Electric Co. (1985, 3d Dist) 166 Cal App 3d 68, 212 Cal Rpt 283, CCH.	Transamerica Insurance Co. v. Trico International Inc., (1985) 149 Ariz. 104; 716 P.2d 1041.
Colorado	Blueflame Gas, Inc. v. Van Hoose (1984, Colo) 679 P2d 579	Smith v. Home Light & Power Co., (1987, Colo) 734 P2d 1051, CCh.	Barr v. Game, Fish & Parks Comm'n, 497 P.2d 340, 343 (Colo. Ct. App. 1972).
			Garnet Ditch & Reservoir Co. v. Sampson, 110 P. 79, 80–81 (Colo. 1910).
Connecticut	Dunphy, et al vs Yankee Gas Services Co., (1995) Conn. Super. Docket No. CV94–0246428S.	Carbone v. Connecticut Light & Power Co. (1984) 40 Conn Supp 120, 482 A2d 722	
Delaware		Does not recognize strict liability in Tort For Products Liability Actions	
District of Columbia			
Florida			
Georgia			
Hawaii			
Idaho			
Illinois	Decatur & Macon County Hospital Asso. v. Erie City Iron Works (1966, 4th Dist) 75 Ill App 2d 144, 220 NE2d 590.	Troszynski v. Commonwealth Edison Co., 356 N.E.2d 926. 923 (Ill. App. Ct. 1976)	
		Genaust v. Illinois Power Co. (1976) 62 Ill 2d 456, 343 NE2d 465.	
		Cratsley v. Commonwealth Edison Co. (1976, 1st Dist) 38 Ill App 3d 55, 347.	
		Elgin Alrport Inn, Inc. v. Commonwealth Edison Col. (1980, 2d Dist) 88 Ill App 3d 477	
Indiana	Southern Indiana Gas & Electric Co. v. Indiana Ins. CO. 91978) 178 Ind App 505, 383 NE2d 387.	Petroski v. Northern Indian Public service COmpany (Ind. App. 1979) 396 N.E. 2d 933	
		Public Service Indian, Inc. v. Nichols (1986, Ind App) 494 NE2d 349	
		Hedges v. Public Service Co. (1979, Ind App) 396 NE2d 933.	
Iowa	Pastour v. Kolb Hardware Inc, (1969, Iowa) 173 NW2d 116.		
	Koppinger v. Cullen-Schiltz & Associates (1975, CA8 Iowa) 513 F2d 901.		
	Kellar v. Peoples Natural Gas Co., (1984) 352 N.W.2d 688.		
Kansas	.Worden v. Union Gas System, Inc. (1958) 182 Kan 686, 324 P2d 501		
	Williams v. Amoco Prod. Co., 734 P.2d 1113, 1121–23 (Kn. 1987)		
Kentucky		Bryant v. Tri-County Elec. Membership Corp., 844 F. Supp. 347, 351.	Winchester Water Works v. Holliday 45 S.W.2d 9, 10–11, (Ky. 1931).
Louisiana	American secur. Ins. co. v. Griffith's Air Conditioning (1975, La App 3d Cir) 317 So 2d 256.	Sessums v. Louisiana Power & Light Co. (1981, CA5 La) 652 F2d 579 cert den 455 US 948, 71 L Ed 2d 661, 102 S Ct 1448	
Maine			
Maryland	Dudley v. Baltimore Gas & Elec. Co., 98 Md. App. 182, 632 A.2d 492.	Voelker v. Delmarva Power & Light Co., 727 F. Supp 991, 994	
Minnesota			
Mississippi			
Missouri	McGowen v. TriCounty Gas Co. (1972, Mo) 483 SW2d 1	Hills v. Ozark Border Electric Cooperative 91986, Mo App) 710 SW2d 338.	Amish v. Walnut Creek Dev., Inc. 631 S.W.2d 866, 871 (Mo. Ct. App. 1982)
	Crystal Tire Co. v. Home Service Oil Co. (1971, Mo) 465 SW2d 531		Covington v. Kalicak, 319 S.W.2d 888, 894 (Mo. Ct. App. 1959)
Montana			
Nebraska		Rodgers v. Chimney Rock Public Power Dist. (1984) 216 Neb 666, 345 NW2d 12	
Nevada			
New Hampshire			
New Jersey		Aversa v. Public Service Electric & Gas co., 186 N.J. Super, 30, 451 A.2d 976 (1982)	
		Huddell v. Levin, 537 F.2d 726 (3 Cir. 1976)	
New Mexico			
New York		Farina v. Niagara Mohawk Power Corp. (1981, 3d Dept) 81 App Div 2d 700, 438 NYS2d 645.	Pixley v. Clark, 35 N.Y. 520, 531 (1866)
North Carolina		Does not recognize strict liability in Tort For Products Liability Actions	
North Dakota			
Ohio		Otte v. Dayton Power & Light Co., (1988) 37 Ohio St 3d 33, 523 NE2d 835	
Oklahoma			
Oregon	McLeane v. Northwest Natural Gas Co., 467 P.2d 635 (Or. 1970).		Union Pac. R.R. v. Vale, Oregon Irrigation Dist., 253 F. Supp. 251, 257–58 (D. Or. 1966).
Pennsylvania		Schriner v. Pa. Power & Light Co. 501 A.2d 1128, 1134 Pa. Super. Ct. (1985)	
		Carbone v. Connecticut Light & Power Co., 40 Conn Supp 120, 482 A2d 722 (1984)	
		Smithbower v. S.W. Cent. Rural Elec. Co-op., 374 Pa. Super. 46, 542 A.2d 140, appeal denied 521 Pa. 606	
Rhode Island			
South Carolina		Priest v. Brown 91990, SC App) 396 SE2d 638	
South Dakota			
Tennessee			
Texas	Smith v. Koening (1965, Tex Civ App) 398 SW2d 411	Houston Lighting & Power Co. v. Reynolds; (1986) Tex App Houston (1st Dist)) 712 SW 22d 761.	Anderson v. Highland Lake CO., 258 S.W. 218, (Tex. Ct. App. 1924).
			Texas & Prac. Ry. v. Frazer, 182 S.W. 1161, 1162 (Tex. Ct. App. 1916).
Utah			Zampos v. U.S. Smelting, Ref. & Mining co., 206 F.2d 171, 176–77 (10th Cir. 1953).
Vermont			
Virginia		Does not recognize strict liability in Tort For Products Liability Actions	
Washington	Zamora v. Mobil Corp. (1985) 104 Wash 2d 199, 704 P2d 584		Johnson v. Sultan Ry. & Timber Co., 258 P. 1033, 1034–35 (Wash. 1927).
	New Meadows Holding Co. v. Washington Water Power Co., 687 P.d 212, 216 (Wash. 1984)		
West Virginia			
Wisonsin		Ransom v. Electric Power co., (1979) 87 Wis 2d 605, 275 NW2d 641.	
		Koplin v. Pioneer Power & Light Co. (1990, App) 154 Wis 2d 487, 453 NW2d 214..	
		Kemp v. Wisconsin Electric Power Co. (1969) 44 Wis 2d 571, 172 NW2d 161.	
Wyoming		Wyrulec Co. v. Schutt (1993, Wyo 866 P2d 756.	

Mr. HOLLINGS. I reserve the remainder of my time.

Mr. DORGAN. Mr. President, let me continue to inquire. I will not take much more time. I still do not understand the answer. Is the answer that the utilities essentially are providing services and are therefore not covered as products under this bill?

If that is the case—and that is what I thought was the case—then fine. But there is extra language here, where there needs to be a record in the Senate, that says here is exactly what this legislation means. If we have a circumstance where we are saying in 44 districts they have strict liability, the services of a utility are now put under the entire provisions of this law, that is a substantial change.

Mr. GORTON. Let me summarize a response to the general concern expressed by the Senator from North Dakota. Generally, at least in common law, the provision of electricity has been considered a service. The provision of the service is not governed by strict liability. Strict liability is a concept that applies to products.

A number of States have determined that there should be a standard of strict liability applied to electricity and, for that matter, to the delivery of blood, the subjects of the first subsection of that section. If a State treats as a product the delivery of electricity, or the supply of blood, and subjects it to strict liability, it is subject to the provisions of this act. It was meant to be subject to the provisions of this act by the bill as it was reported from the Commerce Committee. It is included as a part of the Commerce Committee report. It was noticed simply by someone on the staff that, for some reason or another, subsection (2) omitted the language that was in subsection (1), and it was added during the course of the drafting of the conference committee report. That was not intended to create any difference in the way in which the bill would have been interpreted, in any event. It was intended to bring it into conformity with the committee report, and it has done so. But if the fundamental question of the Senator from North Dakota is, if a State imposes strict liability under these circumstances and treats electricity as a product, it is subject to those provisions, and I say ought to be.

Mr. DORGAN. Imposing strict——

Mr. GORTON. If I can say one other thing, obviously, this question did not come up during the long debate we had a year ago. If it had, to the best of my ability, I would have answered the question of the Senator the same way I am answering now. That is what was meant. Had I memorized this footnote at the time? No, I had not. I would have had to refer to it, but I would have come up with the same answer.

Mr. DORGAN. The State deciding to adopt strict liability with respect to a utility does not put it in the category of products. I do not understand the mixing of the two.

Let me take it one step further then. If that is the case, what would the logic be in saying to a State that because it decides to impose a standard of strict liability on utilities—because potentially you have some very hazardous kinds of circumstances that can exist with respect to electricity, steam, natural gas, and so on. But because a State decides to impose strict liability on that, what would be the logic of saying, by the way, you decided to do that, therefore, we will put the utilities under the protection of this law. I do not understand the logic of attaching that.

Mr. GORTON. Exactly the same logic that applies to the entire bill. If the utility manufactured a toaster, which is clearly a product, and gave it as a bonus to its customers, that product would be subject to this bill. The whole logic of the bill is to provide a degree of predictability to the law from State to State, which does not exist at the present time. That logic is every bit as applicable to a utility as it is to General Motors or to a small business that is engaged in retail sales.

Mr. DORGAN. Mr. President, I will not take this further. But I say there is a substantial difference between utilities and toasters. The reason I supported the bill is I think there has been too much litigation in this country; some of the litigation is totally inappropriate. I supported it on that basis, to create a reasonable response without abridging the rights of the people who want to sue, yet trying to reduce the number of lawsuits in our country. I felt that was appropriate.

I am surprised at the description of what the exclusion means on page 6 of the bill, as originally passed in the Senate. The answer to the question I am asking this afternoon is that the new language in the conference report does not alter what the old language intends to do. It was so clear on its face. It says ''exclusions.'' The term ''product'' does not included electric and water delivered by utility, natural gas, or steam—period, end of section, end of story. There is nobody in my hometown who could misread this. And I did not misread it, I do not think.

The answer now, I guess, is that the added language of that section does not change the intended section because the section was intended to mean something that did not comport with the way it was read.

So I guess legislation is a strange process. I am trying to understand what exactly does this bill do as we move along. There is plenty in the bill I am satisfied with. I commend those who have created some provisions of this bill that I think advance the interests most of us want to find common interest on. But I think it is obvious from the discussion that there is a substantial amount of misunderstanding about what this exclusion means with respect to utilities.

Mr. GORTON. Let me try one other approach to this subject because it applies equally to the two subsections of this section. The whole concept of many of these damages, especially punitive damages, is a concept that is based on a company doing something wrong—in our case, and from some of the definitions, egregiously wrong. It is based on negligence or gross negligence. When a State or a given organization is subject to a standard of strict liability, it is liable for all of the damages that it causes to an individual—in this case, using whatever it is that the company produces, regardless of whether it is negligent or not. It may have engaged in the highest standard of safety available for such an organization. Yet, a legislature or a Congress has determined that, for some reason or another, the whole cost, all of the damages created by that organization, ought to be imposed on the organization, without regard to its having done anything wrong. That is what strict liability means.

You do not have to prove negligence or that there was anything wrong at all with what the particular organization did. You are still going to hold it liable. Well, that is the reason for the first subsection. Under those circumstances, it seems quite logical that you are not going to be required to pay for more than the damages that were actually created.

Mr. DORGAN. If I may finally say, you are absolutely correct about strict liability. But the reason for the standard of strict liability is that there are some kinds of activities that are sufficiently dangerous and contain sufficient risks that a strict liability standard has been determined to be in the public interest.

What I think you are saying is if, in the case of utilities, a State determines that a strict liability standard is appropriate, that is the same as a State defining a utility as a product. There is no relationship between the standard and the product. I think most of us believe——

Mr. GORTON. But it seems to me, I say to the Senator from North Dakota, there is a relationship between the standard and what kind of damages ought to be allowed over and above the actual losses suffered by the victim.

Mr. DORGAN. That is a different issue. The issue is under exclusion. The term ''product'' does not exclude what? The Senate has determined a product does not exclude utilities—the Senator has been patient. I am trying to understand exactly the consequences of this legislation. It is, while a boring subject for some, nonetheless a very important subject with a lot at stake for the American people.

Last evening, I read a fair amount about this. It is not fun reading. It is not a page-turner. But while I was struggling through it, I was trying to understand exactly what we have done and what the consequences will be. I personally think there is room for product liability reform, and I have voted that way and likely will continue to. I am very concerned about that, and I will continue visiting with the Senator about it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. I yield 15 minutes to the distinguished Senator from Iowa.

Mr. HARKIN. I thank the Senator. I have listened very carefully to the preceding colloquy, and I must say that I read both the House and the Senate version of that, and I read what came in afterward in the conference report. Quite frankly, I was opposed to this bill before, and now even more so, because I think it is clear what happened in conference.

As we have said now, 44 States, as I understand it, have strict liability

laws. Now those utilities will come under the purview of this bill and, therefore, it will cap damages to the extent that it is my understanding now that, under this bill, for example, the Seminole pipeline and natural gas facility in Texas, exploded in 1992, killed three, injured a lot, caused a lot of damage in two counties, and a jury awarded $46 million in punitive damages. It is my understanding that now, under this bill, that will not be able to happen after this.

So I thank the Senator from North Dakota for bringing that out. I had not focused on that before.

Mr. President, I want to say that the debate over product liability has been clouded by misinformation and anecdotal evidence, which is substituting for a careful consideration of the facts.

Mr. President, you know, every time a jury is impaneled, they are told by a judge they should consider only the facts, not hearsay, not speculation, but only the facts. Well, Mr. President, we are sort of sitting as a jury here. We ought to consider the facts. But what we have before us in this legislation—what we are hearing is hearsay, speculation, and a distortion of the truth. If, in fact, this Senate finds in favor of the conference report, and we were a jury, the judge would be well within his purview to dismiss the jury for not adhering to the instructions of the court and following the facts of the case.

It is wrong for a jury to decide on anything other than the facts, and it is wrong for us to legislate based on anecdote and misinformation, but that is what we are doing. This is not commonsense reform. This is nonsense regression. This bill ought to be called the caveat emptor bill of 1996, throwing us back to the old days when it was buyer, beware. If you bought something and it hurt you, tough luck—buyer, beware. That is what this bill is about. It turns back the clock years.

In the midst of all the legalese, it is hard to sort out what is really at stake here. It is really very simple. We are talking about people's lives. We are talking about their health, and we are talking about their happiness and about families.

This bill is about as antifamily, antihuman rights as I have ever seen. What the bill does is places economic worth on a higher plateau than individual work. I find that totally objectionable.

We have heard a lot of words about the need to promote values of greater responsibility and accountability. If you believe in those values, you ought to oppose this bill because it absolves wrongdoers from responsibility and does not hold them fully accountable for their actions.

We have heard a lot of talk about sending more power to the States. If you are for that, you ought to oppose this because this puts power in Washington. We have heard a lot of talk on the floor about putting more power in the hands of the people. If you believe in that, you ought to oppose this legislation because this takes power out of the hands of citizens and juries and puts it in the hands of big Government. Plain and simple, this bill is big Government, big business, and it is a big mistake.

Now, of course, most businesses do not set out to harm consumers with their products. Obviously not. But sometimes faulty products do make it to the market, and sometimes they make it to the market through carelessness or through sheer disregard of the public safety by those manufacturers. Sometimes people get hurt and die because of it. In the zeal to pass this conference report, let us not pass over the victims. There is a lot of talk about the victims. Let us talk about the victims—the children severely burned by highly flammable pajamas, women who die from toxic shock syndrome, women with silicone breast implants who have now lupus and scleroderma.

Again, I want to make it clear that most businesses are responsible. Most businesses take due care and concern. But there are those who do not. The current product liability system is based on a fundamental premise that we want to make sure that people—average citizens of this country—have the assurance that when they buy a product, when children consume a product, when they travel on our highway, they can be reasonably certain that what they are using, consuming, or buying is not going to harm them.

Part of that is our responsibility, and that is why we have health and safety and food inspection laws. That is why we have left untouched in our country the common law that we inherited from Great Britain that goes back several hundred years, the concept of tort feasor, the concept that someone must take due care or concern that his actions do not harm others, and if they do, that person must be held accountable and responsible. Those are the core values embodied in our Nation's laws. It is the essence of the common law. It goes back several hundred years.

My friend from North Dakota said we have too many lawyers in this country. I do not know about that, but I do believe that more knowledge of law and a love and respect of law—and especially the common law that we have inherited—makes us a more decent and a more law-abiding citizenry. That is what we are forgetting here. We are forgetting the history of tort feasance. For the life of me, I do not understand how people argue about we ought to be personally responsible and now saying we do not have to follow that admonition.

With this legislation, we all know that punitive damages awarded for grossly negligent behavior are capped. But in their efforts to make the product liability system uniform across the United States, supporters have fashioned a one-way preemption: This legislation strikes down only those aspects of State law that give citizens more protection from defective products. That is a one-two punch.

The bill passed by the Senate last year was bad, and this conference report is worse. It is far more extreme. It preserves some of the worst provisions of the Senate bill, like the elimination of joint and several liability and the cap on punitive damages, and expands other areas resulting in a bill that is the consumers' worst nightmare.

Let me talk for a couple of minutes about the elimination of joint and several liability for noneconomic damages. Again, it violates the golden rule of responsibility and accountability. You do not have to worry about being accountable and making sure the victim is wholly compensated unless the victim has a high-paying job. The Senator from Louisiana talked about that earlier. Eliminating joint and several liability for noneconomic damages eliminates the protections particularly for women, children, and elderly, because noneconomic losses constitute a greater proportion of their total losses.

So, again, this bill is antiwomen, it is antichildren, and it is antielderly. I do not understand that. We are supposed to be for individual workers. And, yet, what this says is that if you have a high-paying job, you are worth more than a child or worth more than an elderly person who has been a homemaker. You are worth more than they are.

Under current law, joint and several liability enables an individual to bring one lawsuit against the companies that are responsible for the manufacture of a dangerous, defective product and have the defendants apportion fault amongst themselves if the jury finds for the plaintiff. Under joint liability, victims are compensated fully for their injuries even if one or more of the wrongdoers is insolvent.

Our civil justice system is founded on the principle that the victim deserves the greatest protection. This bill turns that basic value on its head. It says we should protect the wrongdoer. This bill says they deserve protection.

Mr. President, consider one case, the Claassen family of Newhall, IA. Bill, Jeanne, his wife, and their 4-year-old son, Matt, were returning home from a family gathering on November 6, 1993, in their 1973 Chevrolet pickup. Another driver failed to stop at a stop sign and rammed into the passenger side of their pickup at a speed of about 30 miles an hour. Eyewitnesses confirmed that the Claassen's pickup immediately burst into flames on impact. The flames raced up the outside of the passenger door and engulfed Jeanne Claassen's face in flames.

The Claassen's son, Matt, was seated between Bill and Jeanne in the pickup. Bill struggled to get Matt out of the truck before returning to rescue his wife. He was unable to rescue her and was convinced that she had died in the fire. Witnesses who arrived on the

scene immediately after the collision heard Bill telling his son that his mommy had died and gone to heaven.

Jeanne Claassen survived and is still recovering today. Her face and head permanently disfigured, she has not been able to return to her job as a medical technician. They are reluctant to take her back because of her appearance. She continues to undergo painful surgery to regain some semblance of her former self. Her young son Matt often relives that nightmare in his school drawings, once drawing an igloo engulfed in flames. He sometimes has trouble relating to the different way his mother now looks.

The Claassens are currently in litigation to recover damages from the two parties involved in this accident, the driver of the other car and the General Motors Corp. that manufactured the truck.

The driver of the other car has no personal assets, and her insurance will only cover some of Jeanne's many continual medical expenses. General Motors has been under criticism for refusing to recall the 1973 and later models of the C/K pickups. These model trucks have the fuel tanks outside of the frame rail of the vehicle, making them more susceptible to the type of accidents like Jeanne Claassen's.

By eliminating joint and several liability for noneconomic damages, this legislation will make it potentially more difficult for Jeanne Claassen to be compensated for her loss if the court rules in her favor. The driver of the other car is insolvent, and once the insurance money runs out, GM will not necessarily have to chip in to cover expenses. But Mrs. Claassen's pain and suffering will continue.

This legislation says that it really does not matter about her, it does not matter about the exploding fuel tank when awarding noneconomic damages. If one of them cannot pay, if one of the defendants cannot pay, we will just stick it to Mrs. Claassen. But—and here is the rub in this bill—if Mrs. Claassen was a CEO making millions of dollars a year for a major corporation, this bill would not hesitate to take care of her economic losses. She does not have a big economic loss, but she has personal losses. She has pain and suffering. She has a lot of loss in her life. This bill says, tough luck. If she had been the CEO of a major corporation making 20 million bucks a year, this bill would have been for her. But not for this Mrs. Claassen. What kind of discrimination against human beings are we about to engage in if we approve this conference report?

Mr. President, there are a lot of things I object to in this bill, but that is what I find most objectionable—economic losses are more important than human losses, pure and simple. If you have money, this bill is for you. But if you suffer the loss of consortium, if you suffer the loss of one of your family, pain and suffering, disfigurement, sorry, you are out of luck. Under this bill, Mrs. Claassen would be out of luck.

The elimination of joint liability for noneconomic damages forces our legal system to make a value judgment based upon your economic worth, and that is why this bill is so antiwoman and antifamily.

Last, let me just talk about capping punitive damages. I think I heard earlier the Senator from Connecticut saying $250,000 is a lot of money.

Mr. President, I have here a list of the amount of money made by CEO's of our major corporations. I figured out how long it would take to reach the cap of $250,000.

The CEO of Boeing makes $1.4 million a year. It would take 9 weeks of his salary to reach this cap. Do you think that is going to be a deterrent to Boeing? IBM, it would take 5 weeks. Sears & Roebuck, it would take 1 month. That is not a deterrent.

When this bill first came to the floor, in good faith I offered an amendment which I thought would tend to balance things out. I am opposed to caps, but I said if you are going to have a cap, let us put the cap at twice the annual compensation of the CEO of the corporation. That way it protects small businesses because, if you are a CEO of a small business, you do not have much money every year so you would have less exposure, but if you are a CEO making $20 million a year, well, then twice that would be the limit on the cap.

I lost on that amendment, but to me it still makes better sense than what we have in this bill of saying $250,000 or twice the compensatory damages, whichever is greater. This defeats the purpose of the deterrent effect of the product liability laws. They have made a difference. Ford Motor Co. redesigned the Pinto only after a $125 million lawsuit was awarded in which a 13-year-old boy was severely burned when the Pinto he was riding in burst into flames.

The PRESIDING OFFICER. The Senator's 15 minutes have expired.

Mr. HARKIN. Yet evidence showed Ford Motor Co. knew it was a faulty design, but they went ahead anyway because they said it would cost less to have to pay it out in damages than to redesign the car.

Mr. President, what this bill does is it lets those tort feasors off the hook.

I know my time is up. I could go on and on. Quite frankly, we should not say that simply because you make a lot of money you are going to get awarded more damages, more punitive damages will be assessed against someone if you make more money than if you are a homemaker or a child or an elderly person. That is discrimination of the worst sort.

I hope and I trust we will not invoke cloture on this bill and that we can continue to abide by the principles of individual work and responsibility and accountability in our country.

I thank the Senator for yielding me this time.

The PRESIDING OFFICER. Who yields time?

The majority manager is recognized.

Mr. GORTON. Mr. President, I yield 10 minutes to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, first of all, in connection with the remarks of the distinguished Senator from Iowa, I point out there is an additur provision in this bill dealing with punitive damages. I do not want to debate that whole thing here; I only have 10 minutes, but I would stress that point of which perhaps the Senator was not aware.

Mr. President, yesterday, I briefly outlined the history of this legislation, which represents now 15 years—15 years; that is a long time—we have been debating this liability reform act. It started in 1981 when Senator Kasten, of Wisconsin, introduced the first bill.

Finally, here we are today with a fair and a reasonable bipartisan bill that not only has passed both Houses but did so with strong majorities. The House approved a broader bill, not this one but a broader one, which I presume those on the other side would find more offensive. They passed that 265 to 161, a very substantial majority. In the Senate, the bill that we passed had 61 votes in support of it, 61 out of 100.

So with a track record like that, you might think product liability reform would soon become law. But here we are faced with two major obstacles, a cloture vote this afternoon to protect against further filibustering on this issue, and, worse than that, a newly raised threat of a Presidential veto. If this bill does not make it past the procedural hurdle of cloture, or if the President does not reconsider his threat of a veto, this bill will not become law.

To be prevented from succeeding at this point, I must say, is particularly galling. After all, I suspect that this bill has seen more roadblocks in the last 15 years than any other bill we have seen here. Indeed, I venture to guess that product liability has been subject to more cloture votes than any other subject. There were 2 cloture votes in 1986, 3 in 1992, 2 in 1993, 4 in 1995, for a total of 11 cloture votes in all. Yet, it seemed in this new Congress we were going to win it; once and for all this gridlock would be ended.

Drafting of this bill was a bipartisan effort right from the beginning. It is not a Republican bill; it is a Republican-Democratic bill, a bipartisan bill. The White House was well aware of what was going on. The White House watched closely as the Senate took up the bill and began adding amendments. It is my understanding that it was the administration, during the Senate debate in May, that quite helpfully suggested the addition of the so-called additur provision to the final version.

So, as I say, it went sailing through here, 61 to 37. What happened to change

the White House's attitude? Did the bill change dramatically in conference from what went through here in the Senate? The answer is, hardly at all. It was clear to all that the House's broad tort-reform bill would not be approved by the administration. Therefore, to their credit, the conferees, representatives from the House and representatives from the Senate meeting together, decided to stick closely to the Senate version that had passed so overwhelmingly and that seemed to have White House support. So the bill that we will vote on today, or the bill that we are dealing with, is virtually identical to the Senate-passed bill that won such strong approval.

I do not know why the President appears to have changed his mind. I cannot believe he is personally opposed to a Federal liability law for, as a Governor, as Governor of Arkansas, the President sat on the National Governors' Association committee that drafted the first National Governors' Association resolution dealing with Federal liability reform.

Here we have a copy of the letter from the President to Senator DOLE setting forth the reasons for the veto.

I ask unanimous consent the letter be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. CHAFEE. We are told it is an ''unwarranted intrusion on State authority.'' Yet, the National Governors' Association enthusiastically supports this measure.

We are told the bill would ''encourage wrongful conduct because it abolishes joint liability.'' But joint and several liability, it has been pointed out, applies still to economic damages.

The letter accuses the bill of ''increas[ing] the incentive to engage in the egregious conduct of knowingly manufacturing and selling defective products.'' I do not find this charge makes much sense. Then it goes on to say that the ''additur'' provision the White House itself put in here, the provision being that the judge himself can increase the punitive damages—the White House had a hand in drafting that—now they say that is not adequate.

So I do not think any of these three statements that the President has in his letter represents what this conference report really would do. I think that is very, very unfortunate.

To my judgment, this bill is sound and reasonable. Under the bill, those who sell but do not make products—sell the products but not necessarily having made them—are liable only if they did not exercise reasonable care. If they offered their own warranty and it was not met, or if they engaged in intentional wrongdoing, obviously they will be liable. But they cannot be caught up in a liability suit where they did nothing wrong. I do not see much trouble with that.

If the injured person was under the influence of drugs and alcohol and that condition was more than 50 percent responsible for the event that led to the injury, the defendant cannot be held liable.

If plaintiff misused or altered the product—this is the one we see so often in the area I come from, people have altered machinery and equipment that they have purchased—in violation of the instructions or warnings to the contrary, or in violation of just plain common sense, then the damages are reduced accordingly. I just cannot understand why we ought to blame the manufacturer for behavior that everyone knows would place the product user at risk. That does not seem fair to me. Does that not contradict our notion of an individual's personal responsibility? The person has to have some sense of responsibility here.

The bill allows injured persons to file an action up to 2 years after the date they discovered or should have discovered the harm and its cause. For durable goods, the actions may be filed up to 15 years after the initial delivery of the product. These also seem to me to be fair.

Either party may offer to proceed to voluntary, nonbinding, alternative dispute resolution.

The most controversial element of the bill, I suppose, is the punitive damages. I remind my colleagues that these damages are separate and apart from compensatory damages. The compensatory damages are meant to make the injured party whole. The punitive damages are awarded where there is ''clear and convincing evidence'' proving ''conscious, flagrant indifference to the right of safety of others.'' The amount of punitive damages may not exceed two times the amount awarded for compensatory loss or $250,000, whichever is the greater.

Again, I must say I have had trouble with punitive damages for a long time. I have great difficulty understanding the basis of that; certainly that the punitive damages go to the plaintiff instead of the State for retraining of those who are committing the errors. It might be manufacturers, it might be physicians, whatever it is. But I have great difficulty understanding why in the world punitive damages should go to the plaintiff.

In conclusion, I pay my compliments to Senators ROCKEFELLER, GORTON, PRESSLER, and LIEBERMAN for the work they have done on this. I certainly urge the President to reconsider his position and join the bipartisan coalition supporting this very important legislation.

I urge him to sign this bill into law.

EXHIBIT 1

THE WHITE HOUSE,
Washington, March 16, 1996.

Hon. BOB DOLE,
Majority Leader, U.S. Senate, Washington, DC.

DEAR MR. LEADER: I will veto H.R. 956, the Common Sense Product Liability Legal Reform Act of 1996, if it is presented to me in this current form.

This bill represents an unwarranted intrusion on state authority, in the interest of protecting manufacturers and sellers of defective products. Tort law is traditionally the prerogative of the states, rather than of Congress. In this bill, Congress has intruded on state power—and done so in a way that peculiarly disadvantages consumers. As a rule, this bill displaces state law only when that law is more beneficial to consumers; it allows state law to remain in effect when that law is more favorable to manufacturers and sellers. In the absence of compelling reasons to do so, I cannot accept such a one-way street of federalism, in which Congress defers to state law when doing so helps manufacturers and sellers, but not when doing so aids consumers.

I also have particular objections to certain provisions of the bill, which would encourage wrongful conduct and prevent injured persons from recovering the full measure of their damages. Specifically, the bill's elimination of joint-and-several liability for noneconomic damages, such as pain and suffering, will mean that victims of terrible harm sometimes will not be fully compensated for it. Where under current law a joint wrongdoer will make the victim whole, under this bill an innocent victim would suffer when one wrongdoer goes bankrupt and cannot pay his portion of the judgment. It is important to note that companies sued for manufacturing and selling defective products stand a much higher than usual chance of going bankrupt; consider, for example, manufacturers of asbestos or breast implants or intra-uterine devices.

In addition, for those irresponsible companies willing to put profits above all else, the bill's capping of punitive damages increases the incentive to engage in the egregious misconduct of knowingly manufacturing and selling defective products. The provision of the bill allowing judges to exceed the cap in certain circumstances does not cure this problem, given Congress's clear intent, expressed in the Statement of Managers, that judges should do so only in the rarest of circumstances.

The attached Statement of Administration Policy more fully explains my position on this issue—an issue of great importance to American consumers, and to evenly applied principles of federalism.

Sincerely,

BILL CLINTON.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. FRIST). Who yields time?

Mr. HOLLINGS. Mr. President, I yield 10 minutes to the distinguished Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I rise today to speak in opposition to the conference report on the Common Sense Product Liability Legal Reform Act. Supporters of this legislation have made the claim that this bill will benefit manufacturers, investors and business owners and workers. They also say it will benefit consumers. Yet, to my knowledge, this bill is opposed by virtually every group in the country that represents working people and consumers and children and the elderly.

One of the reasons for this is that the claims that have been made on behalf of this bill do not really add up. The people who support this bill claim the bill would set uniform Federal standards for product liability legislation.

They claim uniformity is essential and that knowing the laws are going to be the same everywhere you go is absolutely critical for business interests that might be unsure of what the marketplace and a legal system of a particular jurisdiction will hold for them. That is the whole basis of this bill. That is the core concept, that you have to have this uniformity across the board, or businesses really will not know what to do in terms of location, business location decisions.

I would like to use my time to speak about two aspects of this notion of uniformity. First, let us remember that this legislation marks an unprecedented event. We are, for the first time, imposing the demands of the Federal Government in an area of law that has, for 200 years, been the sole domain, the sole province of the States. I thought this was a Congress devoted to devolution, not to the Government at Washington making mandatory rules.

I thought that was the mantra of the new Republican majority, that the States know best, that most of the time the best decisions are those that are made by the folks back home and not by the decisionmakers in Washington. I remember time and time again the majority leader coming down to the Senate floor and telling us it was time to ''dust off the 10th amendment.''

I remember when the Speaker of the other body went on national TV last spring and in an address to the Nation said the following:

> This country is too big and too diverse for Washington to have the knowledge to make the right decisions on local matters. We've got to return power back to you, to your families, your neighborhoods, your local and State governments.

Mr. President, what happened to those words? What happened to the 10th amendment? What happened to the need to address local problems on the local level? All this talk about States rights is about to go right out the window as we usurp over 200 years of State control over their tort systems.

We have a bill before us that has as its central premise the notion that the Federal Government is a better administrator of justice than the States and that the U.S. Senate is better suited to determine the outcome of a civil trial than are 12 average Americans sitting in a jury box.

How troubling that, at a time when Americans are so distrustful of their Government, we in Government are not willing to trust Americans to administer civil justice. But I suppose that for the sponsors of this bill, this is a reasonable price, so long as we get some uniformity in our laws.

Unfortunately—and I really want to stress this—this bill has about as much uniformity as a circus parade. Look at the new punitive damage cap contained in the bill. That provision caps punitive damages in most cases at the higher of $250,000, or two times compensatory damages. That sounds pretty uniform, does it not? But read the small print.

If a State has a law that is more restrictive—more restrictive—than the Federal cap, then that particular State law prevails. If a State has a law that is less restrictive than this Federal cap, then, and only then, the Federal cap prevails.

Moreover, under this bill, those States that currently simply prohibit punitive damages, do not allow them at all, they would be permitted to continue to not allow any punitive damages.

So what does this mean for American consumers? It means the consumers and children and the elderly living in different States with different sets of laws will have substantially different protections from injuries and defective products.

Mr. President, so much for the uniform Federal standards and so much for the idea that this bill is somehow fair and equitable and beneficial to consumers.

But what this really is is sort of a one-way preemption of State laws, and it is grounded on the premise that some States know better than others and that some Americans can properly serve on juries but others cannot. With this new concept of, let us call it, selective federalism, perhaps we should change the words above the Supreme Court so they read ''Equal justice under the law, unless you live in the following States,'' and then list the appropriate States.

Mr. President, I also find it absolutely ludicrous that the supporters of this bill would suggest that we are providing uniformity when we are going to have completely different standards and rules throughout the 50 States. If I had to pick one provision of this bill that demonstrates how nonsensical this notion of uniformity is, I would have to choose the provisions seeking to reestablish a new Federal statute of repose.

This bill creates a new Federal standard for the number of years a manufacturer or product seller can be held liable for harm caused by a particular product. Known as a statute of repose, that period is 15 years under this conference report.

Why 15 years? Where did that come from? It is a good question. The product liability legislation considered in the 103d Congress, written by the same two principal authors, contained a 25-year statute of repose. Why? Well, a footnote in the committee report from that Congress justified the 25-year limit by pointing out that, according to testimony received by the Commerce Committee, and I quote, ''30 percent of the lawsuits brought against machine tool manufacturers involve machines that are over 25 years old.'' Therefore, Mr. President, presumably the authors of this bill, last time around, selected 25 years as the life expectancy of all products manufactured in the United States.

So last May, we considered a product liability bill that the supporters tried to characterize as much more moderate and much narrower than the product liability bill considered in the 103d Congress. But in many cases, the bill we considered last May was worse than its predecessor. For example, they dropped the 25-year statute of repose to only 20 years. Why? Once again, good question. The committee report for the Senate-passed legislation conspicuously left out that footnote from last time about the machine tool testimony and just makes no mention whatsoever as to why 20 years was selected for that bill. Instead, the committee report promotes the consistency of the 20-year statute of repose with the General Aircraft Revitalization Act of 1994 that was passed by this body in 1994.

It also justifies a Federal statute of repose on the basis that Japan is poised to enact a short 10-year statute of repose. So now, apparently, the Japanese Government knows better than the State of Wisconsin how to properly administer civil justice in cases involving Wisconsin litigants. I wonder how the Framers of the Constitution would feel about that assertion, Mr. President.

What is too bad is, in this conference report before us, it does not end there because, as I said, the conference report before us does not have a 25-year statute of repose, does not have a 20-year statute of repose, it even has now a significantly shorter 15-year statute of repose. So we have gone from 25 to 20 to 15, and they call this a moderate bill.

Again, what in the world is that 15 years based on? It strikes me as being completely arbitrary and it seems less concerned with what the life expectancy of certain products should be and more concerned with making sure we pass as short a statute of repose as can possibly be done politically.

Finally, Mr. President, worse, this takes us back to the issue of selective preemption of State authority over liability laws. Under this conference report, if a State legislature has decided against having a statute of repose or has decided on a statute that is longer than 15 years, then this new Federal law will override the judgment of that State legislature.

Again, when you really look at this bill, it is not about uniformity at all. It will lock in a lack of uniformity and different treatment throughout the States and not provide the central purpose of the bill, as I understand it, which is to provide all the businesses in the country with some kind of uniformity.

So, Mr. President, on behalf of all the consumers who will be affected by this, as well as the concern about uniformity, I simply must say that this conference report should be defeated.

I yield the floor.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. GORTON. I yield 5 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I thank my colleague. I will try to use less time than that, because I know my colleague from Washington has several requests for additional time.

First of all, let me commend our colleagues from West Virginia and from Washington for their tremendous work on this legislation. They have spent countless months, indeed years, working on this issue. I want to express my gratitude to them and the gratitude of my constituents in Connecticut. They have dealt with a complicated, sensitive issue in a forthright manner, allowing all to have a full say in what ought to be included in the legislation. I strongly urge our colleagues to support their effort, the Common Sense Product Liability and Legal Reform Act of 1996.

Mr. President, I am not new to this issue. During this debate, I have been playing a supporting role to the efforts of Senator ROCKEFELLER and Senator GORTON. But I began working on this issue 10 years ago, when I joined with our former colleague, Jack Danforth, and attempted to fashion a product liability bill. None of our efforts ever made much headway through the legislative process, but I think we helped lay a foundation for the measure we are considering today.

Mr. President, when I ask the businesses in my State to list the single most important issue to them, they tell me that it is product liability reform, more so than taxes or any other issue. This is particularly true of my smaller manufacturers, the tool and die makers, and other industries that are supported by larger companies like United Technologies, Sikorsky, and Electric Boat. This is the issue they care more about than anything else.

Across this country, manufacturers are spending seven times more to prepare for product liability cases than they are on research and development.

Because of these costs, innovative products never make it to the market. There is no question, for example, that there would be more research into an aids vaccine if companies were not fearful of the current product liability system.

Additionally, the high costs of litigation raises the cost of many products. This so-called tort tax accounts for an estimated 20 percent of the cost of a ladder, 55 percent of the cost of a football helmet, and 95 percent of the cost of childhood vaccines.

The excessive costs of the product liability system also hurt the competitive position of American companies. Some American manufacturers pay product liability insurance rates that are 20 to 50 times higher than their foreign competitors.

Of course, if this system were working well for consumers, that would be an important argument for maintaining the status quo. But that is not the case.

As I mentioned earlier, consumers are denied innovative products and must pay higher prices for products. And what about people who are injured by the products that do make it to the marketplace? Do they benefit from the current system? The answer is no.

A General Accounting Office study concluded that it takes almost 3 years for a case to be resolved. That is 3 years that an injured person must wait to be made whole. Regrettably, this delay leads many injured people, particularly those with very severe injuries, to settle for less than their full losses.

Clearly, the present system is broken. We need to fix it and the conference report makes some important repairs. My colleagues have already discussed some aspects of the bill, but let me highlight some provisions that are particularly important.

UNIFORM SYSTEM

First, by providing Federal standards in certain areas, this measure will provide a more uniform system of product liability. These standards will add more certainty to the system, and help reduce transaction costs.

When you consider that 70 percent of all products move in interstate commerce, Federal standards make sense. The National Governors Association supports this approach. The association has testified:

> The United States needs a single, predictable set of product liability rules. The adoption of a Federal uniform product liability code would eliminate unnecessary cost, delay, and confusion in resolving product liability cases.

ALTERNATIVE DISPUTE RESOLUTION

The provision in the bill that encourages the use of alternative dispute resolution will also help reduce the excessive costs in the current system. Currently, too much money goes to transaction costs—primarily lawyers fees—and not enough goes to victims.

A 1993 survey of the Association of Manufacturing Technology found that every 100 claims filed against its members cost a total of $10.2 million. Out of that total, the victims received only $2.3 million, with the rest of the money going to legal fees and other costs. Clearly, we need to implement a better system in which the money goes to those who need it—injured people.

STATUTE OF LIMITATIONS

Consumers will also benefit from a statute of limitations provision that preserves a claim until 2 years after the consumer should have discovered the harm and the cause. In many cases, injured people are not sure what caused their injuries, and by the time they figure it out, they have often lost their ability to sue. This legislation will provide relief for people in such situations and allow them adequate time to bring a lawsuit.

This legislation will also improve the system for businesses—from large manufacturers to the hardware store down the street.

ALCOHOL AND DRUGS

Under this bill, defendants would have an absolute defense if the plaintiff was under the influence of intoxicating alcohol or illegal drugs and the condition was more than 50 percent responsible for the plaintiff's injuries. This provision, it seems to me, is nothing more than common sense. Why should a responsible company pay for the actions of a drunk or a drug user?

PRODUCT SELLERS

The bill also institutes reforms to help product sellers. They would only be liable for their own negligence or failure to comply with an express warranty. Product sellers who are not at fault can get out of cases before running up huge legal bills. But as an added protection for injured people, this rule would not apply if the manufacturer could not be brought into court or if the claimant would be unable to enforce a judgment against the manufacturer.

PUNITIVE DAMAGES

In my view, the conference report also strikes an appropriate balance on punitive damages. There are reasonable limitations on punitive damages, but the judge could award a higher amount against large businesses if the limited punitive damage award is insufficient to deter egregious conduct.

BIOMATERIALS

The biomaterials provision also addresses a critical problem. It would limit the liability of biomaterials suppliers to cases where they are at fault, and establish a procedure to ensure that suppliers, but not manufacturers, could avoid unnecessary legal costs. This provision will help ensure that Americans continue to have access to lifesaving and life-enhancing medical devices.

My colleague from Connecticut, Senator LIEBERMAN, authored this proposal and I commend him for his excellent effort.

BALANCED LEGISLATION

The provisions I have outlined demonstrate the balance this legislation strikes between consumers and businesses. In the final analysis, the reforms in the bill should strengthen the product liability system for everyone.

Mr. President, I commend the conferees for staying so close to the Senate bill. In my view, the House bill went too far. It contained provisions that would have applied in a wide range of cases, including medical malpractice.

The stakes of legal reform, the rights and responsibilities of all Americans, warrant a more cautious approach. There are some areas of our legal system where problems must be addressed. Securities litigation and product liability are obvious examples, but we should avoid wholesale changes.

The conference report we are debating today takes the right approach. It is a moderate measure that makes modest reforms. It strikes a careful

balance between the needs of consumers and businesses, and should help improve the product liability system for everyone.

Before closing, let me again commend Senator ROCKEFELLER and Senator GORTON for their excellent work on this legislation. As I discussed earlier, this conference report has very few changes from the Senate bill that they crafted so carefully. They have also done a superb job in keeping this legislation moving forward.

I urge my colleagues to vote for cloture and help pass this conference report.

Mr. President, I yield back whatever time I may have remaining to our distinguished colleague from Washington.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, before I yield to the distinguished Senator from Minnesota, I ask unanimous consent to have printed in the RECORD an article entitled ''In Defense of Big (Not Bad) Business'' from the Washington Post.

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

IN DEFENSE OF BIG (NOT BAD) BUSINESS

(By Jerry J. Jasinowski)

Engaging in class warfare and anti-industrial rhetoric has become the favorite blood sport in this political year.

We have the unlikely duo of presidential candidate Pat Buchanan and Labor Secretary Robert Reich warning us about anxious workers and their stagnant wages. A seven-part treatise in the New York Times blames corporate callousness for the ills of society, while Newsweek recently threw the mugs of four leading American business executives on its cover under the headline ''Corporate Killers.''

How quickly perceptions change. Little more than a year ago I was invited to address an international gathering of corporate and political leaders in Davos, Switzerland, to talk about an American industrial renaissance that had restored the United States to the top spot among the world's economies for the first time in nearly a decade. And instead of warning of Japan's industrial might, a constant theme throughout the 1980's, I found myself describing a quality and productivity revolution that has led to record job creation in the United States.

No one in this country seems to know it or care, but while Americans have been busy berating our capitalist system with unbridled enthusiasm, the U.S. economy has become the envy of the industrialized world.

Indeed, the current anxiety over jobs and wages illustrates the verity of the notion that a big enough lie, repeated often enough, can take on the trappings of reality. I may be fashionable—and in some cases politically expedient—to argue that American workers are underpaid, underappreciated and on the brink of losing their jobs. Some are—and these concerns need to be addressed. But to suggest that this is the prevailing phenomenon taking place in our economy is wrong, or at the least, a very distorted view of reality.

While corporate downsizing gets the headlines, the American economy has quietly grown richer—gaining more than 8 million net new jobs since 1992 and putting our unemployment rate at an historically low 5.5 percent. In the past 25 years, U.S. employment has increased 59 percent and we have created more than five times as many net jobs as all the countries of Europe combined.

Even in areas like U.S. manufacturing, to take a favorite topic of media concern, the picture is not so bleak as news reports, or a cursory look at the data, might suggest. According to government statistics, around 1.7 million manufacturing jobs disappeared between 1988 and 1993. But many of the positions shed by manufacturers were never the assembly line jobs typically associated with manufacturing in the first place. Rather, a sizable portion of the eliminated positions were back-office jobs like payroll and accounting, which are now contracted out to companies that the Labor Department classifies as ''service sector'' firms. It's also worth remembering that millions of jobs are created in other sectors as a direct result of manufacturing. It happens when a new restaurant locates near a manufacturing plant, the so-called ''multiplier effect.'' And it happens when jobs that were considered by the government to be manufacturing are spun off—the most common example being GM's transfer of its data-processing to EDS, a move that overnight classified thousands of jobs from manufacturing to service.

The data can be equally misleading when it comes to wages. It has by now been widely reported that median household incomes, adjusted for inflation, have been falling for nearly two decades, and by 7 percent since 1989 alone. But the wage decline doesn't take into account other factors that greatly mitigate its effect. First, the size of the average American family has been declining meaning the typical household paycheck is being spread over fewer people. And when the overstatement of inflation contained in the consumer price index is eliminated, income growth actually climbs by 15 percent.

Nor do such statistics take into account the fact that workplace compensation has undergone radical changes in recent years. As studies by the Federal Reserve and others have shown, employees nowadays receive a much greater share of their compensation in the form of various benefits—health care, paid vacation, pensions, incentive payments, bonuses, commissions and profit sharing. Using this broader measure of total compensation, workers are even better off than they were in the 1970s.

It is also important to remember that workers with the right skills and in the right fields are sharing handsomely in the economy's growth. A study by Princeton University economist Alan Krueger showed that employees who use computers on the job earn 15 percent more than those who don't. Indeed, a wage boom has been underway for some time in many high-tech firms. Assembly-line positions in the technology sector now typically pay anywhere from $50,000 to $75,000 annually, including bonuses. And in part because of automation that has raised the skill-level required to perform all kinds of jobs on the factory floor, manufacturing workers in any field now earn an average of $40,000 annually, for companies like Cypress Semiconductor in San Jose, Calif., compensation is even higher. The average worker in this 1,900-person company, including line workers and receptionists, earns $93,000 a year including benefits.

Even more important than what the numbers tell us about the present is what they tell us about our future. It is true that, while the wage picture is not as bleak as we've been led to believe, there is reason for concern. But a number of powerful trends suggest that several of the factors that have kept take-home pay lower than expected and job in security higher than desired are self-correcting. Others are well within our power to fix.

The baby-boom generation, combined with the influx of women into the workplace and high levels of immigration, has brought on the largest increase in the supply of labor in American history. Since 1968, the number of Americans seeking jobs has shot up by 52 million workers, a factor which has had the inevitable effect of slowing wage growth since so many more people were out in the market competing for jobs.

Currently there are still too many workers with inadequate skills struggling to fit themselves into an economy that increasingly demands higher levels of education. But demographics will be on the side of the workers in coming years. For one, four times as many Americans have college degrees today compared with just 50 years back. More importantly, the generation now entering the work force is one-third smaller than the baby-boom generation, which will inevitably push up employee compensation. A labor force that is older and more experienced also commands generally higher compensation, a factor that filters down through the entire labor market.

Meanwhile, many jobs are going wanting. Some manufacturers are so desperate for skilled assembly line workers that they've taken to hiring professional recruiting firms to help them find qualified applicants. The owner of one Northern Virginia firm told me that software developers who commanded $30,000 five years ago now demand, and get, $50,000 a year. And a newly released study of software programmers nationwide shows many veteran code writers can command salaries that exceed $100,000.

John F. Kennedy's oft-repeated maxim that ''a rising tide lifts all boats'' is as true today is it was 35 years ago. Unfortunately, the tide hasn't been rising very fast lately. Though much of the news about the economy is positive, it's also true that economic growth during the current expansion has been hovering around 2 percent, roughly half that of previous post-war expansions. Yet, given improvements in corporate productivity of late, both in manufacturing and more recently in the service sector, there is no reason our growth rate can't be lifted to at least 3 percent a year. If that happened, we would inevitably see substantial new economic activity and jobs gains for workers at all skill levels.

So why isn't the economy growing faster?

Pat Buchanan would have us believe that it's because our free-trade policies have allowed other countries to benefit at the expense of Americans. But if anything, the opposite is true. Exports, in fact, have been responsible for roughly one-third of U.S. economic growth over the past decade. According to a new report by the Manufacturing Institute and the Institute for International Economics, American firms that export goods or services have experienced a job growth rate almost 20 percent higher than comparable non-exporting firms. Exporters are 9 percent less likely to shut down, and they pay their workers as much as 10 percent more than firms that do not export, the study found. If anything, we should be figuring out ways to open up markets across the world, not stir tensions in a way that could set off a trade war.

It's also time we question whether the Federal Reserve is keeping interest rates unduly high, and whether we should continue allowing government to keep the tax burden so high. The median two-wage earner family carries total tax burden—federal, state and local—of 38.2 percent, up from 27.7 percent in 1955. This amounts to more than $5,000 a year for the typical family. Payroll taxes, which represent the largest single tax on millions of middle income Americans, have grown at four times the rate of incomes. While this

last tax is technically paid by employers and employees alike, it amounts to a direct hit on employees because most companies simply pass on the burden in the firm of reduced wages and benefits.

So does all this mean business should be let off the hook? Certainly not. I would be the last to exonerate business completely of the charges coming at them of late. Take the issue of wages. It's true that many companies have done a lot to share their success with their workers. Last month, for example, while the press was busy maligning IBM for its layoffs, the computer maker announced it would spend more than $200 million increasing employee bonuses, not just for top executives but for the rank and file. And at Coca-Cola, where nearly one-third of the workers own company stock, each employees' holdings shot up in value by an average of $70,000 over the last 15 months.

The problem is that not enough companies are putting a priority on performance-related compensation. People should be paid based on the quality of their performance, at every company, and no matter how lowly the job appears. If only the top executives are sharing the largess—or if bonuses are climbing when profits are shrinking—something is wrong.

The other area that needs more corporate attention is education and training. Again, many companies are investing significant sums, but too many others aren't. In a constantly changing work environment, honing skills and keeping up with the latest technology is an essential priority for all companies that intend to remain competitive. Yet right now, the average company spends roughly 1.5 percent of its payroll on employee training and education. To my mind, that figure needs to double.

The United States still offers the best employment opportunities in the world. But if it is to stay that way, it will require a new social compact in the workplace. That doesn't mean guaranteed job security—which is impossible in today's highly competitive world. But it does mean employment security; ensuring that workers acquire the training and skills to move up the ladder, if not at one company, then at another.

For employees, it means that instead of thinking of themselves as victims, they should be investing in their own futures. And, in exchange for their hard work, they should insist that corporations keep up their end by helping to fund the cost of training, and by rewarding financially those who help themselves.

Mr. HOLLINGS. This particular article refutes the statement by the Senator from Connecticut. Big business is doing fine. They are not worried about new products. They are competitive. They are making the biggest profits. It goes right back to the official hearings we had with the conference report, risk managers. Over 432 risks managers sat there and said it was less than 1 percent of the cost of the product.

So we can hear these statements that this is the No. 1 thing they are worried about, and everything of that kind and holding things back, but under the Cornell study, product liability cases are diminished by 44 percent in the last decade and, yes, industries are suing industries like Pennzoil suing Texaco for a $10 billion verdict. Those things occur.

But this is not the No. 1 interest of business. The No. 1 interest of business, that I have been trying to defend in the Commerce Department and ask what they are interested in, they say they are interested in capital gains. ''We are not going to really spread our influence around. On the contrary, we are going to fight for capital gains and let the Commerce Department and the President take care of that.''

I yield 7 minutes to the distinguished Senator from Minnesota.

Mr. WELLSTONE. I thank my colleague. I thank the Senator from South Carolina.

Mr. President, I ask my colleagues to consider the faces of people who will be hurt by this provision. Think of LeeAnn Gryc from my State of Minnesota who was 4 years old when the pajamas 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 bill contains a cap on the punitive damages a plaintiff could receive. How would this affect LeeAnn? We are talking about people, we are talking about consumers. They may not be the heavy hitters, or the big players, but that is who we are talking about.

It all depends on what kind of compensatory damages the jury awards. Are we really willing to sit here in Washington and dictate to LeeAnn and other victims of defective products how much is enough to punish and deter the people who hurt them?

The jury's role. By capping punitive damages this bill takes power out of the hands of the jury. This particularly confounds me. People on juries are fine when they are electing Members of the Senate to their jobs. But apparently some of my colleagues do not trust them to sit in judgment of their peers. They sit in judgment of us, do they not? Are they not usually the finders of facts? How is it that they lose their competence in the short trip from the ballot box to the jury box?

Elimination of joint liability. In Minnesota we struggled with this problem and we have come to a middle ground. Joint liability only applies to wrongdoers who are over 15 percent responsible. But this bill would say that Minnesota's solution is not good enough. This bill would preempt Minnesota's law with an extreme measure, one that my State at least has chosen not to embrace.

Again, Mr. President, real people, faces I would like my colleagues to see before they vote. Nancy Winkleman, a Minnesotan I met last year who was in a car crash. Because a defective car underride bar failed to operate properly, the hood of her car went under the back of a truck and the passenger compartment came into direct contact with the rear end of the larger vehicle. Without the benefit of her car's own bumper to protect her, she was severely injured, losing part of her tongue and virtually all of her lower jaw. Despite reconstructive surgery, her face and ability to speak will never be the same.

I cannot imagine the pain that Nancy must have undergone or the pain that she undergoes every day, nor can my colleagues. If one of the responsible parties in her case was unable to pay their fair share, should she go uncompensated for some of that pain or should the other responsible parties have to make it up? Unless you are certain, colleagues, that it is more important to protect those other parties, who usually have been found to be negligent, than to compensate Nancy for her pain, you should not support this bill. If you do, you will be hurting real people, you will be hurting real people.

Statute of repose now cut down to 15 years. Jimmy Hoscheit was a boy at work on his family farm when he was hurt. I met Jimmy last year when he was in my office telling me his story. He was using common farm machinery, consisting of a tractor, a mill, and a blower, all linked together with a power transfer system, much like the drivetrain on a truck. The power of the tractor was transferred to the other equipment by way of a spinning shaft, a shaft covered by a freely spinning metal sleeve. The sleeve is on bearings so if you were to grab the sleeve, it would stop moving, while the shaft inside would continue to powerfully rotate at a very high speed.

Apparently when Jimmy leaned over the shaft to pick up a shovel, his jacket touched the sleeve and got caught on it. However, instead of spinning free on the internal shaft, the sleeve somehow was bound to the shaft, became wrapped in Jimmy's jacket and tore Jimmy's arms off. His father found him flat on his back on the other side of the shaft. The manufacturer could have avoided all of this if it just provided a simple and inexpensive chain to anchor the shaft to the tractor.

I ask you, should Jimmy be able to bring suit against the manufacturer? What if the product was over 15 years old? Does that make his injury and his pain any less severe?

A similar question can be asked about 6-year-old Katie Fritz, another Minnesotan whose family I was privileged to meet when we began consideration of the bill. This is about real people. Katie was killed when a defective garage door opener failed to reverse direction, pinning her under the door, and crushing the breath out of her.

We do not know how long some of these machines can last. If that garage was at a business and was over 20 years old, Katie's family could not have sued the manufacturer. There would not be any question of capping punitive damages or having joint liability for noneconomic damages. They simply would not be allowed to the courthouse door.

Mr. President—the big picture—on behalf of people like LeeAnn, Jimmy, Katie, Nancy, real people, consumers, I urge my colleagues to reach into their

hearts and do the right thing, and to reject this bill. I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I ask unanimous consent to have printed in the RECORD a letter dated only yesterday from Mothers Against Drunk Driving in opposition to the bill.

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

MOTHERS AGAINST DRUNK DRIVING,
Irving, TX, March 19, 1996.

Re H.R. 956 Conference Report.

Members of the U.S. Senate, Washington, DC.

DEAR SENATOR: On behalf of the more than 3 million members and supporters of Mothers Against Drunk Driving (MADD) and the thousands of victims of drunk drivers crashes in this country, I urge you to oppose the H.R. 956 Conference Report (The Common Sense Product Liability Act of 1996). While it may not have been the intent of the sponsors and supporters of this legislation to limit or restrict the rights of drunk driving crash victims to be fully compensated for the harm they have suffered, this will be one of the unintended consequences of this bill in its present form.

It is clear that alcoholic beverages will fall within the meaning of ''product'' in this bill and the term ''product liability action'' in the bill means ''any civil action brought on any theory of harm caused by a product or product use.'' The limitations and restrictions imposed by this legislation will limit recovery by victims of drunk driving crashes against sellers who irresponsibly serve intoxicated persons or minors who subsequently cause drunk driving crashes killing or seriously injuring innocent victims. Defendants in these dram shop cases will be able to use the defenses and protections provided to them by this legislation to prevent these innocent victims from being fully compensated for the harm they have suffered.

The caps on punitive damages contained in this reform legislation will directly benefit those who irresponsibly serve alcoholic beverages to obviously intoxicated persons and minors in violation of existing laws and in total disregard for the safety of the citizens who drive on our highways. In 1994, 16,589 people were killed and an estimated 950,000 were injured in drunk driving crashes in this country. Punitive damages have historically been allowed against defendants as a means of ''protecting the public'' and ''deterring dangerous conduct.'' I know of no more appropriate case for the imposition of punitive damages without limitations than drunk driving and dram shop cases. The limitations on recovery of non-economic damages and joint and several liability are additional roadblocks this legislation puts in front of drunk driving crash victims.

For the reasons outlined above, MADD urges you to oppose the H.R. 956 Conference Report. The defects and unintended consequences of this bill can be corrected and we can avoid this rush to judgment which will have a devastating impact on drunk driving crash victims.

Sincerely,

KATHERINE PRESCOTT,
National President.

Mr. HOLLINGS. Mr. President, I yield 10 minutes to the distinguished Senator from Hawaii.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I thank my colleague for this opportunity to rise in opposition to the conference report to H.R. 965, the Commonsense Product Liability Legal Reform Act of 1996.

Before I lay out my reasons for objecting to this conference report, I would like to express my dismay that while appointed as a conferee, I was never invited to participate in the conference. I am very disappointed that the legislative process has deteriorated to this level where diverse views are no longer welcome.

A critical analysis of the conference report to H.R. 965 reveals that the balance tips in favor of product producers at the expense of injured women, children, retires, and the poor.

This measure provides a series of limitations on the ability of victims to recover from the manufacturers of defective products, while it expressly exempts the big businesses who support this bill from those requirements.

For example, if company A purchases a piece of factory equipment from company B, and that piece of equipment is defective and explodes, company A can sue company B for all of its lost profits caused by the disruption of company A's business. On the other hand, the family of the poor worker who is operating the machine at the time it exploded must face the limitations in the bill to recover. Further, if the piece of machinery is 15 years old or older, the worker or his family cannot recover at all while the business faces no such limitation.

The punitive damage limitation in this bill causes me tremendous concern. I find it ironic that in the punitive damage section of the bill, it clearly indicates that punitive damages may only be awarded in the most serious cases. Yet later in that same section it provides that the amount of damages that can be recovered for these most serious cases is limited to the greater of 2 times the economic and noneconomic damages of $250,000. That same section further limits the ability to recover damages by creating a special rule protecting individuals of limited net worth and business or entities with a small number of employees. The construction of this section is facially inconsistent with its intent.

I would also like to debunk the myth that punitive damage awards threaten the viability of many business. The evidence indicates otherwise. Punitive damages are rarely awarded in product liability cases. In ''Demystifying the Functions of Punitive Damages in Products Liability: An Empirical Study of a Quarter Century of Verdicts'' (1991), author Michael Rustad concludes that consumer products are responsible for an estimated 29,000 deaths and 30 million injuries each year. Between 1965 and 1990, punitive damages were awarded in only 353 product liability cases—91 of which involved asbestos claims. In addition, he states that approximately 25 percent of these awards were reversed or remanded upon appeal. It is apparent that punitive damage awards do not threaten the viability of businesses.

In addition, this measure discriminates against women, children, and retirees. Women are most likely to be victims of such dangerous products as Dalkon shields, Copper-7 intrauterine devices, high estrogen birth control pills, super-absorbent tampons and silicone gel breast implants. These products all were justly held liable for punitive damage awards and were removed from the market. Had this bill been in effect, punitive damage awards in these cases would have been severely limited and the impetus for these companies to remove these dangerous products from the market may not have been as strong.

H.R. 956 also makes noneconomic damages more difficult to recover. Again, women, children and the poor are disproportionately impacted. It fundamentally alters the traditional concept of joint and several liability by eliminating joint liability. H.R. 956 places the harm caused by defective breast implants, or a women's loss of her ability to bear children, or the disabling of a child, in a secondary position to that of the lost salary of a corporate executive.

The corporate executive who misses work because of an injury caused by a product is unfettered in his ability to recover millions because he can easily establish his economic damages. However, if a young woman loses her ability to ever become a mother because of a defective contraceptive device, she is made to endure additional difficulties to recover compensation and, under the bill, faces the risk of not being able to collect her damages at all since these are noneconomic. This is inherently unfair.

On a very personal note, if I may, Mr. President, thank God that provisions of this law were not part of the American military laws at the time I had the privilege of serving this country in uniform. On May 30, 1947, I was retired, not as a general, not as a colonel, but as a small captain. I was awarded at that time the sum of $175 a month for the loss of my arm. I would like to believe that my arm is worth much more than that. But Uncle Sam did not forget us. That amounted to $2,100 per year. Today, Uncle Sam, understanding the rising cost of living, is now awarding me $19,140 a year tax free.

In addition to that, Uncle Sam sees to it that if I desire, I can receive medical services for the rest of my life. The same thing for my spouse. I have received free education as a result, receiving my law degree. If this provision was in effect at that time, I would end up receiving $175 a month, if I am lucky, for the rest of my life. In other words, Mr. President, Uncle Sam has paid me in damages, and never once did they ask me, is this the most serious of cases? They did not ask me about strict liability. It made no difference whether I fell off a jeep or was struck by a shell. I received in excess of

$383,000. I think the least that can be done is to do the same for fellow citizens.

The PRESIDING OFFICER (Mr. GORTON). The Senator from Tennessee.

Mr. FRIST. Mr. President, I yield myself 5 minutes.

Mr. President, I rise today to speak in support of the Commonsense Product Liability Legal Reform Act of 1996. This piece of legislation has been crafted carefully. It is tempered. It is moderate. It is bipartisan.

We now live in the most litigious country on Earth, and we are paying a huge price as a result. Year after year, companies are forced to lay off workers or shut down entirely because of the staggering cost of product liability insurance or because of the threat of outrageous damage awards that in many cases bear no relation whatever to the underlying claims. This bill will help stem that tide. It will help preserve jobs, particularly manufacturing jobs, and it will help create jobs.

At a time in our country when there is so much focus on worker unrest, so much focus on the loss of good manufacturing jobs, when there is so much talk about finding ways to stimulate the economy, this is an easy call. It is a bipartisan bill. It is supported by 90 percent of the American public. We all know that the only real group that opposes it is a small band of plaintiff's attorneys who have become wealthy at the expense of the public at large. It is the trial lawyers and a few special interest groups that are preventing this bill from becoming law.

Mr. President, critics of the House-Senate compromise are concerned about the violation of States rights. This is one area where a federalism argument simply does not hold water. The Framers of the Constitution valued local decisionmaking and they wanted to avoid an overly centralized Federal Government. However, one important exception they recognized was the need to have Federal control over interstate commerce and trade.

Alexander Hamilton, in Federalist No. 11, wrote about his concerns that diverse and conflicting State regulations would be an impediment to American merchants. Today, the abuses in our product liability system have reached the point where they are, indeed, a major impediment to interstate commerce. The Commerce Department had reported that over 70 percent of the goods manufactured in a particular State are shipped out of that State and sold. Moreover, the National Governors' Association, the obvious protector of States rights, has adopted three resolutions calling on Congress to enact a uniform Federal product liability law, most recently in January of 1995.

Opponents of this legislation have also argued the so-called hard cap on punitive damages. But there is no hard cap on punitive damages. The bill permits punitive damages to be awarded against large businesses up to the greater of $250,000 or two times the claimant's compensatory damages. It is critical to note that it is two times compensatory damages, not just economic damages. Two times compensatory damages will still permit huge punitive damages awards in almost all product liability cases where such punitive damages are appropriate.

The damage awards in this country will still be astronomically higher than in any other industrialized nation, but at least there will be some limits that businesses can hang their hats on. If that were not enough, the trial judge is given the discretion to award even more if he or she thinks it is appropriate. This is not a hard cap. All it does is inject an element of predictability into our legal system.

If you asked most citizens in this country whether or not they think it is fair to cut off lawsuits 15 years after a product was manufactured, most would agree that is eminently reasonable. And even this modest limit does not apply in cases involving motor vehicles, vessels, aircraft, passenger trains, or in any case involving toxic harm.

At the end of the day, when you finish sifting through the opponents' concerns with this bill, it is clear that the trial lawyers are exercising an inordinate amount of political muscle. Their opposition to this bill is clearly in their own interest. But it is bad politics, and it is terrible policy.

American workers and American businesses need this bill. Industry trade associations report that today 30 percent of the price of a step ladder, 33 percent of the price of a general aviation aircraft, 95 percent of the price of a childhood vaccine are all due to costs of product liability.

I urge my colleagues to support this bill, and I urge the President to rethink his position.

I yield the floor.

Mr. HOLLINGS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 9 minutes, 22 seconds.

Mr. HOLLINGS. I yield 7 minutes, 22 seconds to the distinguished Senator from California.

Mrs. FEINSTEIN. Mr. President, I supported the Senate-passed product liability bill, and I am very proud of that. I think the findings in the conference report very clearly state why there needs to be a product liability bill, not the least of which is some uniformity all the way across the broad consumer market, known as the United States of America. While I supported the Senate-passed bill, the conference report, I believe, raises some new questions, points of controversy that, since I am not a lawyer, I cannot resolve. I ask one party and they say one thing; I ask another party and they say another. This may mean clarification is needed. It may mean that substantive changes need to be made. But surely, it means, I believe, that we should send this bill back to conference.

I want, very briefly, in the time afforded me, to make five points. The first is the section, or the move of the section, on negligent entrustment. Negligent entrustment, as it was presented in the Senate bill, applied to the entire bill, and now, in this bill, it has been placed in a section on ''Liability Rules Applicable to Product Sellers, Renters, and Lessors.'' This move, I am told, also then places a cap on punitive damages in negligent entrustment actions, and subjects them to the limitations on joint and several liability.

This is a problem to me because, in the event of automobiles and drunk drivers, guns sold or given to people who misuse them, this could have an impact on the kinds and types of suits and the amount of judgments derived therefrom. Therefore, my belief is that this entire issue of negligent entrustment needs to be clarified so that we are certain that the exception applies throughout the entire bill.

Second the statute of repose. California has no statute of repose. The proposed statute of repose in the Senate bill was 20 years, and now it is down to 15 years in the conference report. The bill provides, however, that any State with a statute of repose that is under 15 years prevails. California, with no statute of repose, cannot have a higher standard and maintain no statute of repose. But a State with a lesser standard of, let us say, a 10-year statute of repose, can prevail. To me, this is unsatisfactory. For my vote, I would have a very difficult time having a statute of repose in a bill which is less than 20 years.

I believe it sends a wrong signal to U.S. manufacturers. I believe it sends a message to manufacturers all across this great land that they can, in fact, manufacture less durable and perhaps even less safe products, because their time for liability is cut dramatically, certainly from no statute of repose to a 15-year statute of repose. This is a dramatic change in the bill.

The third point is the definition of durable goods. Durable goods are subject to the statute of repose. In the definition on page 4 of the conference report, section 101, subsection 7, one comma has been deleted and one has been added. I must say that what could be just grammatical has caused a maelstrom of interpretation and misinterpretation. And I, frankly, do not know who to believe.

This may be a drafting error, or it may be an intentional change in meaning. But many people point out to me that this change of a comma could change the definition of durable goods.

The fourth point I would like to make has to do with the additur provision, and this relates to punitive damages. I believe it needs further clarification. As I understand the additur provision in this conference bill, it provides that if a State has a cap on punitive damages and does not authorize an additur, then a judge is unlikely to have the authority to award punitive damages above the State cap. I believe this needs to be cleared up by the conference committee.

My fifth point has to do with biomaterials. I come from a State with many responsible companies who are very concerned about the possibility of losing their supplies of raw materials. They need this legislation because they produce lifesaving devices, whether they be pacemakers, or heart starters. I was visited by a very young woman who had a condition in which her heart periodically would just stop, and she had an implanted device that would restart her heart. Her heart would sometimes stop when she was asleep. The people that made some of the materials that went into this device essentially would not provide it absent some release from liability.

But, as presently drafted, biomaterials suppliers—including suppliers of component parts—can be liable only if they fail to meet their contract specifications, or if they fail to properly register their materials with the FDA.

First, I think we need a better definition of what is a ''component part'' in the bill to ensure that this does not sweep too broadly, and to ensure that this language would not allow certain manufacturers of devices to escape liability. I believe it is also very important that raw materials suppliers who know that their products pose a potential hazard and fail to disclose such harm should be held liable for knowing behavior.

I thank the Chair.

Mr. PRESSLER. Mr. President, this should be a great day. It should be a great day for small business. It should be a great day for employees of those businesses. It should be a great day for consumers. It should be a great day for those unfortunate enough to be injured by defective products.

As chairman of the Committee on Commerce, Science, and Transportation I am extremely pleased and proud to see the Senate take up consideration of the conference report to H.R. 965, the Commonsense Product Liability Legal Reform Act of 1996. This is historic. Never in almost two decades of work have we gotten this far. I am deeply saddened, however, by the President's announced intention to veto this important legislation.

I am also quite puzzled. You see, as Governor of Arkansas, Bill Clinton in August 1991, sat on the committee that drafted and unanimously approved the National Governors Association's [NGA] first resolution supporting product liability reform. Governor Clinton also went on record in support of the second resolution favoring product liability reform passed by the NGA.

Mr. President, America is plagued by frivolous lawsuits. Every day, our economy is victimized by ridiculous damage awards, both real and threatened. This conference agreement represents a substantial reform of the legal system that allows this abuse. It is tragic some have allowed this effort to formulate meaningful policy to be overtaken by political posturing. It is election year politics at its worst. The sad thing is the posturing is being done for the benefit of certain special interests. Tragically, if the special interests win, the American people lose.

BRIEF HISTORY OF THE STRUGGLE FOR REFORM

Mr. President, over the past 15 years the Commerce Committee has held 23 days of hearings on product liability reform. In this Congress, the companion measure to H.R. 965—S. 565—was reported by the Commerce Committee on April 6, 1995. The bill marked the seventh reform bill reported by the Commerce Committee since 1981. I have been involved deeply in the product liability reform movement since that time. I was an original cosponsor of the Risk Retention Act that became law in 1981. This legislation provided for liability insurance pools—so-called risk retention groups—for businesses. I chaired Small Business Committee field hearings in Sioux Falls and Rapid City, SD, on this issue in 1985.

Over the years, I sponsored numerous product liability reform bills with some of the great leaders in this area including Senators Kasten and Danforth. These gentlemen are no longer Members of this body, but this legislation is their legacy. I want to commend them for their excellent work. They truly pioneered much of this effort. It has brought us to this point. We would not have gotten this far without them.

Let me also take a moment to commend two of our current colleagues—Senators GORTON and ROCKEFELLER—for their hard work and dedication to this process. They have given years of labor to a cause in which they both are committed and have done so in an extraordinarily bipartisan fashion. I also know Jeanne Bumpus and Trent Erickson of Senator GORTON's staff and Tamera Stanton, Jim Gottlieb, and Ellen Doneski with Senator ROCKEFELLER have given much of the past year, and in some cases more time than that, to this effort. On my own staff, I want to commend Tom Hohenthaner, deputy chief of staff for the Commerce Committee, who has worked this issue for years and in this Congress managed what has often been a tortuous process. I also thank Lance Bultena, counsel for the Consumer Subcommittee, for his dedicated efforts.

Let me next pay tribute to House Judiciary Committee Chairman HENRY HYDE who also served as chairman ofthe conference. HENRY and I were in the same freshman class in the House back in 1974, and I have been honored to serve with him over the years. At the first meeting of the conference, I likened Chairman HYDE to a beacon shining brightly in a field. I would say that his light never wavered in this process and without his fine leadership we would not be here today. Chairman HYDE was assisted in this process by Alan Coffee, general counsel and staff director for the House Judiciary Committee and a savvy veteran of many legislative battles over the years. Diana Schacht and Peter Levinson, both counsels to the Judiciary Committee, and both consummate professionals, also put in a great many hours in this process. Finally, the House Commerce Committee shared jurisdiction over this measure, and I think and commend Chairman BLILEY for his leadership. Robert Gordon, counsel to the House Commerce Committee, proved a dedicated and significant member of the team of staff—all of whom worked so hard on this conference agreement and legislation that preceded it. Again, I thank them all.

I know many—including many of our colleagues in the other body—would have liked to see much broader reform. Indeed, many in this body wanted more. So why this fairly narrow and moderate approach? The short answer is: expansion was not possible. We tried. Last April 24 the Senate began consideration of the legislation. Over the next 2½ weeks—and some 90 hours of debate—the Senate considered and voted on over 30 amendments.

Ultimately, the Senate passed a bill very similar to the legislation reported by the Commerce Committee. In the following months, we negotiated with our colleagues in the other body who had passed a much broader bill. Again, activity centered around the possibility of expanding the scope of the Senate bill. Mr. President, the bill that has emerged from conference is—virtually—the Senate-passed bill. It is extraordinarily close to the legislation we sent out of the Commerce Committee last spring. The Senate should pass it again.

The conference agreement is narrower than many of us would like. However, while limited in scope, it is an excellent piece of legislation. This bill is fair, balanced, and well reasoned. Indeed, it is a moderate package of reforms. It also keeps faith with what we set out to accomplish—it provides substantial reform to a legal system that is broken.

HIGHLIGHTS OF THE CONFERENCE AGREEMENT

Mr. President, let me highlight some of those much-needed reforms:

Punitive damages. The conference agreement provides that punitive damages may be awarded in a product liability case if a plaintiff proves, by ''clear and convincing evidence,'' that his or her harm was caused by the defendant's ''conscious, flagrant indifference to the safety of others.'' This language is to make clear that punitive damages are only to be awarded in the most serious of cases.

Mr. President, a fact all too often overlooked in this debate is that punitive damages are not intended as compensation for injured parties. They are punishment. Punishment of defendants found to have injured others in a conscious manner. They are used much as fines in the criminal system. However, currently there are two big differences. First, unlike the criminal system, there are virtually no standards for when punitive damages may be awarded. Second, when awarded, there are no

clear guidelines as to their amount. This agreement addresses both problems. It brings uniformity to the punishment and deterrence phase of product liability law by providing a meaningful standard for when punitives are to be imposed and at what level.

Under the conference agreement—except in cases against small businesses—punitive damages in a product liability case may be awarded up to two times compensatory damages or $250,000, whichever is greater. An additur provision permits the judge to award punitive damages beyond this limit if certain factors are met, but the judge cannot exceed the amount of the jury's original award.

When the defendant is a small business—or similar entity—with less than 25 full-time employees, punitive damages may not exceed $250,000 or two times compensatory damages, whichever is less. The additur provision does not apply to small businesses.

Finally, either party can request the trail be conducted in two phases, one dealing with compensatory damages and the other dealing with punitive damages. The same jury is used in both phases.

Joint and several liability. Joint liability is abolished for noneconomic damages—such as pain and suffering—in product liability cases. Joint liability is a concept allowing one defendant to be held liable for all damages even though others also were responsible for the damage caused. What are the consequences? Too often, it means one person is held responsible for the conduct of another. True wrongdoers are not held liable. Indeed, consumers ultimately pay these claims—either through higher prices, loss of service, or higher insurance premiums.

Therefore, as to noneconomic damages, under this bill defendants would be liable only in direct proportion to their responsibility for the claimant's harm—so-called several liability. This section goes a long way toward correcting one of the most often abused aspects of our current civil legal system. It would ensure defendants would be held liable based on their degree of fault or responsibility, not the depth of their pockets.

Mr. President, this is an issue on which I have worked for many years. In 1986, I fought to strengthen proposed product liability legislation, S. 2760, with an amendment regarding joint and several liability. My amendment—which passed the Commerce Committee—also abrogated joint and several liability for noneconomic damages in product liability cases. I am proud the spirit of my amendment of a decade ago lives on in this legislation.

Alcohol and drugs defense. Under this bill, the defendant in a product liability case has an absolute defense if the plaintiff was under the influence of intoxicating alcohol, illegal drugs, or misuse of a prescription drug and as a result of this influence was more than 50 percent responsible for his or her own injuries.

The philosophy behind such a provision is simple. A society working hard to discourage alcohol and drug abuse must not sanction such abuse by allowing individuals to collect damages when their disregard of a vital societal norm is the primary cause of an accident.

Misuse and alteration defense. Under this legislation, a defendant's liability in a product liability case is reduced to the extent a claimant's harm is due to the misuse or alternation of a product. Why should the manufacturer of a machine pay for injuries I sustain because I remove safety guards put on in the factory?

Statute of limitations. The statute of limitations for product liability claims is established as 2 years from when the claimant discovered or reasonably should have discovered both the harm and its cause. A plaintiff may not file suit after this time.

This is an excellent example of how this legislation would benefit victims. Under current law, some States establish the time of injury as the point at which the time for bringing a claim begins to run. Often this is not a problem. However, in cases in which the harm has a latency period or manifests itself only after repeated exposure to the product, the claimant may not know immediately if he or she has been harmed or the cause of the harm.

This bill thus would reduce the number of victims who, having otherwise meritorious claims, are denied justice solely on the basis of the statute of limitations in the State in which they file their claim.

Statute of repose. A statute of repose of 15 years is established for certain durable goods. A durable good is defined by the bill as one having either: a normal life expectancy of 3 or more years, or a normal life expectancy that can be depreciated under applicable IRS regulations; and is: first, used in trade or business; second, held for the production of income; or third, sold or donated to a governmental or private entity for the production of goods, training, demonstration or any similar purpose.

No product liability suit may be filed for injuries related to the use of a durable good 15 years after its delivery unless the defendant made an express warranty in writing as to the safety of the specified product involved, and the warranty was longer than 15 years. In such a case, the statute of repose does not apply until that warranty period is complete. The statute of repose section does not apply in cases involving toxic harm.

States would be free to impose shorter statutes of repose and to cover more than just durable goods. For instance, the House-passed version of this bill would have applied the statute of repose to all goods.

The need for a Federal statute of repose was presented well by a fellow South Dakotan, Art Kroetch, chairman of Scotchman Industries, Inc., a small manufacturer of machine tools located in Philip, SD. Last year during hearings, Art told the Commerce Committee how vital product liability reform is to the ability of American manufacturers to compete in the global marketplace.

Art told me that under the current patchwork of liability laws, his company pays twice as much for product liability insurance as it does for research and development. Mr. President, the system is broken.

Workers compensation subrogation standards. This provision preserves an employer's right to recover workers compensation benefits from a manufacturer whose product harmed a worker—for instance, the manufacturer of a machine used in a business which injures an employee—unless the manufacturer can prove, by clear and convincing evidence, that the employer caused the injury—for example by maintaining an unsafe work environment or taking safety guards off the machine.

This section of the bill makes no changes to the amount of damages an injured worker can recover in such cases. It merely provides the insurer or employer will not be able to recover workers compensation benefits it paid to an injured employee if the employer or a coemployee is at fault.

Biomaterials Access assurance. In certain actions in which a plaintiff alleges harm from a medical implant, title II of the legislation allows biomaterial suppliers to be dismissed from the action without extensive discovery or other legal costs. The term ''biomaterial'' refers to the raw materials—such as plastic tubing or copper wiring—used as part of an implantable medical device.

The legislation does not affect the ability of plaintiffs to sue manufacturers or sellers of medical implants. However, it releases biomaterials suppliers from lawsuits if the generic raw material used in the medical device met contract specifications, and if the biomaterials supplier cannot be classified as either a manufacturer or seller of the medical implant.

During our hearings last year, the Commerce Committee heard compelling testimony that without such changes in the law, the millions of Americans who depend upon a variety of implantable medical devices will be at grave risk. Suppliers of biomaterials have found the risks and costs of responding to litigation related to medical implants far exceeds potential revenues from the sale of the components they manufacture.

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