the fourth Circuit in 3 years, and confirmed the first African American appointed to that court in American history, even though that nominee and 6 other nominees of President Clinton to the Fourth Circuit, for a total of 7 in that circuit alone, never received hearings during Republican control of the Senate. Today, another of President Bush's nominees was confirmed to that circuit. These are just a few of the firsts we have achieved in just 16 months.

There were many other firsts in courts across the Nation. For example, we held hearings for and confirmed the first judges appointed to the Federal courts in the Western District of Pennsylvania in almost 7 years, even though several of President Clinton's nominees to the courts in that district were blocked by Republicans. They allowed none of President Clinton's nominees to be confirmed to that court during the entire period of Republican control. They also blocked the confirmation of a Pennsylvania nominee to the Third Circuit, among others. Democrats confirmed the first nominees to the Third Circuit and Ninth Circuit in 2 years, even though the last nominees to those seats never received hearings during Republican control of the Senate.

We have had hearings for a number of controversial judicial nominees and brought many of them to votes this year just as I said we would when I spoke to the Senate at the beginning of the year. Of course, it would have been irresponsible to ignore the number of vacancies we inherited and concentrate solely on the most controversial, time consuming nominees to the detriment of our Federal courts. The President has made a number of divisive choices for lifetime seats on the courts and they take time to bring to a hearing and a vote. None of his nominees, however, have waited as long for a hearing or a vote as some of President Clinton's judicial nominees, such as Judge Richard Paez who waited 1,500 days to be confirmed and 1,237 days to get a final vote by the Republican-controlled Senate Judiciary Committee or Judge Helene White whose nomination languished for more than 1,500 without ever getting a hearing or a committee vote.

As frustrated as Democrats were with the lengthy delays and obstruction of scores of judicial nominees in the prior 6½ years of Republican control, we never attacked the chairman of the committee in the manner as was done in recent weeks. Similarly, as disappointed as Democrats were with the refusal of Chairman HATCH to include Allen Snyder, Bonnie Campbell, Clarence Sundram, Fred Woocher, and other nominees on an agenda for a vote by the committee following their hearings, we never resorted to the tactics and tone used by Republican members of this committee in committee statements, in hallway discussions, in press conferences, or in Senate floor statements. As frustrated and disappointed as we were that the Republican majority refused to proceed with hearings or votes on scores of judicial nominees, we never sought to override Senator HATCH's judgments and authority as chairman of the committee.

The President and partisan Republicans have spared no efforts in making judicial nominations a political issue, without acknowledging the progress made in these past months when 102 of this President's judicial choices have been given committee votes. One indication of the fairness with which we have proceeded is my willingness to proceed on nominations that I do not support. We have perhaps moved too quickly on some, relaxing the standards for personal behavior and lifestyle for Republican nominees, being more expeditious and generous than Republicans were to our nominees, and trying to take some of them at their word that they will follow the law and the ethical rules for judges.

For example, as I noted on October 2, 2002, we confirmed a personal friend of the President's, Ron Clark, to an emergency vacancy in the United States District Court for the Eastern District of Texas. Clark's commission was not signed and issued promptly. We learned later that Clark was quoted as saying that he asked the White House, and the White House agreed, to delay signing his commission while he ran as a Republican for reelection to a seat in the Texas legislature so that he could help Republicans keep a majority in the Texas State House until the end of the session in mid-2003. The White House was apparently complicit in these unethical partisan actions by a person confirmed to a lifetime appointment to the Federal bench. Clark, who was confirmed to a seat on the Federal district court in Texas, was actively campaigning for election despite his confirmation.

These actions bring discredit to the court to which Judge Clark was nominated by the President and confirmed by the Senate, and calls into question Judge Clark's ability to put aside his partisan roots and be an impartial adjudicator of cases. Even in his answers under oath to this committee, he swore that if he were ''confirmed'' he would follow the ethnical rules. Canon 1 of the Code of Conduct for United States Judges explicitly provides that the code applies to ''judges and nominees for judicial office'' and Canon 7 provides quite clearly that partisan political activity is contrary to ethical rules. In his answers to me, the chairman of this committee, Clark promised ''[s]hould I be confirmed as a judge, my role will be different than that of a legislator.'' As the Commentary to the Code of Conduct for United States Judges, (which applies to judges and nominees), states, ''Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges [which] depend in turn upon their acting without fear or favor. Although judges should be independent, they should comply with the law as well as the provisions of this Code.'' The code sets standards intended to help ensure that the public has access to Federal courts staffed with judges who not only appear to be fair but are actually so.

Yet he was flouting the standards set by the code and the promises he made to me personally and to the Senate Judiciary Committee and, by proxy, to the Senate as a whole. That the White House was prepared to go along with these shenanigans reveals quite clearly the political way they approach judicial nominations. Only after the New York Times reported these unseemly actions, did the President sign Judge Clark's appointment papers. As Judge Clark hoped, he ''won'' the election and so the Republican Governor of Texas may be able to name a Republican to replace him in the state legislature.

With a White House that is politicizing the Federal courts and making so many divisive nominations, especially to the circuit courts, to appease the far-right wing of the Republican party, it would be irresponsible for us to turn a blind eye to this and simply rubber-stamp such appointees to lifetime seats. Advice and consent does not mean giving the President carte blanche to pack the courts with ideologues from the right or left. The system of checks and balances in our Constitution does not give the power to make lifetime appointments to one person alone to pack the courts with judges whose views are outside of the mainstream and whose decisions would further divide our nation.

I have worked hard to bring to a vote the overwhelming majority of this President's judicial nominees, but we cannot afford to make errors in these lifetime appointments out of haste or sentimental considerations, however well intentioned. To help smooth the confirmation process, I have gone out of my way to encourage the White House to work in a bipartisan way with the Senate, like past Presidents, but, in all too many instances, they have chosen to bypass bipartisanship cooperation in favor of partisanship and a campaign issue. Arbitrary deadlines will not ensure that nominees will be fairminded judges who are not activists or ideologues. The American people have a right to expect the Federal courts to be fair forums and not bastions of favoritism on the right or the left. These are the only lifetime appointments in our whole government, and they matter a great deal to our future. I will continue to work hard to ensure the independence of our Federal judiciary.

TERRORISM RISK INSURANCE ACT OF 2002—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate the conference report to accompany H.R. 3210.

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. 3210) to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, signed by a majority of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The report is printed in the House proceedings of the RECORD of November 13, 2002.)

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the conference report to accompany H.R. 3210, the Terrorism Risk Protection Act.

Christopher Dodd, Zell Miller, Joseph Lieberman, Harry Reid, Jack Reed, Jon Corzine, Debbie Stabenow, Hillary Rodham Clinton, Charles Schumer, Maria Cantwell, Paul Sarbanes, Byron L. Dorgan, Tom Carper, Jeff Bingaman, Tom Daschle, Barbara Boxer.

The PRESIDING OFFICER. There are 2 minutes of debate evenly divided before the vote. Who yields time?

Mr. SARBANES. Mr. President, I urge Members to vote in favor of invoking cloture. I am not quite sure why we are doing the cloture vote, but in any event, so we can get to the legislation and pass it—this is worthy legislation—I hope the Senate will first impose cloture, and then, under the unanimous consent agreement, we would go to a final vote on the legislation.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, much good work has gone into this bill. I am going to vote against cloture. I don't think the industry retention figures are high enough. I think the taxpayer is too exposed. I am afraid the secondary market will not develop under these circumstances, and, despite all our efforts, the bill still retains the provision that will produce punitive damage judgments against victims of terrorism. In my mind, that is licensing piracy on hospital ships and should not be allowed.

The PRESIDING OFFICER. Is all time yielded back?

All time is yielded back.

By unanimous consent, the mandatory quorum call under the rule is waived.

The question is, Is it the sense of the Senate that debate on the conference report accompanying H.R. 3210, the Terrorism Risk Protection Act, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Alaska (Mr. MURKOWSKI), and the Senator from Arkansas (Mr. HUTCHINSON) are necessarily absent.

The yeas and nays resulted—yeas 85, nays 12, as follows:

[Rollcall Vote No. 251 Leg.]

YEAS—85

Akaka	Dayton	Lott
Allard	DeWine	Lugar
Allen	Dodd	McCain
Barkley	Domenici	McConnell
Baucus	Dorgan	Mikulski
Bayh	Durbin	Miller
Bennett	Edwards	Murray
Biden	Feingold	Nelson (FL)
Bingaman	Feinstein	Nelson (NE)
Bond	Fitzgerald	Reed
Boxer	Frist	Reid
Breaux	Graham	Roberts
Brownback	Gregg	Rockefeller
Bunning	Hagel	Sarbanes
Burns	Harkin	Schumer
Byrd	Hatch	Smith (NH)
Campbell	Hollings	Smith (OR)
Cantwell	Inhofe	Snowe
Carnahan	Inouye	Specter
Carper	Jeffords	Stabenow
Chafee	Johnson	Stevens
Cleland	Kennedy	Thompson
Clinton	Kerry	Thurmond
Cochran	Kohl	Torricelli
Collins	Landrieu	Voinovich
Conrad	Leahy	Warner
Corzine	Levin	Wyden
Crapo	Lieberman	
Daschle	Lincoln	

NAYS—12

Craig	Grassley	Santorum
Ensign	Hutchison	Sessions
Enzi	Kyl	Shelby
Gramm	Nickles	Thomas

NOT VOTING—3

Helms	Hutchinson	Murkowski

The PRESIDING OFFICER. On this vote, the ayes are 85, the nays are 12. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. HATCH. Mr. President, today I rise to speak on final passage of H.R. 3210, the conference report to the Terrorism Risk Insurance Act of 2002. Most of us agree that something needs to be done in this area. This legislation is important to our economy and the many jobs and construction projects that have been in limbo due to the uncertainty following the tragic events of September 11th. My constituents have come to me on multiple occasions, imploring that the Senate act on this issue. They are genuinely concerned about the negative impact lack of coverage has had on their businesses and their employees. Without insurance, our economic growth is in jeopardy, businesses will fail and jobs will be lost. For that reason, I will support final passage.

However, I am concerned that we have not addressed the issue in a prudent and responsible manner that provides the appropriate stability to our economy without exposing our taxpayers to an unreasonable financial burden. In this legislation, we have failed to provide elements that are necessary to the businesses that are themselves the victims of the terrorist attacks, those very same businesses that provide the thousands of jobs in this country that we are seeking to preserve. Moreover, I have concerns about implementing a program such as this without ensuring that the hardworking taxpayers in this county are not forced to pick up the tab for the overzealous and unrestrained trial bar. With the type of litigation that would likely result from massive losses, even just from one attack, it defies common sense that some would oppose implementing principles of litigation management to ensure that all victims get treated fairly and jury awards, based more on emotion rather than actual legal culpability, do not dry up the resources of defendant businesses, which in turn hurts victims, employees and taxpayers.

In a letter dated June 10, 2000, from the Treasury Department and signed by not only the Secretary of the Treasury, but the Director of the Office of Management and Budget, the Director of the National Economic Council and the Director of Economic Advisers really underscores the serious ramifications to our economy that have resulted from a lack of coverage for terrorist acts and supports Congressional action in this area. But it also emphasizes that we must do so in a responsible manner.

One important issue for the availability of terrorism insurance is the risk of unfair or excessive litigation against American companies following an attack. Many for-profit and charitable companies have been unable to obtain affordable and adequate insurance, in part because of the risk that they will be unfairly sued for the acts of international terrorists . . . It makes *little economic sense* to pass a terrorism insurance bill that leaves our economy exposed to such *inappropriate and needless legal uncertainty*. [emphasis added]

In seeking to provide stability to our economy we must not act irresponsibly. The conference report on H.R. 3210, while providing a necessary backstop to our economy, includes some weaknesses that concern me. While I believe this measure is necessary and should be enacted as soon as possible, I sincerely hope this body will address my concerns in the next Congress.

Mr. GRASSLEY. Mr. President, I rise to express my concern about the conference report to H.R. 3210, the Terrorism Risk Insurance Act. When the Senate first considered this bill in June, I expressed the hope that Congress would send the President a bill that was fair and balanced with respect to basic liability protections for all victims of terrorism. However, I believe that the conference report before us fails to provide reasonable restrictions on lawsuit liability, and instead exposes the American taxpayer to potentially excessive costs of unmitigated litigation as a result of terrorist attacks beyond anyone's control. Consequently, I am reluctant to vote for final passage of this conference report.

I am glad that the final version of the terrorism reinsurance legislation is only a temporary fix. As a general matter, the Government should not be in the business of writing claims.

Some have implied that we wrongly predicted an insurance crisis following the events of September 11, 2001, which was the reason for this temporary backstop. The insurance companies have survived without government support thus far, and banks are still lending where there is uncovered risks. According to the Wall Street Journal, ''the economy has continued to grow, albeit slowly, and some companies have started offering insurance again, albeit at very high premiums.'' The article states that a short-term solution would be nice, but the bill is ''a bonanza for the trial lawyers, an entitlement for insurers.''

Again, I do not believe that this legislation contains adequate liability protections. While some restrictions were negotiated in conference, I don't believe that they go far enough. Basically, American companies that are themselves victims of terrorists acts should not be subject to predatory lawsuits or unfair and excessive punitive damages. If that happens, not only will Americans be the victims of another attack, but the taxpayers will be the victims of trial lawyers who will seek the deepest pocket and rush to the courthouse to sue anyone regardless of fault. There needs to be careful restrictions on lawsuit liability to protect taxpayer funds from being exposed to opportunistic, predatory assaults on the United States Treasury.

In fact, I agree with an editorial in the Washington Post: the other side of the aisle should be ''embarrassed by their efforts to defend trial lawyers at the expense of the American economy.'' Rather, we should be working to enforce the long-standing Federal policies behind the Federal Tort Claims Act: namely, that lawyers should not be making handsome profits when they are paid from the U.S. Treasury. I agree with a statement made by House Judiciary Chairman SENSENBRENNER, that ''especially today, in a time of war, excessive lawyer fees drawn from the U.S. Treasury should not be allowed to result in egregious war profiteering at the expense of victims, jobs and businesses.''

Many say we can come back and revisit these provisions later. I say we get it right the first time we sign it into law.

I ask unanimous consent to print the Wall Street Journal article to which I referred in the RECORD.

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

[From the Wall Street Journal, Nov. 6, 2002]

A TERRIFYING INSURANCE DEAL

A BONANZA FOR THE TRIAL LAWYERS, AN ENTITLEMENT FOR INSURERS

After the elections the 107th Congress is threatening to return to pass some unfinished business, including a compromise on terrorism insurance. Having looked at the details of the insurance deal, we can only hope they'll all stay home.

The two parties have been battling for a year over this bill, especially the extent to which trial lawyers could profit from acts of terror. Republicans and some Democrats want to ban punitive damages against property owners. But Tom Daschle, carrying his usual two oceans of water for the plaintiff's bar, resisted any erosion in the right to sue the owner should a plane crash into his or her building.

And it looks like Mr. Daschle has prevailed. The compromise permits such suits, albeit before a single federal court as opposed to the more accommodating state courts. In other words, the White House appears to have caved, and after months of arguing the opposite now says terror insurance is about ''jobs, not tort reform.''

Well, we're not sure it's still about jobs either. The bill makes insurance companies liable for claims amounting to a certain percentage of their premiums, puts the government on the hook for 90% of losses over that deductible, and allows the government to recover some portion of its payment by levying a surcharge on all policy owners. The best news is that government help sunsets in 2005, or at least that's the promise.

Unfortunately, the bill ignores the crucial problem of risk. Risk-based premiums—which reward the careful and punish the careless—are a superb tool for reducing risk. Consider: There are lots of things property owners can do to reduce the damage from terrorism—retrofitting air-filtration systems to guard against biological agents, redesigning underground parking garages to prevent bomb attacks, fireproofing steel girders to minimize fire damage. And insurance companies can discipline them to take these measures by charging risk-based premiums.

If insurers were required to pay premiums to the government based on the premiums they receive, market incentives to reduce risk would improve markedly. If, on the other hand, terror insurance is essentially free, as it would be under the current bill, insurers have less incentive to charge the full cost of risk; instead they have every incentive to underprice it.

An alternative has been suggested by David Moss, an economist at Harvard Business School: Let the federal government pay 80% of losses from a terrorist attack, as long as insurers also pass along 80% of the premiums they collect. This way, says Mr. Moss, insurers would price risk near or at its full cost, exerting discipline against the careless, and prices would be set in the private market.

We mention Mr. Moss's idea because, despite heavy breathing by the insurance industry, it isn't at all clear that there's an immediate economic need for this legislation. It's true that right after 9/11 the property insurance market seized up. Insurers didn't know how to price for the risk of another attack, and so rent their garments that the economy would collapse without government reinsurance. We were also open to the idea, but it turns out they were wrong. The economy has continued to grow, albeit slowly, and some companies have started offering insurance again, albeit at very high premiums.

We aren't arguing that a federal backstop might not perk up business in the short term, or that some sort of insurance wouldn't be nice to have in place before another attack. But the assertion that billions of dollars of projects have been shelved and 300,000 jobs lost is bogus. Despite efforts to quantify a slowdown, including a survey by the Fed, evidence of suffering is scattered and anecdotal—and mostly confined to trophy properties.

The bigger point here is that any legislation is likely to be permanent, since no entitlement of this size has ever been allowed to ride quietly into the sunset. That argues for doing it right, and waiting until the next Congress if need be. Many Republicans are privately unhappy with the deal the White House has cut with Mr. Daschle. We hope they'll urge President Bush to insist on something better.

Mr. HARKIN. Mr. President, I am very pleased that this conference report includes bipartisan legislation that I authored with my colleague, Senator ALLEN of Virginia, which will make state sponsors of terrorism and their agents literally pay for the dastardly attacks they perpetrate on innocent Americans.

Last June, the Senate approved our amendment to the terrorism insurance bill on an 81 to 3 vote to mandate that at least $3.7 billion in blocked assets of foreign state sponsors of terrorism and their agents, at the current disposal of the U.S. Treasury Department, be used—first and foremost—to compensate American victims of their terrorist attacks. That lop-sided vote made it very clear that most Americans and their elected representatives understand the importance of making the rogue governments who sponsor international terrorism pay literally, instead of blithely dunning the American taxpayer to compensate the victims of their outrageous attacks or doing nothing.

Our global struggle against terrorism must be fought and won on multiple fronts. In so doing, we cannot forget that terrorist attacks are ultimately stories of human tragedy. The young woman from Waverly, IA—Kathryn Koob—seeking to build cross-cultural ties between the Iranian people and the American people only to be held captive for 444 days in the U.S. Embassy in Tehran. The teenage boy from LeClaire, Iowa—Taleb Subh—who was visiting family in Kuwait in 1990, and who was terrorized by Saddam Hussein and Iraqi troops in the early stages of the invasion of Kuwait. The U.S. aid worker from Virginia—Charles Hegna—who was tortured and killed in 1984 by Iranian-backed hijackers in order ''to punish'' the United States. These are only a few of the American families victimized by terrorist attacks abroad I have come to know. There is not a Senator in this body who cannot count additional American victims of state-sponsored terrorism among his or her constituents.

What do we say to these families, the wives, mothers and fathers, sons and daughters? More importantly, what can we do, as legislators and policymakers, to mitigate their suffering and to answer their cries for justice?

Those who sponsor as well as those who commit these inhumane acts must pay a price. That is why I sponsored the Terrorism Victim's Access to Compensation Act, whose key provisions are included in this conference agreement.

In 1996, the Congress passed an important law—the Anti-Terrorism and Effective Death Penalty Act—with bipartisan support and with the support of the U.S. State Department. That statute allows American victims of state-sponsored terrorism to seek redress and pursue justice in our Federal courts. A central purpose of that law is to make the international terrorists and their sponsors pay an immediate price for their attacks on innocent Americans abroad. For the first time starting in 1996, the money of foreign sponsors of terrorism and their agents that is frozen bank accounts in the United States and under the direct control of the U.S. Treasury was to have become available to compensate American victims of state-sponsored terrorism who bring lawsuits in federal court and win judgments on the merits against the perpetrators of such attacks.

The law enacted in 1996 only applies to seven foreign governments officially designated by the U.S. State Department as state sponsors of international terrorism. They are the governments of Iran, Iraq, Libya, Syria, Sudan, North Korea, and Cuba. It is these state sponsors of international terrorism, not the American taxpayer, who must be compelled first and foremost to compensate the American victims of their inhumane attacks.

The U.S. Treasury Department currently and lawfully controls at least $3.7 billion in blocked or frozen assets of these seven state sponsors of terrorism. But some officials of the U.S. Treasury and State Departments who think they know better, until now, have been flaunting the law, ignoring the clear intent of the Congress, and opposing the use of these blocked assets of Saddam Hussein, the ruling mullahs in Iran, and other state sponsors of terrorism to compensate American victims of terrorist attacks. In fact, in the on-going case involving the 53 Americans taken hostage in the U.S. Embassy in Iran in 1979 and held in captivity for 444 days and their families, U.S. Justice Department and State Department attorneys have intervened in federal court to have their lawsuit dismissed in its entirety, thus de facto siding with the Government of Iran.

Incredibly, since 1996 American victims of state-sponsored terrorism have been actively encouraged to seek redress and compensation in our federal courts. These long-suffering American families have complied with all requirements of existing U.S. law and many have actually won court-ordered judgments, only to be denied any compensation and what little justice they seek in a court of law. The opponents of this legislation apparently want American taxpayers to foot the bill for what could amount to hundreds of millions of dollars instead of making the terrorists and their sponsors pay.

With the passage of this new legislation, the Congress is requiring that this misguided policy be abandoned. Holding the blocked assets of state sponsors of terrorism in perpetuity might make sense in the pristine world of high diplomacy, but not in the real world after the September 11 terrorist attacks on America.

First, paying American victims of terrorism from the blocked and frozen assets of these rogue governments and their agents will really punish and impose a heavy cost on those aiding and abetting the terrorists. This tougher U.S. policy will provide a new, powerful disincentive for any foreign government to continue sponsoring terrorist attacks on Americans, while also discouraging any regimes tempted to get into the ugly business of sponsoring future terrorist attacks.

Second, making the state sponsors actually lose billions of dollars will more effectively deter future acts of terrorism than keeping their assets blocked or frozen in perpetuity in pursuit of the delusion that long-standing, undemocratic, brutish governments like those in Iran and Iraq can be moderated.

Third, American victims of state-sponsored terrorism and their families will finally be able to secure some measure of justice and compensation. Public condemnation by the U.S. Government of state-sponsored terrorism only goes so far. This new legislation enables American victims to fight back, to hold the terrorists who are responsible accountable to the rule of law, and to make the perpetrators and their sponsors pay a heavy price.

In his last days in office, former President Clinton signed a law endorsing a policy of paying American victims of terrorism from blocked assets, while simultaneously signing a waiver of the means to make this policy work. The Bush administration has not changed this mistaken policy as yet. That is why Senator ALLEN joined me in pushing this bipartisan legislation to establish two new policy cornerstones for our Nation's struggle against international terrorism. First, the U.S. will first require that compensation be paid from the blocked and frozen assets of the state sponsors of terrorism in cases where American victims of terrorism secure a final judgment in our Federal courts and are awarded compensation. Second, the U.S. Government will provide a level playing field for all American victims of state-sponsored terrorism who are pursuing redress by providing equal access to our federal courts.

American victims of state-sponsored terrorism deserve and want to be compensated for their losses from those who perpetrated the attacks upon them, including our former hostages in Iran and their families. The Congress should clear the way for them to get some satisfaction of court-ordered judgments and, in so doing, help deter future acts of state-sponsored terrorism against innocent Americans.

Mr. KYL. Mr. President, I rise today to express my opposition to the conference report on H.R. 3210, the terrorism insurance bill.

I had hoped that Congress would approve legislation that encouraged building construction, gave business owners limited liability protection in the event of a terrorist attack, and protected taxpayers from exorbitant costs. These goals were all enunciated by President Bush when he pressed Congress to act on this issue after months of delay.

Unfortunately, the legislation in its current form fails to meet any of those objectives.

First, the conference report subjects victims of terrorism to potentially unlimited liability by placing no restrictions on court awards of punitive damages or non-economic damages. This has the potential of encouraging a slew of frivolous lawsuits against business owners whose business may be destroyed in terrorist attacks. Certainly no business that was located in the World Trade Center, for example, should be held at fault for the unforeseeable tragedy that took place on September 11.

As several of the President's economic advisors noted in a June 10, 2002 letter to Senate Minority Leader LOTT, ''the victims of terrorism should not have to pay punitive damages. Punitive damages are designed to punish criminal or near-criminal wrongdoing.'' The letter goes on to say ''the availability of punitive damages in terrorism cases would result in inequitable relief for injured parties, threaten bankruptcies for American companies and a loss of jobs for American workers.''

I strongly agree with that position and am troubled that the conferees did not take these concerns into account before bringing this legislation to the Senate floor.

Additionally, I am concerned that this legislation leaves taxpayers open to liability for terrorist attacks. One of the original goals of this bill was to allow the Secretary of the Treasury to sign off on out-of-court settlements to protect the taxpayers from exorbitant costs. Without such a provision, taxpayers, who are liable for as much as 90 percent of property and casualty costs after a terrorist attack, could be gouged by trial attorneys. That is primarily because insurers, with only a ten percent stake in the outcome of litigation, will favor faster, rather than fairer, settlements—at the taxpayers' expense.

Of additional concern, the low per-company deductibles will impede the development of a private reinsurance market and will increase the likelihood that this temporary federal program becomes permanent. Since the Federal Government limits each company's liability, rather than that of the entire industry, insurance companies have less incentive to spread their risk.

I am also troubled by certain provisions in Title II of this legislation covering victim compensation through

seized assets from terrorists and terrorist-sponsoring states. As the conference report stands now, this provision would create a race to the courthouse benefiting a small group of Americans over a far larger group of victims just as deserving of compensation.

Economic sanctions against terrorist states have kept the economic activity of those states to a minimum. Yet this limited pool of frozen assets and diplomatic property would be exhausted quickly as large, and often uncontested, compensatory and punitive damage awards are satisfied, leaving most victims with nothing. For example, the special provisions for terrorism victims of Iran expands the number of judgment holders eligible for payment under the 2000 Act (to approximately eight), but metes out all of the approximately $30 million remaining in the fund to satisfy judgments in only two cases. And there are a number of ongoing lawsuits by terrorism victims and their families against Iran that will be foreclosed under this agreement.

This section would also disproportionately benefit trial lawyers, since plaintiff's lawyers whose fees are contingent upon satisfying their clients' judgments stand to gain the lion's share of the compensation, not the victims.

Overall, this legislation is far from what President Bush wanted. It is a major disappointment that literally benefits trial lawyers at the expense of the taxpayers.

I realize that many of my colleagues want to support this bill, despite its flaws. And I understand that. It is regrettable that special-interest groups exerted so much influence in the drafting of this legislation, leaving the President with a bill that amounts to little more than the best he could get from this Congress.

But as it stands today, I cannot ask Arizona taxpayers to absorb the potential losses they might incur because of the self-serving and unjustified lawsuits that are the all but inevitable outcome of this legislation.

Mr. HARKIN. Mr. President, I rise to address a portion of this conference agreement relating to enforcement of judgments obtained by victims of terrorism against state sponsors of terrorism. These provisions strike an important blow in our global struggle against terrorism.

The purpose of title II is to deal comprehensively with the problem of enforcement of judgments issued to victims of terrorism in any U.S. court by enabling them to satisfy such judgments from the frozen assets of terrorist parties. As the conference committee stated, this title establishes, once and for all, that such judgments are to be enforced against any assets available in the U.S., and that the executive branch has no statutory authority to defeat such enforcement under standard judicial processes, except as expressly provided in this act.

Title II expressly addresses three particular issues which have vexed victims of terrorism in this context. First, there has been a dispute over the availability of ''agency and instrumentality'' assets to satisfy judgments against a terrorist state itself. Let there be no doubt on this point. Title II operates to strip a terrorist state of its immunity from execution or attachment in aid of execution by making the blocked assets of that terrorist state, including the blocked assets of any of its agencies or instrumentalities, available for attachment and/or execution of a judgment issued against that terrorist state. Thus, for purposes of enforcing a judgment against a terrorist state, title II does not recognize any juridical distinction between a terrorist state and its agencies or instrumentalities.

Second, title II amends Section 2002 of the Justice for Victims of Terrorism Act of 2000 to address a miscarriage of justice in the drafting and implementation of that act. In that provision, Congress had directed that specified claimants against Iran receive payment in satisfaction of judgments from two specified accounts, namely Iran's Foreign Military Sales, ''FMS'', Trust Account and the proceeds of rental of certain Iranian government properties. Contrary to Congressional intent, the legislative language has been construed by the Departments of State and Treasury to exclude unspecified claimants and to allow the executive branch to bar enforcement of their awards against other blocked assets. As one United States District Court has noted, the result is a gross injustice that demands immediate correction.

To address this injustice, we are adding to the list of those to be compensated, all persons who meet two criteria—either, 1, they had a claim filed when Section 2002 was enacted and have already received a final judgment on that claim as of the date of enactment, or 2 were added to the list by the State Department Reauthorization Bill enacted last month. In accordance with amended Section 2002(b)(2)(B), each of these claimants are to be treated as if they were originally included in Section 2002, and are to be paid an amount determined by the Secretary of the Treasury to have been available for payment of their judgment on the date their judgment was issued. Once these amounts are paid, any remaining amounts in these accounts are to be paid to remaining claimants under the formula specified in amended Section 2002(d).

Moreover, to address this injustice, this amendment will treat all of these victims—those originally included in Section 2002 and those now being added—equally to the maximum extent possible. No priority is given to one group or the other. Those in each group which have filed timely lawsuits and received a final judgment by the enactment of this Act are to be paid within the strict deadlines set in the Act, i.e., within 60 days, without delay. Those not included within this time frame may pursue satisfaction from blocked assets. This will necessarily include some who, for whatever reason, have failed to obtain a judgment in their lawsuit by the date of enactment of this act.

Third, the term ''blocked asset'' has been broadly defined to include any asset of a terrorist party that has been seized or frozen by the United States in accordance with law. This definition includes any asset with respect to which financial transactions are prohibited or regulated by the U.S. Treasury under any blocking order under the Trading With the Enemy Act, the International Emergency Economic Powers Act, or any proclamation, order, regulation, or license. Moreover, by including the phrase ''seized by the United States'' in this section, it is our intent to include within the definition of ''blocked asset'' any asset of a terrorist party that is held by the United States. This is intended as an explicit waiver of any principle of law under which the United States might not be subject to service and enforcement of any judicial order or process relating to execution of judgments, or attachments in aid of such execution, in connection with terrorist party assets that happen to be held by the United States. In this respect, the United States is to be treated the same as any private party or bank which holds assets of a terrorist party, and such terrorist party assets held by the United States are not immunized from court procedures to execute against such assets. However, any assets as to which the United States claims ownership are not included in the definition of ''blocked assets'' and are not subject to execution or attachment under this provision.

Mr. ENZI. Mr. President, first of all, I want to thank all of the conferees for the long hours and late nights they here worked to complete this bill. I know this has been a difficult process and a long year.

Unfortunately, now I kind myself in a very difficult position. I find myself forced to oppose this legislation even though it is a Presidential priority and even though I support the underlying goals.

It was a little over a year ago that Senators SARBANES, GRAMM, DODD, and I announced an agreement for terrorism risk insurance legislation. That agreement outlined the parameters that we thought were a reasonable response to disruptions occurring in the marketplace as a result of the lack of reinsurance. This agreement outlined very limited and specific liability protections that would protect both the taxpayer's pocketbook and businesses which may themselves be victim's of terrorism from frivolous lawsuits after future terrorist attack.

These limited protections were: First, suits filed as a result of a terrorist attack would be consolidated

into a Federal district court; second, punitive damages would not be allowed; and third, the Secretary of the Treasury was given the ability to agree to out-of-court settlements.

Now, in this new conference report, two out of these three protections have been eliminated. The new program in this conference report will allow frivolous lawsuits to be filed against businesses that may be victims of the terrorist act themselves. Think about a business located in the World Trade Center on 9/11. This business was destroyed and likely lost a number of its employees. The next thing that happens is while attempting to rebuild, the business gets slapped with a frivolous lawsuit by a greedy trial lawyer. It is ridiculous to believe that a business could have prevented an attack of this kind. Yet this legislation will subject them to the will of the trial bar.

This conference report keeps America's businesses and the taxpayer subject to punitive damages. I have a Statement of Administration Policy from the executive Office of the President's Office of Management and Budget. In the second paragraph of the letter dated June 13, 2002, it states ''the Administration cannot support enactment of any terrorism insurance bill that leaves the Nation's economy and victims of terrorist acts subject to predatory lawsuits and punitive damages.'''

Also from the administration, I have a letter signed by Treasury Secretary O'Neill, OMB Director Daniels, Director of the National Economic Council Lindsey, and Director of the Council of Economic Advisors Glenn Hubbard dated June 10, 2002. This letter states ''the victims of terrorism should not have to pay punitive damages. Punitive damages are designed to punish criminal or near-criminal worngdoing.'' It goes on the say ''the availability of punitive damages in terrorism cases would in inequitable relief for injured parties, threaten bankruptcies for American companies and a loss of jobs for American workers.'' I could not agree more with the administration's position from just a few months ago that this legislation could lead to the bankruptcies of American companies who were victims of terrorist acts themselves.

In addition, this conference report does not include a provision which allows the Secretary of the treasury to agree to out-of-court settlements. This legislation has the American taxpayer pay potentially 90 percent of property and casualty costs after a terrorist attack. I can think of no other instance where the group liable for paying 90 percent of a lawsuit is unable to agree to an out-of-court settlement. If another catastrophic terrorist attack occurs, every trial lawyer in America will file a lawsuit because they know that the insurance company, which only pays 10 percent of the settlement, will agree immediately. The mansions of the trial lawyers will be built with the dollars of the American taxpayer.

I do not consider the inclusion of these protections to be extreme measures and I do not think that most of the members of this chamber believe them to be unreasonable. They are very simple and reasonable protections that basically say the trial bar should not take advantage of tragedies caused by terrorists.

The President invited Senate Republican conferees to the White House a few weeks ago where concerns were raised regarding the lack of these specific taxpayer protections. Unfortunately, these protections were not reintroduced into the legislation and now this conference report comes to the floor of the Senate without a single Senate Republican conferee's signature.

For these reasons, I am unable to support passage of this legislation. I support the program and understand the possible economic problems by not passing the legislation. I cannot in good faith subject the hard-working taxpayers of Wyoming to the potential losses they might incur because of the self-serving and unjustified lawsuits which may result.

However, even though I cannot support this bill because of the lack of taxpayer protections, I would like to commend those who have worked so diligently on the legislation for over a year now. Senator DODD, in particular, has given more time and effort to this project than probably anyone. He and his staff, Alex Sternhell, have remained committed to seeing the passage of this legislation and have done remarkable work to bring the issues that relate to the structure of the program to a compromise. I have to say that I agree with Senator DODD'S position on the structure of the program and always felt confident in the manner which he negotiated these provisions.

Mr. President, my position on this legislation has not changed since the very beginning. I believe we need a Federal backstop and I believe at one point we had a bill that did just that. I am sorry the trial bar was able to derail the bill for over a year now. I can only hope that the trial lawyers of America will stop to realize that subjecting Americans to lawsuits to line their pockets after the devastation of a terrorist attack is simply the wrong thing to do .

Mr. President, I yield the floor.

Mr. LEAHY. Mr. President, I am pleased to support this conference report to provide a federal backstop for terrorism insurance. I believe this bipartisan bill will boost our economy by providing extra protection against terrorist attacks for buildings and construction projects with resulting new jobs in Vermont and across the nation. I agree with President Bush that this legislation is essential for our future economic growth.

I worked with the distinguished Majority Leader, Senator DODD, Senator SARBANES, Senator SCHUMER and others to craft a balanced compromise in the conference report on legal procedures for civil actions involving acts of terrorism covered by the legislation. The conference report protects the rights of future terrorism victims and their families while providing federal court jurisdiction of civil actions related to acts of terrorism, consolidating of such cases on a pre-trial and trial basis, and excluding punitive damages from government-backed insurance coverage under the bill. These provisions do not limit the accountability of a private party for its actions in any way.

Further, the conference report, identical to the Senate-passed bill, fully protects federal taxpayers from paying for punitive damage awards. Under the conference report only corporate wrongdoers pay punitive damages, not U.S. taxpayers as some incorrectly claimed on the Senate floor during consideration of the Senate-passed bill.

The U.S. Chamber of Commerce has declared that the conference report ''will improve the legal rights of plaintiffs and defendants and, importantly, will help American workers and the economy.'' I agree.

I thank the conferees for rejecting the special legal protections in the House-passed bill. The liability limits for future terrorist attacks in the House-passed bill were irresponsible because they restricted the legal rights of victims and their families and discouraged private industry from taking appropriate precautions to promote public safety. Restricting damages against a wrongdoer in terrorism-related civil actions involving personal injury or death, for example, could discourage corporations from taking the necessary precautions to prevent loss of life or limb in a future terrorist attack. There is no need to enact these special legal protections and take away the legal rights of victims of terrorism and their families.

For example, the House-passed bill would have permitted a security firm to be protected from punitive damages if the private firm hired incompetent employees or deliberately failed to check for weapons and a terrorist act resulted.

The threat of punitive damages is a major deterrent to wrongdoing. Eliminating punitive damages under the House-passed bill would have severely undercut this deterrent and permitted reckless or malicious defendants to find it more cost effective to continue their wanton conduct without the risk of paying punitive damages. Without the threat of punitive damages, callous corporations could have decided it is more cost-effective to cut corners that put American lives at risk. This approach failed to protect public safety, and the conferees rightly rejected it.

In addition, I thank the managers for including language in the conference report to help captive insurance companies participate in the federal backstop program. Many captives deal in

property and casualty lines, but some do not. Senator JEFFORDS and I strongly support language in the conference report to allow those captives in property and casualty the option of participating in the program while not requiring other captives to start offering terrorism risk insurance.

The state of Vermont is the premier U.S. domicile for captive insurance companies. Vermont's captive owners represent a wide range of industries including multinational corporations, associations, banks, municipalities, transportation and airline companies, power producers, public housing authorities, higher education institutions, telecommunications suppliers, shipping companies, insurance companies and manufacturers, among others. Since 1981, Vermont has averaged approximately 25 captives licensed annually, and those numbers are on the rise. Vermont closed 2001 with 38 new captives, 37 pure and I sponsored, for a total of 527 at year-end. The first half of 2002 saw 26 new captives licensed in Vermont setting a record pace, according to the Vermont Department of Banking, Insurance and Health Care Administration.

At a time when the American people are looking for Congress to take measured actions to protect them from acts of terror and jump-start our economy, this conference report is a shining example of bipartisan progress. I applaud Senator DASCHLE, SENATOR DODD, Senator SARBANES, Senator SCHUMER and the other Senate and House conferees on their good work on this bipartisan conference report.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DASCHLE. Mr. President, I have consulted with the chairman and the ranking member of the Appropriations Committee. As I think our colleagues know, the next order of business is a debate and then a vote on the continuing resolution. I am told they will need no more than 40 minutes. So Senators should be prepared to vote on final passage on the continuing resolution at about 9:10 to 9:15 p.m. Please return to the Chamber if you are not going to stay. That will be the final vote of the evening. We will vote at approximately 9:10 to 9:15 p.m., following this vote.

The PRESIDING OFFICER. Under the previous order, cloture having been invoked, the question is on agreeing to the conference report to accompany H.R. 3210.

Mr. DODD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Arkansas (Mr. HUTCHINSON), and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 86, nays 11, as follows:

[Rollcall Vote No. 252 Leg.]

YEAS—86

Akaka	Dayton	Lincoln
Allard	DeWine	Lott
Allen	Dodd	Lugar
Barkley	Domenici	McCain
Baucus	Dorgan	Mikulski
Bayh	Durbin	Miller
Bennett	Edwards	Murray
Biden	Ensign	Nelson (FL)
Bingaman	Feingold	Nelson (NE)
Bond	Feinstein	Reed
Boxer	Fitzgerald	Reid
Breaux	Frist	Roberts
Brownback	Graham	Rockefeller
Bunning	Gregg	Santorum
Burns	Hagel	Sarbanes
Byrd	Harkin	Schumer
Campbell	Hatch	Smith (NH)
Cantwell	Hollings	Smith (OR)
Carnahan	Inhofe	Snowe
Carper	Inouye	Specter
Chafee	Jeffords	Stabenow
Cleland	Johnson	Stevens
Clinton	Kennedy	Thompson
Cochran	Kerry	Thurmond
Collins	Kohl	Torricelli
Conrad	Landrieu	Voinovich
Corzine	Leahy	Warner
Crapo	Levin	Wyden
Daschle	Lieberman	

NAYS—11

Craig	Hutchison	Sessions
Enzi	Kyl	Shelby
Gramm	McConnell	Thomas
Grassley	Nickles	

NOT VOTING—3

Helms	Hutchinson	Murkowski

The conference report was agreed to.

Mr. REID. Mr. President, I ask unanimous consent that the Senator from Georgia, Mr. CLELAND, be recognized for up to 10 minutes.

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

SERVICE IN THE SENATE

Mr. CLELAND. Mr. President, I rise today to reflect on a 6 year term in the Senate which has been simultaneously the most challenging, yet most rewarding, experience of my life. I have had the chance to realize a lifelong dream by following in the footsteps of one of my personal my heroes, Senator Richard Russell of Georgia. I have been able to represent the state I love in an institution I revere. And I have been able to add my voice to the others that have risen before me in this chamber, from William Fulbright to Harry Truman to John Kennedy to Everett Dirksen to so many other outstanding men and women of history.

In my Senate office, I have surrounded myself with small reminders of the men I most admire. I sit at Richard Russell's desk. On my walls, I have photographs of just two people. President Franklin Roosevelt and Prime Minister Winston Churchill. Theirs were no ordinary times, and we can safely say now, neither are ours. After the Pentagon was attacked on September 11th, I looked at FDR's picture and finally understood the gravity of his day of infamy, because this generation now had one of its own. I have used Churchill's and Roosevelt's examples of strength and courage to make it through every day in this town. Some days have been better than others, but every one has been a gift because this has been the life of my dreams.

When I came to the Senate, I came to do the best job I could for the people of Georgia and the people of the United States, particularly our men and women in uniform. I am proud of what we've accomplished since then. Today, over 60% of our service members are married, and their benefits have finally begun to reflect that fact in order to retain those talented professionals. We knew that the decision to stay in the military is made at the dinner table, not the conference table, so we've increased pay for service members by nearly 20% since I came to the Senate. We've modernized the G.I. bill so that service members can transfer their benefits to start a college fund for their children. We set a schedule to eliminate out of pocket housing expenses and we even added a measure to help families take their pets with them when serving in Hawaii. Keeping the family dog may not be the highest priority for some lawmakers, but it's the whole world to a child moving around the globe as their mother or father serves our country. The family matters to the military member, so the family has mattered to me in my time here.

Beyond these individual personnel matters, I became deeply concerned about the shrinking numbers of our U.S. military, and this year was able to raise the ceiling of our force strength. In our new war on what Sam Nunn calls ''catastrophic terrorism,'' we must continue to go on the strategic offensive. Our military may be winning the battle, but we will lose the war if we continue to ignore the fact that our forces are critically over-deployed and being asked to do too much with too little. We are out of balance. Our commitments are far outpacing our troop levels, and the situation is only getting worse.

Since the end of Operation Desert Storm in 1991, the armed forces have downsized by more than half a million personnel, but our commitments have increased by nearly 300%, including new deployments to Afghanistan, Yemen, the Philippines, Georgia, and Pakistan. Today, a Desert Storm-size deployment to Iraq would require 86% of the Army's deployable end strength, including all stateside deployable personnel, all overseas-deployed personnel, and most forward-stationed personnel.

To make the war on terrorism possible, we have activated more than 80,000 guard and reserve troops and instituted stop-loss for certain specialties. This is no way to fight a war when our strategic national interests are at stake. The President has rightly told the country to be prepared for a long commitment. But the Pentagon has not requested an increase in end