would not have to. Throughout the war he was held in several different camps including Buchenwald, Gross Rosen, and Dachau.

Mr. Weinroth lost both parents, grandparents, aunts, uncles, three brothers, and one sister in the camps. Only he and one sister survived, whom he found after the war in Germany. Mr. Weinroth along with his sister came to Stamford, CT, in June 1949. He came to this country with nothing but his trade, watchmaking, and promptly started a small business repairing watches. Over the years Bedford Jewelers has grown into a family retail jewelry store—he works there today with his wife, daughter, and son.

He still resides in Stamford, and is an active member in the community and his synagogue, Congregation Agudath Sholom. He married his wife, Luba, in 1952, whom he met at a displaced persons camp in Germany in 1948. They have two sons and a daughter, and three grandsons to carry on the family name. A 50th anniversary is worth celebrating, yet an anniversary that represents as much as this one should not and will not go unrecognized. I salute Mr. Weinroth for his courage and perseverance in the face of extreme hardship.●

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 609 TO AMENDMENT NO. 603

(Purpose: To provide for full compensation for noneconomic losses in civil actions)

Mr. KYL. Mr. President, I ask unanimous consent that the amendment of the Senator from Maine, No. 608, be set aside so that I may offer an amendment which is at the desk.

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

The clerk will report the amendment.

The assistant legislative clerk read as follows.

The Senator from Arizona [Mr. KYL] proposes an amendment numbered 609 to amendment No. 603:

The amendment is as follows:

At the appropriate place in the amendment insert the following new section:

SEC. . FAIR COMPENSATION FOR NONECONOMIC LOSSES AND PUNITIVE DAMAGES.

(a) FULL COMPENSATION FOR NONECONOMIC LOSSES. Notwithstanding any other provision of this Act, an attorney who represents, on a contingency fee basis, a claimant in a civil action in a Federal or State court may not charge, demand, receive, or collect for services rendered in connection with such action on any amount recovered by judgment or settlement under such action for noneconomic losses in excess of 25 percent of the first $250,000 (or portion thereof) recovered, based on after-tax recovery.

(b) ATTORNEY FEES FOR PUNITIVE DAMAGES.—With respect to any award or settlement for punitive damages, an attorney's fee, if any, received by an attorney who represents, on a contingency fee basis, a claimant in a civil action in a Federal or State court shall be established by the court based on the work performed by the attorney, and shall be ethical and reasonable. It shall be a rebuttable presumption that an ethical and reasonable attorney's fee in such an action is 25 percent of such award for punitive damages.

(c) CONTINGENCY FEE DEFINED.—As used in this section, the term ''contingency fee'' means any fee for professional legal services which is, in whole or in part, contingent upon the recovery of any amount of losses or damages, whether through judgment or settlement.

Mr. BROWN addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BROWN. Mr. President, I rise to address the question of medical malpractice concerns, and I believe I speak for many Senators in expressing the strong hope that those States that have addressed this question will not have their limitations and their efforts to address this question overruled or overturned.

In 1986, Colorado enacted, or expanded, the following general tort reforms:

Certificate of merit—Requiring a certificate of merit to be filed at beginning of case that the plaintiff's attorney has consulted with a qualified expert who based on review of the facts find that the claim has merit or ''does not lack substantial justification.''

Noneconomic damages limit—Limiting noneconomic damages, for pain and suffering, loss of consortium, and so forth, to $250,000. Colorado does allow a court to find ''clear and convincing evidence'' to justify an increase from $250,000 to a maximum of $500,000.

Collateral source—Reducing any damage award by the amount of payment by any collateral source which partially or wholly indemnifies or compensates the injured party for their injury. If the injured party purchased the coverage, the reduction is not made, for example personal disability insurance.

Punitive damage limit—Limiting punitive damages to equal actual damages—1 to 1 ratio between compensatory damages and punitive damages—but allowing the court to increase this to 3 times the compensatory damages for continued egregious behavior during pendency of the action. Evidence of the income or net worth of the defendant is not admissable.

Elimination of joint liability—Generally, Colorado eliminated joint liability for tort damages and further enhanced Colorado's comparative negligence system by which defendants are liable only for their pro-rata share of damages if the defendant's share is more than that due to the plaintiff's contributory negligence.

Good samaritan liability—Licensed physicians who render emergency assistance are not liable to a person injured unless they were grossly negligent or their conduct was willful and wanton.

Volunteer and nonprofit liability—Generally exempting volunteers and nonprofit organizations from liability, except for willful and wanton misconduct or from liability in an automobile accident to the extent of insurance coverage under the Colorado No-Fault law.

In 1988, Colorado expanded upon these reform with the Health Care Availability Act. Colorado enacted these reforms to ensure the continued availability of health care, particularly prenatal and obstetrical care, in Colorado. In 1988, facing rapidly escalating malpractice premiums, many doctors were quitting or limiting their practices and Coloradoans, particularly in our rural areas, were facing reduced choice and availability in health care.

Under the Colorado Health Care Availability Act, these additional tort reforms were enacted for medical malpractice actions:

Periodic payment of judgments—Requires payment of future damages in excess of $150,000 by periodic payment.

A cap of $1 million on damages—Generally, Colorado now limits damages in a medical malpractice action to a present value of $1 million, inclusive of the $250,000 cap on noneconomic damages. In imposing the cap, the Colorado legislature made sure that money would be available to injured persons by imposing mandatory malpractice insurance coverage on doctors and hospitals.

Voluntary pre-treatment arbitration agreements—Allows a provider and patient to enter an agreement to arbitrate any dispute over the care before the care is rendered. The Health Care Availability Act sets forth several patient protections in regard to such agreements.

Qualifications of expert witnesses—Generally, the act requires that expert witnesses in a medical malpractice action be licensed in the same medical specialty as the defendant and familiar with the applicable standards of care at the time of the injury.

Punitive damages—Punitive damages against a health care provider cannot be claimed until after the substantial completion of discovery and the plaintiff can establish prima facie proof of fraud, malice or willful and wanton conduct.

Statutes of limitation—The general statute of limitations in Colorado for medical malpractice actions is 2 years from the date of injury, or the date the injury and its cause should reasonably have been known. The Health Care Availability Act reinstituted a ''statute of repose'' which bars any action for medical malpractice being brought more than 3 years after the date of treatment.

In 1991, the Colorado Supreme Court reviewed and upheld the constitutionality of these reforms in 1991.

The reforms have had their intended effect. Malpractice insurance premiums for most Colorado physicians have been reduced substantially, by 53 percent. For the average Colorado physician, their malpractice premiums

were $18,609 in 1986. In 1994, the premiums were reduced to $8,816. For obstetricians in Colorado, the tort reforms reduced malpractice premiums by over $30,000. In 1986, their premiums were an astronomical $62,584, last year they were $31,029. This is $30,000 of overhead that the Colorado OB/GYN's now don't have to cover and it allows them to continue providing health care, and delivering babies, in Colorado.

Colorado is only one of several States that have enacted health care liability reforms. California was the first, or one of the first, with the Medical Injury Compensation Act of 1975. Indiana adopted some other different reforms including a patient-victim compensation fund. Colorado followed the California model in 1988.

Overall: 22 States have enacted limits for damages for pain and suffering; 28 States have either mandatory or discretionary collateral source rules; at least 14 States require periodic payment of large damage awards and 16 States give the option to the court; 15 or so States have adopted medical malpractice arbitration provisions; some 30 States restrict punitive damages, and around 33 have revised or abolished joint and several liability.

It is most important to Colorado, and other States which have enacted them, to get to keep their tort reforms. We can establish a Federal standard in these areas, but States which have enacted more stringent reforms should not be pre-empted by Federal law.

Senator MCCONNELL's amendment allows States to keep their reforms. Most importantly, the McConnell amendment would allow Colorado to keep its $250,000 cap on noneconomic damages and $1 million cap on health care liability damages and numerous of the procedural reforms. However, the McConnell amendment would impose new requirements in Colorado in the area of limitations on attorneys fees, and may impose additional limitations on punitive damages. Where Colorado has acted to impose greater limitations they are allowed to keep them, but where Colorado laws are not as stringent they must follow Federal law.

Mr. President, I want to thank you and I want to thank the other Members of the body.

But I want to make this message clear. What we are talking about is not simply an arbitrary or theoretical exercise in trying to address the medical malpractice question. What we are talking about is an effort that can lead to significant drops in medical malpractice insurance. We are talking about something that will dramatically reduce the overhead of health care providers. We are talking about something that can have a very significant change in what consumers pay.

Thank you, Mr. President.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Arizona.

Mr. KYL. Mr. President, I would now like to discuss the amendment which I have just a moment ago offered, an amendment which will complement what the Senator from Colorado has just spoken of by helping to get health care costs under control, but, more importantly, to put a better balance into the awards that are received in cases where today the attorney is taking too much of that award and the victim is receiving too little of it.

My amendment is an amendment which provides some very modest limitations on attorneys' fees in the kinds of cases in which very large awards have sometimes been granted and where, by virtue of the fact that the attorneys are awarded a contingent fee or have arranged for a contingent fee contract, they receive a percentage of that award.

It is common in cases of this kind for the percentage to be at least one-third and frequently 50 percent, sometimes even more, of the recovery. That means that if a plaintiff in a case receives $100,000 in an award, the attorney is likely to receive somewhere between $30,000, $40,000, $50,000, leaving the plaintiff with frequently about half of what is recovered.

There are some statistics in this regard which I would like to refer to which indicate that actually the percentage that the attorneys' fees are taking is even greater. When you add the other administrative fees of the court and so on, you end up with a situation in which the victims frequently get less than half the award the jury thinks they are receiving.

This bill will, I hope, reform a situation that the Wall Street Journal wrote of in an article recently—March 12, specifically—noting that the result is that fees paid to plaintiffs' lawyers can range from $1,000 to $25,000 per hour—Mr. President, per hour. Twenty-five thousand dollars is more than a lot of Americans make in an entire year and yet, as the article notes, some lawyers have made that much per hour spent on a case. That is what we are trying to avoid with this amendment.

A recent Department of Commerce report stated that 40 cents of each dollar expended in litigation is paid in attorneys' fees. A 1994 study by the Hudson Institute found that 50 cents out of each litigation dollar went to attorneys' fees.

So you see, Mr. President, the notion that these attorneys' fees, contingency contracts, or agreements result in almost half, sometimes more than half, of the award going to the attorney are borne out by the studies that have been performed professionally on this matter. And that is what we are trying to change here.

I think, really, Mr. President, for our tort system to retain, or to regain, really, credibility as a fair and equitable dispute-resolution system, it has to be more efficient, less litigious, and we have to ensure that a larger portion of the judgment awards actually goes to the claimants rather than to the attorneys.

Now, some will say when I describe this amendment in just a moment that this is not really much of a limit on attorneys' fees. Those who like to bash lawyers will say you really have not limited them.

My effort here is not to punish lawyers, but it is to try to ensure that more of the money that the jury awards goes into the pocket of the claimant. As I said, today the typical fee is at least a third, frequently at least 50 percent.

I would like now to describe the three different kinds of awards that might be granted in a case and indicate what the percentage in each case would be under the underlying bill and under my amendment.

Under the McConnell amendment, which is essentially pending before us here, the award is limited in a health care liability case, typical medical malpractice case, to one-third of the first $150,000, and 25 percent of any amount in excess of $150,000. So on the first $150,000 you get a third and on anything greater than that you get 25 percent.

Now this guarantees, Mr. President, that there is an adequate incentive for an attorney to take a small case, because for the economic damages—these are damages that repay the doctor, the hospital, and so on and also provides for compensation for any economic losses, time loss from work, inability to perform work in the future and so on—it guarantees that the attorney is going to get a third of the first $150,000 and 25 percent of everything thereafter. So there is adequate compensation for a lawyer to take even a relatively small case.

But cases usually involve another element of damages called noneconomic damages. And these are the so-called pain and suffering damages. So that after a person has been compensated for the out-of-pocket expenses to the hospitals and to the physicians and so on and for any lost wages and future lost economic earning power, juries also frequently—in serious cases virtually always—award the claimant a sum of money representing the pain and suffering that that claimant suffered; the hurt, the anguish, the pain.

That award is frequently a multiple of the economic damages. So in many case, most cases, it exceeds the economic damages.

What my amendment says is that the attorneys' fees should be limited to 25 percent of that award up to $250,000. So, in the case of the McConnell amendment, added onto the Kyl amendment on attorneys' fees, you would have essentially either 25 percent or 33 percent as the limitation.

Now, as I say, compared to 50 percent, some people will say, ''Well, you haven't really gone down all that much.'' But since some of the very high awards are in excess of $250,000, we

have denied the attorneys their windfall, their lottery award. They are going to get plenty up to the $250,000, but what they will not get is that big bonanza, the jackpot, where they convince the jury that there is such an egregious situation here that the claimant gets, let us say $1 million, and the lawyer then is going to get at least a half a million. No. The claimant in this case would get the bulk of that $1 million, if that is the amount that is awarded.

So what we are saying here is that the lawyer is going to be limited but guaranteed, in effect, a percentage of both the economic damages and noneconomic damages, if they are otherwise awardable. They just cannot exceed either 33 percent or 25 percent.

In the case of the noneconomic damages, the pain and suffering damages, they cannot exceed 25 percent of the first $250,000, or in other words, $62,500.

Now in some cases, Mr. President, there is a third kind of award and it is punitive damages. There have been several statements made about punitive damages and ways to limit punitive damages. These are the damages not intended to compensate the victim but rather to punish the defendant for wrong conduct, conduct that is very wrong, that is willful or malicious, is in great disregard of the rights of the public and intended to cause a defendant never to do it again or, in the case of a defective product, for example, to fix that product and never allow a defective product again to hit the market.

In those cases, there are limits in the underlying bill on the amount of punitive damages that can be collected. Under the McConnell amendment, the total award for punitive damages in the medical malpractice kind of case is either $250,000 or three times the economic damages, whichever is greater. The Snowe amendment, which has been presented just before my comments, would limit the total award for punitive damages in these cases to two times compensatory damages, which is the sum of the economic and noneconomic damages. In either case, there is some limit on the amount of punitive damages.

The question is, should attorneys receive any percentage of that as well? And what my amendment says is that if the attorney believes that he or she is entitled to a percentage of the punitive damages awards in addition to the other two kinds of awards, that attorney may petition the court and the court may grant reasonable and ethical attorneys' fees based upon the amount of time that the attorney has put into the case.

There is a presumption that 25 percent is reasonable. So, here again, the attorney can petition the court, can get at least 25 percent. A court may even deem that a larger amount would be warranted. But, in any event, it has to be reasonable and ethical and based upon the amount of work that the attorney put in.

So, as I say, Mr. President, some people will say, ''Well, this is not much of a limitation. You haven't whacked the attorneys. You haven't cut them out of all of their awards,'' and so on. And we have not.

The reason we are offering the amendment this way is to guarantee that people who have a good case can get a lawyer to take their case, and with these limitations they can clearly get the lawyers to take their case.

But what it prevents is the situation where the lawyer gets the bulk of the recovery and, in the case of the very large award, hits the jackpot, gets the big bonanza, in effect.

The objectives of the overall legislation, Mr. President, are, first of all, to ensure that people can be compensated in our tort system. This bill helps to guarantee that result.

We need incentives for lawyers to take these kinds of cases which frequently the plaintiff cannot pay for by the hourly rate or money up front to the lawyer, so there has to be a contingency fee. We provide for that.

We need to ensure that in the case of the economic damages, the lawyer is limited in how much of those economic damages can be recovered as attorney's fees. That is limited in the underlying bill.

We are saying that with respect to the pain and suffering damages, most of that ought to go to the victim. Seventy-five percent of it ought to go to the victim, the claimant, the plaintiff. But, again, we allow up to $250,000 of noneconomic damages, the recovery of 25 percent of that amount by the attorney and, as I said, in punitive damages, the opportunity to collect fees there, as well.

So the real question is whether lawyers should be getting 50 percent, or somewhere between 25 and 33 percent. And I think, Mr. President, that this body will agree that placing some cap, some limit, is desirable and that it will help us to avoid the situation that causes a great deal of public anger, frankly, with our litigation process.

Ironically, I think we might even help the legal profession, which is being greatly criticized by the public in public opinion surveys these days primarily because of their fees. There is a Hudson Institute study which notes that there has been a doubling of negative attitudes toward lawyers since 1986 and that exorbitant attorney's fees are a major factor in this increase in the public's ill will for lawyers.

Ironically, we may even be helping the legal profession, and that is not all bad, either. We will be debating this amendment, and others, on Monday next, and I hope very much that all of the Members of the Senate will reflect on how this amendment, narrow that it is, will improve the bill, will improve the McConnell amendment, and will improve the pending amendment before the body and, as I said, allow the victims to recover more of what the juries award to them.

Mr. President, I will debate and present further arguments with respect to this matter on Monday. At this time, I would like to make a closing statement on behalf of the leader.

ORDERS FOR MONDAY, MAY 1, 1995

Mr. KYL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 11 a.m. on Monday, May 1, 1995; that following the prayer, the Journal of proceedings be deemed approved to date, no resolutions come over under the rule, the call of the calendar be waived, the morning hour be deemed to have expired, the time for the two leaders be reserved for their use later in the day, and there then be a period for the transaction of morning business not to extend beyond the hour of 12 noon, with Senators permitted to speak for up to 5 minutes each, with the following exceptions: Senator GREGG, 30 minutes; Senator GRAMS, 15 minutes.

Further, that at 12 noon, the Senate immediately resume consideration of H.R. 956, the product liability bill.

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

ORDER OF PROCEDURE

Mr. KYL. Mr. President, for the information of all of our colleagues, the leader has asked me to announce that the Senate will return to session on Monday. However, there will be no rollcall votes during Monday's session. Under the order, any Member who wishes to offer a medical malpractice amendment must offer and debate that amendment on Monday. Any votes ordered on any of those amendments will be stacked to occur at 11 a.m. on Tuesday.

ADJOURNMENT UNTIL MONDAY, MAY 1, 1995, AT 11 A.M.

Mr. KYL. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:14 p.m., adjourned until Monday, May 1, 1995, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate April 27, 1995:

THE JUDICIARY

GEORGE H. KING, OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA, VICE A NEW POSITION CREATED BY PUBLIC LAW 101–650, APPROVED DECEMBER 1, 1990.

DONALD C. NUGENT, OF OHIO, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO, VICE THOMAS D. LAMBROS, RETIRED.