anti-Western sentiment. Since its inception, Israel has experienced regional opposition from dictators such as Egypt's Gamal Abdel Nasser and Iraq's Saddam Hussein. Yet Israel has flourished amidst such hostility. Through open, democratic elections, majority rules representation, and the support of her allies, Israel has proven that a democracy can succeed in a region of otherwise undemocratic nations. Today we applaud the tenacity and the vision of the Israeli people and their success in making democracy work for nearly half a century.

Israel's charter reads that the new state ''will rest upon the foundation of liberty, justice, and peace as envisioned by the prophets of Israel, and that it will be loyal to the principles of the United Nations Charter.'' Almost immediately, President Truman recognized the similarity between the United States Constitution and the Israeli proclamation and became the first foreign leader to endorse the newly formed state. With the help of allies like the United States and the path-breaking leadership of individuals such as Menachim Begin and Former Egyptian President Anwar Sadat, Israel has been able to maintain and even expand its strategic alliances throughout the world.

Mr. President, the State of Israel has made tremendous progress over the past 47 years. Israel has emerged as a scientific and technological leader. Last year, the Israeli economy grew more than 7 percent—a growth rate higher than the more advanced economies. This is clear evidence of Israel's commitment to progress, and the willingness of countries all over the globe to recognize Israel as a viable trade partner. The Israeli people have repeatedly looked beyond the events of the day and maintained a focus on the need building a strong scientific and technological base. Neither terrorism nor war has diminished their desire to maintain a strong, independent nation.

Without a doubt, the people of Israel could not have flourished so quickly without the support of friends and family living abroad. By conveying their support for Israel, Jewish people living in the diaspora have demonstrated their commitment to a Jewish homeland. Israeli Foreign Minister Shimon Peres recently stated that, ''No nation has been helped as much by its brothers and sisters.'' Americans of all religions and creeds are brothers and sisters of the people of Israel. Our nations share a bond of similar values. Our experiences are their lessons. Israel and the United States of America have demonstrated that a democratic society can withstand the forces of hate, oppression, and terror. That is why we have embraced Jews living within this Nation and have pledged our support to their homeland.

In spite of a housing shortage, Israel maintains an open door to Jewish immigrants. The Israeli Government has made it clear that it will not refuse the admission of Jewish immigrants due to external political pressures. To do so would contradict a major principle of the Jewish faith—that ''all Jews are responsible for one another.'' President Weizman recently reaffirmed this belief by insisting that, ''The significance of sons and daughters coming to Israel in large numbers to feel and breathe the atmosphere cannot be overemphasized. Israelis, on their part, will take them to their hearts.'' This long-standing policy has been a beacon of hope for the 600,000 Soviet and 50,000 Ethiopian Jews who fled their besieged countries and settled in their new homeland.

Today's celebration of Israeli independence should bring to mind the determined spirit of the Jewish people. After centuries of struggle and persecution, the Jewish people finally have a cultural, political, and religious sanctuary. To our friends in Israel, we Americans share in your continuing efforts to achieve regional peace and the further economic progress of your homeland. The celebration of Israeli independence is a celebration of the permanence of democracy. We recognize that no force can defeat your spirit of self-determination. In the words of Foreign Minister Shimon Peres, ''neither war not holocaust nor threats nor animosity could cut the energy of your people.''

Mr. President, today is a great day for all Jewish people and all people in democratic societies. The nation of Israel stands as a great tribute to the fortitude of the human spirit. I am pleased to join with my colleagues in wishing the Jewish people, especially those in my home State of South Dakota, a happy and peaceful 47th Yom Ha'atzmaut.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 956, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

(1) Gorton amendment No. 596, in the nature of a substitute.

(2) Abraham amendment No. 600 (to amendment No. 596), to provide for proportionate liability for noneconomic damages in all civil actions whose subject matter affects commerce.

(3) Kyl amendment No. 681 (to amendment No. 596), to make improvements concerning alternative dispute resolution.

(4) Hollings amendment No. 682 (to Amendment No. 596), to provide for product liability insurance reporting.

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

Mr. KYL. Mr. President, I thank the Senator from Washington for yielding. First, I want to begin by saying that the comments of the Senator from Georgia just now are right on the mark in terms of the amendment that we will be voting on. I certainly subscribe both to what he said and what the Senator from Washington has previously said about this.

My conversation, Mr. President, this morning, has to do with a very specific amendment which we will be voting on, the Kyl-McCain amendment, which will have the effect of striking section 103 of H.R. 956.

This amendment preserves State law on alternative dispute resolution procedures and ensures the plaintiffs and defendants are treated equally through the ADR, or alternative dispute resolution process.

The amendment strikes section 103, which says when alternative dispute resolution procedures are employed, these procedures are enforceable only against the defendant, not against the plaintiff. Currently, of course, under the State laws under which this would be applied, ADR provisions are equally applicable to the plaintiffs and to the defendants. Of course, it should remain that way.

Mr. President, a fundamental tenet of American jurisprudence is that all parties go into court with equal rights. As a matter of fact, Americans, I submit, would not submit their disputes, their lives, and their fortunes to a decision by the judge or a jury if they knew that the deck was stacked against them when they began.

That is precisely what this section 103 of the bill does today. That is why we are striking this section.

What this section says is that when a State has an alternative dispute resolution procedure, the parties may use it. Well, that adds nothing to current law. That is the law of the States. Parties can take advantage of those alternative dispute procedures, and they should.

As a matter of fact, we are trying to encourage more alternatives to proceeding through the actual trial of the case. The second part of section 103 provides for the notice by one party or the other that that party wants to invoke those procedures. Again, this amendment or this bill changes nothing in that regard.

The part that changes the law and that we wish to strike is titled ''Defendant's Penalty for Unreasonable Refusal,'' meaning unreasonable refusal to go through the alternative dispute resolution process. Defendant's penalty; there is no concomitant plaintiff's penalty.

In other words, the authors of this section have provided that, although

the defendant would suffer the consequences of refusing to go through alternative dispute resolution, if the defendant wishes to go through that process—and we all encourage them to do so—and the plaintiff unreasonably refuses to do so, there is no penalty on the plaintiff.

Mr. President, that is fundamentally unfair. It is exactly the kind of thing the American people wish Members to reform in this litigation process that we engage in in our country.

The whole idea of reform here, the whole notion of what we are debating, is fairness. This provision would inject a fundamental element of unfairness where one party is penalized for not going forward with alternative dispute resolution, and the other party suffers no adverse consequences at all. It is fundamentally unfair.

Now, what the provision states is that the court shall assess reasonable attorney's fees and costs against a defendant who refuses to proceed; final judgment is entered against that defendant that that refusal was unreasonable or not made in good faith.

That is typical of the State alternative dispute procedures here, that where either parties says, ''Let's go to alternative dispute rather than going all the way through trial'', and the other party says, ''No, I do thought want to do that,'' and it turns out the other party loses and the court finds that that party's refusal to go through the alternative dispute resolution procedure was unreasonable or not made in good faith, then costs and attorney's fees can be assessed against that losing party. That is the law in many States today. We should preserve that law.

This section of the bill changes that procedure in State law. It says, ''No, even though you say that the losing party who refuses to go through the alternative dispute resolution in good faith should have a penalty, we are going to strike that in the case of only one-half of the parties, the plaintiff.'' The plaintiff gets a free ride. The plaintiff can refuse alternative dispute resolution in bad faith and still not be penalized. A defendant who refuses alternative dispute resolution and who loses, and the court determines he has done that in bad faith, has a penalty rendered against him.

Mr. President, I could argue either way that there should or should not be a penalty. I do not want to change the State law in that regard. That is why, instead of saying that the penalty would lie to both the defendant and the plaintiff, which we could have done with this amendment, we have simply said ''Let's strike the section and leave State law the way it is. State law treats both parties fairly. That is the way it should be.''

So I urge all my colleagues who for the last several days have been arguing that this is not something that the Federal Government should be involved in, that we should let the States experiment, that we should let them decide their own procedures here—I urge them to support this resolution, my amendment, because my amendment allows the State law to be preserved as it is today with no change on alternative dispute resolution. I think we want to encourage alternative dispute resolution. We will certainly not be encouraging it if we say we believe in it but only if it is a stacked deck, only if it can be used against the defendant but not against the plaintiff.

It is fundamentally unfair, and we should never be a party to changing the law of the States in a way that will result in unfairness to one side or the other in litigation. So I urge my colleagues when we vote in about an hour on these various amendments to the bill to support the Kyl-McCain amendment to strike section 103 and thus preserve State ADR proceedings and preserve the balance between plaintiffs and defendants proceeding under those procedures.

I yield the floor, Mr. President.

Mr. HEFLIN. I wonder if the Senator can respond to a question or two?

Mr. KYL. I will be happy to reply.

Mr. HEFLIN. I have come to somewhat agree with the Senator in regards to this. I have always been sort of puzzled as why that was put in there.

Of course, in original ideas on alternate dispute resolution methods, some of the States have had what they call court-annexed arbitration, and they put a penalty relative to the failure to bind on the claimant, plaintiff, when this occurs, which raises an issue that it could be a violation of the seventh amendment, of the right to a trial by jury, by saying anything is mandatory under the concept of court-annexed provisions. Previous bills, as I recall, said if the judgment that occurred was less than what the award had been in an arbitration proceeding which is a part of the alternate dispute resolution, that then plaintiff would have to pay the reasonable attorney's fees and court costs and so on. And that raised the question of whether that was causing a claimant to be deprived of the right of trial by jury.

This language here has, in section 103(a)(1), that they can have an offer to proceed to voluntary, nonbinding alternate dispute resolution. If it is voluntary and nonbinding, I do not understand why you would, in effect—unless it is sort of an effort to have an encouragement for defendants, realizing that claimants would be the ones who would probably want a nonbinding, voluntary alternate dispute procedure to start in order to more rapidly dispose of their claims. In particular, in the States that have had procedure, they usually have a dollar amount limitation.

Actually, this is already authorized under existing law which we voted on several years ago, the Biden Civil Justice Act. I do not remember the specific title and name of it, but it authorized nonbinding alternate dispute resolutions in the Federal courts. You could have such a proceeding under this existing statute.

So, I have been puzzled why proponents attempted to have the provision for a possible defendants' penalty. The only reason I see is I thought they were probably doing it for window dressing, purely for the purpose of trying to say we are giving something to the claimant; while we are taking away 100 different things, we are going to give you 1 with the alternative dispute resolution provision.

Of course they use the word ''unreasonable'' in this section which allows for some leeway on behalf of a defendant.

But overall, in fairness, I sort of tend to support the Senator's amendment here to strike the provision from the underlying Gorton substitute. I do not know what the others will do but as it is right now, unless I am convinced otherwise, I may well vote with you.

Mr. KYL. I appreciate the comments of the Senator from Alabama. That helps to give us more background on this as well. I think he is absolutely correct, that as a matter of States rights many States have these procedures today. If they have them, we leave them in place. But to the extent that we change them by saying in effect they only apply to one party, we, at the Federal Government level, will have injected an element of unfairness and I just do not think we want to be a party to doing that.

I know the Senator from Washington wishes to proceed so that is all I will say about that, but I appreciate the comments of the Senator from Alabama. I certainly agree with him on that.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, we are at this last half-hour or 45 minutes before a series of votes, speaking to several amendments: The underlying broad amendment by the Senator from Michigan to extend the joint liability provisions of this bill to all litigation; the amendment proposed by the Senator from Arizona and discussed during the course of the last few minutes; and an amendment by the Senator from South Carolina on insurance data collection and reporting requirements.

While he spoke briefly to that last night, I think it important to outline for the benefit of my colleagues who will soon be voting on it what that amendment actually does. The amendment is not so much an insurance reporting act, though it does add inevitably to the huge amount of paperwork with which our society and economy is already burdened, as it is another skillful attempt for all practical purposes to kill this bill, this whole idea.

What the amendment would do would be to sunset all of the substantive provisions of the proposal which is now before us. I want to repeat that. It would sunset all of them.

I am sorry. Mr. President, I apologize. The notes I have here—the Senator from South Carolina has crossed those provisions out of this provision. Now, it simply requires costly and unnecessary reporting requirements and institutes a brandnew Government bureaucracy.

It stems from the proposition from the opponents to this bill that the only goal of the bill is to lower insurance costs. Yet, I do not believe that either the Senator from West Virginia or I have ever included lower interest costs as one of the rationales for the passage of this bill. We hope that it might well be an incidental impact of the passage of the bill. But it is not central to our arguments.

To go back to the beginning, each of us has said that it is designed to improve the competitiveness of American businesses, large and small, to increase economic growth and to create more jobs, to make the present system more fair by making it more open to small claims through an alternative dispute resolution mechanism and by creating a uniform and in many cases in many States a more generous statute of limitation on claims and to reduce overall liability costs. But whatever the situation may have been 25 or 30 years ago, overall liability costs are a large universe, of which insurance premium costs are only one and one increasingly less important element. Why? For three reasons:

First, in many States, punitive damage awards cannot be insured against. It is not true in all cases but it is true in many States. It is the arbitrary nature of punitive damage verdicts, which is a major goal of the reforms contained in this bill.

Second, several years ago through a solution developed in the Commerce Committee, of which both the Senator from South Carolina and I are members, a market solution was created for the nonresponsiveness of insurance premiums to market changes by a Federal Risk Retention Act which allows small businesses to pool themselves together to self-insure in the area of product liability, an act which has been utilized by thousands of small businesses across the country. So they are outside of the insurance field entirely.

Finally, of course, most very large businesses, many of the business enterprises which have abandoned product lines or decided not to continue to develop new product lines, are self-insurers. They do not go to insurance companies to insure themselves against product liability costs. They make their own business judgments about what they will develop and what they will market.

My friend and colleague from West Virginia is constantly brought up as being originally a sponsor of a bill like this a number of years ago. It is true that he was. But as I trust is the case with all of us, changing circumstances and greater thoughtfulness change our minds on particular courses of action. It has changed my mind on the substance of this bill. There was at least one previous product liability bill in the Commerce Committee which I opposed in the committee, one quite different from this. But when Senator ROCKEFELLER, several Congresses ago, offered an amendment like this, the product liability bill that we were dealing with included strict limits on liability, caps on pain and suffering damages, which this one does not. We did not have the Risk Retention Act in existence at that time. It was a much better argument at that point that this proposal would have a clear cost-cutting effect on insurance.

Mr. HEFLIN. Mr. President, will the Senator yield for a question?

Mr. GORTON. Yes; I am happy to yield for a question.

Mr. HEFLIN. I was interested in what the Senator had to say about whether the Senator really does anticipate that the passage of this bill would reduce insurance costs. The Senator has given a couple of reasons why certain things are outside. But as I understand it, one of the main ideas has been that this would cut transaction costs, which I question, because it bifurcates a trial requiring additional hearings. But basically, will the Senator agree that where companies have liability insurance that there is in practically all policies no limit on transactional costs? The defense that occurs to the company as a result of liability insurance is borne by the insurance companies. Therefore, I raise the issue.

One of the arguments is the cost. I have heard the Senator talk about it—defense fees, the deposition fees, and those things from the defense side which really would be borne by the insurance companies. Therefore, it would have some relationship to the overall cost of insurance, would it not?

Mr. GORTON. I am not entirely certain what the question from the Senator from Alabama consists of. But I think I understand it. I will do the best that I can to answer it.

Yes; one of the goals of this bill is to reduce transaction costs. It is to see to it that more of the money that goes into the legal system goes to actual victims, whether product liability as the bill is now more inclusive, medical malpractice. We find it an absolute scandal that for every dollar that goes into the product liability system only 40 cents or so gets to victims. And 60 cents goes to transaction costs, most of which goes to lawyers.

We have not separated out how much of those lawyer fees are defendants' fees. That is a matter I suspect of indifference to the victim. It is 60 percent. Of course, for most insurance policies there is no limit on the amount that the insurance company will spend in defending the defendant in such a case. There hardly could be. Under those circumstances the claimant's attorney would simply drive the engine until that level had been reached and then no longer would have any opposition.

What we are attempting to do in this bill is, one, create more situations in which there was a prompt settlement through something less than full litigation through the ADR provisions in the bill; second, by limiting to in some respects consistent with the Constitution—in fact, a response to the invitation from the Supreme Court of the United States under the Constitution to do so—somehow limiting the possibility of huge punitive damage verdicts causing cases to settle earlier, and at a more reasonable price and at a lower transaction cost; third, of course, simply doing more justice in the system. We hope that it will modestly cut back on the number of lawsuits that are brought in the first place, especially frivolous ones, and cause the meritorious lawsuits to be settled more quickly and even when they go to trial to be settled less frequently with lengthy appeals to appellate courts.

This Senator did not say, I report, Mr. President, to my friend, that we did not believe that there would be any reduction in liability insurance costs. The Senator said that we were not utilizing that, we were not making that prediction as an argument in favor of the bill. The argument in favor of the bill is greater justice, especially for smaller claims, the increase in economic growth and the creation of jobs, and the encouragement of the development of new and improved products on the part of the American business community.

If you ask this Senator does he think that liability insurance costs will go down, he does. He certainly hopes so. But the point is that if they do not, unlike the situation 8 or 10 years ago, those who have to purchase the insurance or who face product liability claims will have an alternative, an alternative that we created for them in risk retention pools. If the competitive market among big insurance companies does not lower the costs, those risk retention pools certainly will, and they are not a subject of this amendment.

Mr. HEFLIN. I might inquire of the Senator if there was testimony—I do not know whether it was this year or last year—from the American Insurance Association, one of their officers, which basically said that passage of the bill would not, I repeat, not, bring about any reduction in liability insurance premiums? Some words are that there would be insurance cost savings. I do not remember right offhand the person who said it, but I remember seeing that in a previous report of the Commerce Committee.

Does the Senator remember that testimony?

Mr. GORTON. I do not remember that testimony this year. I believe the Senator from Alabama is probably correct about some such testimony for years past. But to exactly the extent that that is true, the amendment which we are discussing is irrelevant and has no impact other than probably

to drive up costs because it drives up the paperwork involved in the entire system.

Mr. HEFLIN. In regard to the alternate dispute resolution, if I recall right—I do not have it before me right now—there was a GAO study which indicated that they thought the bill would increase the transaction costs and that one of the reasons for it was the way the alternate dispute resolution provision was contained in the bill. Does the Senator recall that testimony?

Mr. GORTON. I am sorry; I was distracted.

Mr. HEFLIN. I was speaking of the GAO report. I do not have it before me. But as I recall the GAO report indicated that the provisions of the bill—maybe it was a predecessor of it—in their judgment would not reduce transactions costs, and that one of the reasons was they felt it could possibly increase it was because of the alternate dispute resolution methods that were there—increasing it another hearing as well as the provisions dealing with bifurcation, separate hearings that you would have to go through—thereby bringing about additional lawyer's fees in regards to those proceedings, particularly on the defendant's side where there is an hour billable approach.

Does the Senator recall that?

Mr. GORTON. I have to say to my friend from Alabama I do not recall that. As the alternative dispute resolution provisions in these bills have changed from year to year, certainly no such report has been filed in connection with the alternative dispute resolution proceedings, or, rather, sections in this bill.

I see, Mr. President, it is now 5 minutes after 12. I know my colleague from West Virginia wishes to speak, and I yield the floor.

Mr. ROCKEFELLER addressed the Chair.

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

Mr. ROCKEFELLER. Mr. President, as one of the managers of what was once solely a bill to reform our product liability system, I wish to speak to my colleagues, those who share in a general sense the purpose of what we are trying to do here, about at least my views on the business before us.

At 12:15, in 10 minutes, the Senate will vote on three pending amendments to this bill, and then vote on the first of two cloture motions. The second cloture motion vote is expected at 2 o'clock, maybe 2:15. I am not sure.

I am going to make a motion to table both the Abraham amendment on joint and several liability and the Kyl amendment that tries to delete the alternative dispute resolution section of this bill, alter it in ways which I find distasteful, but the message I wish to get across most strongly is that I will vote against both cloture motions. I will vote against the one at—whenever the first one comes, and I will vote against the second one. I will not vote for one and against the other, against one and for the other. I will vote against both. I want both to fail because there are those of us who believe that this bill needs to be kept to product liability—and I think there are many of us—so that we can at least get some tort reform accomplished, which we will not in any other event. Those folks need to vote in their conscience, if that is where their conscience dictates, against both cloture motions, to vote no on both cloture motions. And I hope anybody interested in achieving actual results on product liability reform will do the same and vote no on both cloture motions today.

This past week, frankly, has been rather astonishing to me, Mr. President. One would think, when a majority of Senators get the chance finally, without a filibuster on the motion to proceed, when we finally get to work on a bipartisan, balanced, focused piece of legislation to deal with this very serious problem, that is precisely how they would spend their time here.

But, no, instead, we have watched Senator after Senator come eagerly to the floor to add one more ornament to the tree. As I have said before, anyone who has ever decorated a Christmas tree knows that if at some point you put too many ornaments on, too many bows on one side of the tree, that tree is going to fall over and crash down and you lose the ornaments, the tree, the Christmas spirit, and it is a terrible vacation. That is the situation I see before us right now. And the amendments from Senators ABRAHAM and KYL are going to assist in sending this tree to the ground.

The Senate has had absolutely no opportunity that I know of to consider whether the joint and several provisions in the product liability bill make sense for the rest of civil actions. I do not know of any hearing on the topic. I do not see a bill from the Judiciary Committee on the topic, or a report laying out the arguments on an idea as significant as this one. Yes, the House of Representatives made a sudden decision to throw the idea into their stew of legislation on tort reform that passed a couple weeks ago. But this body is supposed to keep a standard of actually thinking about what it is on which we vote. We pride ourselves on that. And the idea of deleting the section in this bill that promotes alternative dispute resolution is appalling to me.

Maybe I need to restate the obvious. Legislation becomes law when interests are balanced, when legislators work out difficult problems together, when problems are addressed with practical remedies.

The alternative dispute resolution provision in our product liability bill is there for these reasons. Here is one of the parts of this bill designed solely and specifically to deal with one of the most maddening problems in product liability. Victims have to wait too long for compensation. The system is too slow and too inefficient. If I am a small farmer from West Virginia or some other place and I do not have any money, and I do not have any money to hire lawyers or any money to pay for time for 3 years to go by, I can avail myself of the alternative dispute resolution.

We want to encourage that small farmer who does not have the resources, the small business person, the person of very modest means. And this is the way we do it, by allowing him this particular advantage. That is why we want to promote alternative dispute resolutions in a way that will speed things up so that that small farmer will, in fact, come in and probably just speak for himself and the case will be simply handled right there on the spot, no lawyer, no problem, no time, no expenditure of money.

I really do not think we have to apologize for devising an approach that is slanted toward the victim when we are talking about encouraging them to resolve their cases earlier. Remember, they have wait to 3 years now. We are trying to encourage people to get that amount of time down.

So in the strongest possible terms, I urge my colleagues to defeat both of these amendments. And I urge my colleagues, again, to vote against cloture, not just the first cloture vote but also the second one that will take place this afternoon at about 2 o'clock.

We now have a bill that has become deformed, disfigured. A small group of Senators has refused to follow the discipline of working out with the rest of us who are interested in enacting product liability reform what we will do to accomplish that. Until they do, we should bring this bill to a halt.

A majority of Senators are clearly interested in a balanced, moderate product liability reform bill—I am convinced of that; I deeply believe that—that serves consumers, victims of defective products, and business in a balanced way. We still have that opportunity. The pending cloture votes will demonstrate what it takes to succeed.

Mr. President, I thank the Chair and yield the floor.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from Alabama.

Mr. HEFLIN. Mr. President, I am delighted to hear Senator ROCKEFELLER state that the way the bill stands now, it is deformed and disfigured. That reminds me that this bill, as it stands right now, is pretty much similar to what the House passed. I do not think whatever we pass here in the Senate, when it goes to conference, is going to come out much different from the House bill. I think we know that the Speaker over there has great influence.

I just feel that, basically, whatever we do here which passes the Senate and goes to conference will reflect the Speaker's position on this overall issue. I think the key battle is the battle here in the Senate and the Senate's

role to be deliberate and to prevent unwise, unfair legislation.

Now, if there is a disfigurement and a deformity by extending the language pertaining to punitive damages, by extending the language eliminating joint and several liability to cover all civil actions, then that is a recognition that there is a fault with that extension, there is a fault with the overall underlying principle that is being brought forth here in regard to punitive damages and also to eliminating joint and several liability.

The PRESIDING OFFICER. Under the order, a vote is to occur at 12:15.

Mr. HEFLIN. Mr. President, I ask unanimous consent that I be allowed to proceed for 3 more minutes.

Mr. GORTON. No objection.

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

Mr. HEFLIN. I send to the desk and will ask to have printed in the RECORD a letter, dated May 25, 1990, to the Honorable RICHARD H. BRYAN, then chairman of the Subcommittee on Consumer Affairs, Committee on Commerce, Science, and Transportation, pertaining to the GAO study.

One of the questions that he asked was:

In your research of the current product liability system, have you found any evidence that would support the argument that the current tort system has led to an increase in transaction costs?

And they ended up saying: ''We believe that S. 1400''—which was a predecessor bill—''is unlikely to reduce transaction costs in product liability suits.''

I send that letter to the desk and ask unanimous consent that it be printed in the RECORD.

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

GENERAL ACCOUNTING OFFICE,
Washington, DC, May 25, 1990.

Hon. RICHARD H. BRYAN,
Chairman, Subcommittee on Consumer, Committee on Commerce, Science, and Transportation, U.S. Senate.

DEAR MR. CHAIRMAN: Enclosed are my responses to your questions regarding my February 28, 1990, testimony on product liability. If you have additional questions or if I can be of further assistance, please call me, or Cynthia Bascetta.

Sincerely yours,

JOSEPH F. DELFICO,
Director, Income Security Issues.

Enclosure.

1. In your research of the current product liability system, have you found any evidence that would support the argument that the current tort system has led to an increase in transaction costs? What are the major factors that contribute to the level of transaction costs? Do you believe that S. 1400 would reduce transaction costs in product liability suits?

In our review, we did not collect data over time to assess whether the current tort system has led to an increase in transaction costs. We reviewed a 1987 study by the Rand Corporation, however, that reported that between 1980 and 1985, the annual growth rate for the amount of tort litigation was about 3 or 4 percent. Expenditures for this litigation grew at about 6 percent for automobile-related litigation and about 15 percent for other tort claims, including product liability.[1] Although the literature is replete with general concerns about the costs of litigation, we did not find any other research documenting trends in transaction costs associated with the current tort system.

The major factor affecting the level of transaction costs is the length of litigation. As we reported, cases we reviewed took years to process—almost 2-½ years to move from filing of a complaint to the beginning of the trial. On average, appealed cases took 10 more months. In our review, we noted two possible reasons for lengthy litigation in product liability cases. First, the law has been evolving in many states, which may increase the complexity of the legal decision-making process. Breaking new ground and establishing new precedents, for instance, take more time than cases where the law is clearer and requires little deliberation or interpretation. Second, both plaintiffs and defendants have little incentive to cut corners. Although plaintiffs have incentives to expedite the process so that they can receive compensation, their attorneys may want to invest substantial resources in developing cases to deter manufacturers from making harmful products. Defendants may prefer not to settle cases to deter further suits over the same product. Pretrial discovery—a time-consuming and expensive feature of litigation—therefore becomes an important part of product liability suits for both parties.

We believe that S. 1400 is unlikely to reduce transactions costs in product liability suits. For cases that are litigated, the procedural features of the tort system would not be changed by the bill. It is also not clear that the bill provides strong incentives for alternative dispute resolution, which could cut litigation costs. Moreover, the alternative dispute resolution mechanisms that may be used are left to the discretion of the states. If these mechanisms are not binding, then they may add to rather than substitute for litigation. If this happened, costs could actually increase.

2. Your study found that product liability cases were quite time consuming:

A. Could you please identify the specific factors that make these cases time consuming?

B. Are there any benefits to the judicial process for having prolongated cases? For example, is lengthy litigation ever justified in order to insure an accurate record in a complicated case?

C. What are the disadvantages for having lengthy litigation?

D. Do you believe S. 1400 would reduce litigation time in product liability cases?

A. Specific factors that make these cases time-consuming are the steps required in the legal process. In the vast majority of cases we reviewed, we noted that defendants often used the maximum amount of time legally required. Delays caused by defendants were also common. In most cases, manufacturers have little incentive to settle cases, as we said in response to the first question, although some may be concerned about adverse publicity regarding their products.

In the typical case in our review, the defense was first granted 30 days to respond to a petition. The defense typically argued, at the end of the 30 day period, that the plaintiff did not use the product or that negligence was the cause, at least in part, of the harm. This began the legal process known as discovery, in which the burden was on the plaintiff to build a record by collecting data on product design, specifications, and other (often proprietary) information from defendants. The preparation of interrogatories—testimonial evidence from eyewitnesses, expert witnesses, and others—was another lengthy process needed for the record. We also found frequent motions to extend and delay court dates.

B. In any case, a complete and accurate record would be necessary to ensure a fair legal outcome. In this sense, lengthy litigation and its attendant costs might be justified. Generally, however, we believe litigation should be shorter, and as a result, we would expect lower overhead costs and higher net compensation for injured parties. In our report, we concluded that we cannot determine the degree to which the benefits of the judicial process balance substantial administrative costs. We also noted that benefits thought to accrue from the judicial process include providing incentives for product safety. The Rand Corporation noted in its 1987 study that ''there is no ready measure of the inherent reasonableness of the system's transaction costs. Especially when we focus on the tort system's goal of deterrence, we might encounter circumstances in which we find very high transactions costs acceptable.''[2]

C. There are two primary disadvantages of lengthy litigation. First, as we have already discussed, time greatly increases costs. Second, protracted litigation means that injured parties wait longer for compensation.

D. S. 1400 will probably not reduce litigation time in product liability cases because discovery and other legal processes would not be affected by the bill. And, because the effect of S. 1400 on alternative dispute resolutions is unclear, we cannot predict the extent to which lengthy litigation could be avoided if product liability reform were enacted.

3. Your study indicated that the data needed to give a complete evaluation of the effects of tort reforms is not readily available. Do you have any recommendations on how the relevant and necessary data might be collected? If so, what is your projection of the length of time it would take to collect such data?

When we began our review, we found that with the exception of ongoing work at the Rand Corporation, very little data had been gathered in any systematic way about the outcomes of tort reforms. According to researchers at Rand, neither critics nor defenders of the civil justice system have much solid evidence to support their views. In fact, the legal system is notorious for its fragmentation and dearth of records on finances and workloads. Our review confirmed serious inadequacies in available databases, methodological difficulties in designing rigorous studies, and an overall lack of empirical evidence that impede efforts to evaluate the effects of tort reforms.

For a comprehensive assessment of research prospects in this area, we refer you to the following Rand Corporation publications: (1) Hensler, Deborah R., ''Researching Civil Justice: Problems and Pitfalls,'' Summer 1988; (2) Reuter, Peter, ''The Economic Consequences of Expanded Corporate Liability: An Exploratory Study,'' November 1988; and (3) Carroll, Stephen J., ''Assessing the Effects of Tort Reforms,'' 1987.

Mr. HEFLIN. Senator HOLLINGS is unable to be here. He was called down to the White House on a budget matter.

In regard to his amendment, he has asked that I point out that his same

[1] Hensler, Deborah R. et al, ''Trends in Tort Litigation: The Story Behind the Statistics,'' Rand Corporation, Institute for Civil Justice, Santa Monica, CA, 1987, p. 25.

[2] Ibid., p. 25.

amendment was accepted by unanimous consent last year. The proponents of the bill, Senator GORTON and Senator ROCKEFELLER, accepted the amendment by unanimous consent in the last Congress. So I am just repeating that at the request of Senator HOLLINGS relative to this matter.

But overall, this bill is a very unfair bill. It has added to it to make it much more encompassing, to make this matter of punitive damages now extend to other suits far into what it does.

There are other provisions, such as the Abraham amendment, that, in effect, extends the elimination joint and several liability to all sorts of suits. Now, in our courts, you either have criminal cases or you have civil cases. Under this, it extends it to all civil suits brought under any theory whatsoever. So it is very broad and comprehensive, and very much covering almost every conceivable type of civil lawsuit that you might have, including such things as State antitrust laws.

Sexual harassment in State laws would be covered; disability protections in State laws; Americans with disabilities would be covered, as it would apply, by State laws relative to this; automobile accident cases, all sorts of things in regard to it.

It is an extremely broad and encompassing bill. I think it ought to be defeated.

ABRAHAM AMENDMENT NO. 600 ON JOINT AND SEVERAL LIABILITY

Mr. LEVIN. Mr. President, I intend to vote against the Abraham amendment to extend limitations on joint and several liability for noneconomic damages to all civil actions.

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 the case 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. We all know that cause and effect cannot accurately be assigned on a percentage basis. 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 and this amendment, however, do not recognize that in the real world, multiple wrongdoers may each cause the same injury. They insist that responsibility be portioned out, with damages divided up into pieces. 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 guilty parties, he or she will not be compensated for his or her entire loss. The real world result is that most plaintiffs will not be made whole, even if they manage to overcome the burdens or our legal system and prevail in court. Wouldn't it be more fair to say that any wrongdoers who caused the injury should bear the risk that one of them might not be able to pay its share? Put another way, isn't it more fair for all of the wrongdoers who cause an injury to bear this risk than for the victim to carry the burden of uncompensated loss?

More than 30 States either maintain the doctrine of joint and several liability or have come up with creative approaches to address the potential unfairness of imposing joint and several liability in some cases without unfairly hurting the injured party. Because these State laws are more favorable to the injured party than the approach adopted in this amendment, so they would all be preempted.

As far as I am aware, no hearings have been held on this broad proposal to abolish joint and several liability for noneconomic damages in all civil cases. There has been no discussion of the range of State laws that would be overridden by this amendment and the effect that overriding them would have. This amendment is unfair and unbalanced, and I cannot support it.

PUNITIVE DAMAGE CAPS FOR SMALL BUSINESSES

Mr. BRADLEY. Mr. President, I rise today to express my support for the amendment offered by my colleague from Ohio, Senator DEWINE, and accepted by the Senate yesterday. The amendment provides for a $250,000 cap on punitive damages for individuals whose net worth does not exceed $500,000 and corporations, partnerships, associations, and units of local governments with fewer than 25 employees.

Mr. President, small businesses are the engine that drives the American economy and provide for at least half of this country's new employment opportunities. As such, Mr. President, as we debate the issue of imposing a punitive damages cap, we need to ensure that small businesses are not punished disproportionately when they take actions which call for the imposition of such damages.

Mr. President, punitive damages are designed to punish the offender and protect the public by deterring conduct that is harmful. I am, therefore, a strong proponent of the right of courts to police egregious conduct through the award of punitive damages. Thus, while a cap on punitive damage awards should be sufficient to punish and deter future action, it should also reflect the fact that a cap that may be sufficient to punish a large corporation may in fact push a small business into the abyss of bankruptcy.

Mr. President, I have spoken to small business owners in New Jersey on this issue. What I have heard over and over again is that if they commit offenses that merit an award of punitive damages, they should be punished; however, the punishment and deterrent effect should reflect the economic situation of the small business offender. Mr. President, a $250,000 punitive damage award against a small business with assets of $400,000 may drive the owner out of business, while a $5 million punitive award against a large corporation with assets in excess of $500 million will have less of a deterrent effect. I cannot support such a disproportionate impact on small businesses struggling to meet their bottom line.

Therefore, Mr. President, I am pleased to support the amendment offered by my colleague from Ohio which serves to balance our national interest in punishing and deterring harmful conduct and protecting the viability of small businesses.

Mr. DODD. Mr. President, I have been working on product liability reform for more than a decade. During that time, a wide range of my constituents—consumers, manufacturers, small businesses, and workers—have told me about the serious problems with the present system.

Injured people are upset about both the length of time it takes to receive fair compensation and the high cost of legal fees. Manufacturers are reluctant to introduce new products because of the inconsistent product liability laws in the 50 States. Small businesses are hurt by the costs of defending themselves against unjustified lawsuits. Workers fear that the costs in the present system will drag the economy down. Consumers question whether they are getting high quality products at a fair price.

We need reform that will improve the system for everyone. To do that, we must strike a balance between many competing interests. We must not adopt reform that tips the balance too far in any direction. In the past, I have opposed measures that unfairly limited the rights of consumers, and I will continue to do so.

Because 70 percent of all products move in interstate commerce, this is an appropriate area for Federal standards. A national, more uniform system would lower costs and speed the resolution of disputes. At the same time, we need to be careful about making other changes in the legal system that have not been as carefully thought out.

The original bill, crafted by Senators ROCKEFELLER and GORTON, offered the kind of carefully focused, balanced reform that would improve the system for everyone. I am a cosponsor of that bill. I am concerned, however, about a number of changes that were made to the legislation during the past week.

For example, the bill now contains a separate title on medical malpractice reform. I agree that there are significant problems with medical malpractice litigation and that Congress should enact carefully considered reforms. The proposal that was added to the product liability bill, however, is flawed.

It contains, for example, a provision that would make it harder to bring lawsuits against obstetricians who are seeing the patient for the first time.

This provision might not have much of an effect on wealthier patients who would have a primary doctor supervising the obstetric services. But what about those poor women who only see the doctor during the actual delivery of the baby? If they were injured, they would have a difficult time receiving compensation.

The Gorton-Rockefeller bill was expanded in other ways. For example, there is now a cap on punitive damages in all civil cases—not just product liability cases. There have been a number of studies and commentaries about the problems with punitive damages in product liability cases. Those analyses suggest that some reform is needed for those cases. However, it is not clear that we need to reform punitive damage awards in all civil cases. In my view, we ought to engage in more extensive debate before taking such drastic steps.

Additionally, I have concerns about putting arbitrary limits on damages. Because caps limit flexibility, they can lead to unjust results in some cases. I have filed an amendment that would address this problem. Under my amendment, the jury would determine whether punitive damages are appropriate, but the judge would set the amount. Hopefully, we will resume debate on the bill and consider this amendment.

Because of these and other concerns, I will vote against cloture. There is still much work that needs to be done on this bill, and this is not the time to cut off debate. I still support product liability reform and will work with my colleagues to enact careful, balanced reforms. But I will not support efforts to ram through other changes in the legal system that go far beyond the balanced product liability bill I cosponsored.

We have a real chance to actually pass meaningful and fair product liability reform this year, and I will not support anything that endangers those chances. In my view, there is a bipartisan majority of Senators that would support that approach, and I look forward to working with them to pass a good bill.

VOTE ON MOTION TO TABLE AMENDMENT NO. 600

The PRESIDING OFFICER. Under the previous order, the question now occurs on amendment No. 600.

Mr. GORTON. Has a rollcall been ordered?

The PRESIDING OFFICER. It has not.

Mr. GORTON. I ask for the yeas and nays.

Mr. ROCKEFELLER. If the Senator will yield for a moment, I move to table the Abraham amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Under the order, the question now occurs on the motion of the Senator from West Virginia [Mr. ROCKEFELLER] to table amendment No. 600, offered by the Senator from Michigan [Mr. ABRAHAM].

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Rhode Island [Mr. PELL] is absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island [Mr. PELL] would vote ''aye.''

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

The result was announced—yeas 51, nays 48, as follows:

[Rollcall Vote No. 148 Leg.]

YEAS—51

Akaka	Feingold	Mikulski
Baucus	Feinstein	Moseley-Braun
Biden	Ford	Moynihan
Bingaman	Gorton	Murray
Boxer	Graham	Nunn
Bradley	Harkin	Packwood
Breaux	Heflin	Pryor
Bryan	Hollings	Reid
Bumpers	Inouye	Robb
Byrd	Jeffords	Rockefeller
Cohen	Johnston	Sarbanes
Conrad	Kennedy	Shelby
D'Amato	Kerrey	Simon
Daschle	Kerry	Specter
Dodd	Lautenberg	Stevens
Dorgan	Leahy	Thompson
Exon	Levin	Wellstone

NAYS—48

Abraham	Frist	Lott
Ashcroft	Glenn	Lugar
Bennett	Gramm	Mack
Bond	Grams	McCain
Brown	Grassley	McConnell
Burns	Gregg	Murkowski
Campbell	Hatch	Nickles
Chafee	Hatfield	Pressler
Coats	Helms	Roth
Cochran	Hutchison	Santorum
Coverdell	Inhofe	Simpson
Craig	Kassebaum	Smith
DeWine	Kempthorne	Snowe
Dole	Kohl	Thomas
Domenici	Kyl	Thurmond
Faircloth	Lieberman	Warner

NOT VOTING—1

Pell

So the motion to lay on the table the amendment (No. 600) was agreed to.

Mr. ROCKEFELLER. Mr. President, I move to reconsider the vote.

Mr. GORTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 681

The PRESIDING OFFICER. The question now occurs on amendment No. 681, offered by the Senator from Arizona.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The clerk will call the roll.

Mr. FORD. I announce that the Senator from Rhode Island [Mr. PELL] is absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island [Mr. PELL], would vote ''nay.''

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

The result was announced—yeas 60, nays 39, as follows:

[Rollcall Vote No. 149 Leg.]

YEAS—60

Abraham	Gramm	McConnell
Ashcroft	Grams	Murkowski
Baucus	Grassley	Nickles
Bennett	Gregg	Nunn
Bond	Harkin	Packwood
Brown	Hatch	Pressler
Bumpers	Hatfield	Reid
Burns	Heflin	Roth
Campbell	Helms	Santorum
Chafee	Hollings	Shelby
Coats	Hutchison	Simpson
Cochran	Inhofe	Smith
Coverdell	Jeffords	Snowe
Craig	Kassebaum	Specter
D'Amato	Kempthorne	Stevens
DeWine	Kyl	Thomas
Dole	Lott	Thompson
Domenici	Lugar	Thurmond
Faircloth	Mack	Warner
Frist	McCain	Wellstone

NAYS—39

Akaka	Exon	Lautenberg
Biden	Feingold	Leahy
Bingaman	Feinstein	Levin
Boxer	Ford	Lieberman
Bradley	Glenn	Mikulski
Breaux	Gorton	Moseley-Braun
Bryan	Graham	Moynihan
Byrd	Inouye	Murray
Cohen	Johnston	Pryor
Conrad	Kennedy	Robb
Daschle	Kerrey	Rockefeller
Dodd	Kerry	Sarbanes
Dorgan	Kohl	Simon

NOT VOTING—1

Pell

So the amendment (No. 681) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 682

The PRESIDING OFFICER. Under the order the question occurs on amendment 682 offered by the Senator from South Carolina [Mr. HOLLINGS].

Mr. GORTON. Mr. President, I move to table the Hollings amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Washington to lay on the table the amendment of the Senator from South Carolina. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Rhode Island [Mr. PELL] is absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island [Mr. PELL] would vote ''nay.''

The PRESIDING OFFICER (Mr. KYL). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 56, nays 43, as follows:

[Rollcall Vote No. 150 Leg.]

YEAS—56

Abraham	Exon	McCain
Ashcroft	Faircloth	McConnell
Baucus	Frist	Moseley-Braun
Bennett	Gorton	Murkowski
Bond	Gramm	Nickles
Brown	Grams	Pressler
Burns	Grassley	Pryor
Campbell	Gregg	Robb
Chafee	Heflin	Rockefeller
Coats	Helms	Roth
Cochran	Hutchison	Santorum
Coverdell	Inhofe	Smith
Craig	Jeffords	Snowe
D'Amato	Kassebaum	Specter
DeWine	Kempthorne	Stevens
Dodd	Kyl	Thomas
Dole	Lott	Thompson
Domenici	Lugar	Warner
Dorgan	Mack	

NAYS—43

Akaka	Glenn	Lieberman
Biden	Graham	Mikulski
Bingaman	Harkin	Moynihan
Boxer	Hatch	Murray
Bradley	Hatfield	Nunn
Breaux	Hollings	Packwood
Bryan	Inouye	Reid
Bumpers	Johnston	Sarbanes
Byrd	Kennedy	Shelby
Cohen	Kerrey	Simon
Conrad	Kerry	Simpson
Daschle	Kohl	Thurmond
Feingold	Lautenberg	Wellstone
Feinstein	Leahy	
Ford	Levin	

NOT VOTING—1

Pell

So, the motion to lay on the table was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. LOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CLOTURE MOTION

The PRESIDING OFFICER (Mr. KYL). Under the previous order, the clerk will report the motion to invoke cloture.

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 do hereby move to bring to a close debate on the Gorton Amendment No. 596 to H.R. 956, the Product Liability bill.

Bob Dole, Slade Gorton, Rick Santorum, Jim Inhofe, Conrad Burns, Pete V. Domenici, Hank Brown, Spencer Abraham, Paul D. Coverdell, Larry E. Craig, Dirk Kempthorne, Bob Smith, Trent Lott, Chuck Grassley, Judd Gregg, Mitch McConnell.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the call of the roll has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the Gorton amendment numbered 596 to H.R. 956, the product liability bill, shall be brought to a close? The yeas and nays are required. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Rhode Island [Mr. PELL] is absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island [Mr. PELL] would vote ''aye.''

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

The yeas and nays resulted—yeas 46, nays 53, as follows:

[Rollcall Vote No. 151 Leg.]

YEAS—46

Abraham	Frist	Lott
Ashcroft	Gorton	Lugar
Bennett	Gramm	Mack
Bond	Grams	McCain
Brown	Grassley	McConnell
Burns	Gregg	Murkowski
Campbell	Hatch	Nickles
Chafee	Hatfield	Pressler
Coats	Helms	Santorum
Coverdell	Hutchison	Smith
Craig	Inhofe	Snowe
DeWine	Jeffords	Stevens
Dole	Kassebaum	Thomas
Domenici	Kempthorne	Warner
Exon	Kyl	
Faircloth	Lieberman	

NAYS—53

Akaka	Feinstein	Moynihan
Baucus	Ford	Murray
Biden	Glenn	Nunn
Bingaman	Graham	Packwood
Boxer	Harkin	Pryor
Bradley	Heflin	Reid
Breaux	Hollings	Robb
Bryan	Inouye	Rockefeller
Bumpers	Johnston	Roth
Byrd	Kennedy	Sarbanes
Cochran	Kerrey	Shelby
Cohen	Kerry	Simon
Conrad	Kohl	Simpson
D'Amato	Lautenberg	Specter
Daschle	Leahy	Thompson
Dodd	Levin	Thurmond
Dorgan	Mikulski	Wellstone
Feingold	Moseley-Braun	

NOT VOTING—1

Pell

The PRESIDING OFFICER. On this vote, the yeas are 46, the nays are 53. Three-fifths of the Senators duly chosen and sworn, not having voted in the affirmative, the motion is rejected.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, assuming that this is free time, I ask unanimous consent that the Senator from California, Senator FEINSTEIN, be allowed to speak for 10 minutes.

The PRESIDING OFFICER. Time is controlled and equally divided. Without objection, the Senator from California is recognized.

Mrs. FEINSTEIN. I thank the Chair and I thank the Senator from West Virginia.

Mr. President, I have listened carefully over the past weeks of this debate—pro and con—on product liability. I am not an attorney, so I have tried hard to work through what is fair and what is not. While I would like to have an opportunity to vote for cloture on a more narrowly crafted bill, I cannot vote for this bill with the Dole amendment included. To do so, I believe, would extend the impact of the bill far beyond the limited field of product liability, and impose major limitations to redress of grievances across the board in all civil actions, without the opportunity of Committee hearings in the Senate and consideration of how the bill would impact other specific areas of the law.

Anyone who has read ''The Rainmaker,'' the newest best seller, can see what impact the Dole amendment would have, for example, in insurance cases. Insurance companies would be able to do exactly what was done in that book, act in bad faith. And I simply cannot support this.

I believe that Senators GORTON and ROCKEFELLER have worked hard to craft a bill with reasonable reforms that could pass this body. I was particularly pleased with the compromise reached with the Snowe amendment to limit punitive damages to two times compensatory, which is now part of this bill. This replaces the original fixed cap of $250,000, or three times economic damages, whichever is greater. I believe this would be a fair model which takes into consideration both women and children whose earnings may be limited or nonexistent.

I find myself in strong support of other major provisions of this bill, as well. Specifically, I support the imposition of a 2-year statute of limitations from the time the injury and its cause are discovered for a plaintiff to bring a lawsuit. This provision is actually more permissive than that in many States, and California. This provision is actually victim and plaintiff friendly.

Two, the imposition of a 20-year statute of repose, an outer time limit on litigation involving workplace durable and capital goods. This is a fair standard of repose.

The bill would eliminate product seller's liability—including that against wholesalers, distributors, and retailers—for a manufacturer's errors. Sellers would remain liable in cases of their own negligence. For example, if a seller removed the manufacturer's label from a toy that said it is not appropriate for children under 6 years of age, and a child was subsequently injured, the seller would be liable.

The bill would preserve a plaintiff's power to sue one defendant, theoretically the deep pocket, for the full amount of economic damages, but eliminate such joint and several liability for noneconomic damages, such as pain and suffering.

It would allow either party to offer to participate in alternative dispute resolution—something that I very much thought and hoped would be part of this bill, and which I believe is an important part, especially for the plaintiffs who have small claims.

The bill would bar recovery of a plaintiff who is more than 50 percent responsible for causing their accident