football champions and have been invited to participate in the Rose Bowl on January 1, 1996, in Pasadena, California;

Whereas the winning of the 1995 Big Ten Conference football championship by the Wildcats completes an unprecedented 1-year turnaround of the Northwestern University football program; and

Whereas Northwestern University is committed to athletic competitiveness without diminution of scholastic standards: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates Northwestern University and its athletes, coaches, faculty, students, administration, and alumni on the winning of the 1995 Big Ten Conference football championship by the Wildcats and on the receipt by the Wildcats of an invitation to compete in the 1996 Rose Bowl; and

(2) recognizes and commends Northwestern University for its pursuit of athletic as well as academic excellence.

The PRESIDING OFFICER. The Senator from Utah.

SENATOR THURMOND

Mr. HATCH. Mr. President, I congratulate my colleague from South Carolina as well. There has never been anybody in the history of this body who has meant more to me personally than the distinguished Senator from South Carolina.

Mr. President, I ask unanimous consent we go to the distinguished Senator from South Carolina and then the distinguished Senator from New Mexico for their remarks.

The PRESIDING OFFICER. Is there objection?

Mr. BRYAN. Mr. President, reserving the right to object, my understanding is our distinguished colleague from New Mexico needs 10 minutes?

Mr. DOMENICI. That will be adequate, I think.

Mr. BRYAN. I have no objection.

The PRESIDING OFFICER. The Senator from South Carolina.

THE DEPLOYMENT OF UNITED STATES MILITARY FORCES TO IMPLEMENT THE BOSNIA PEACE AGREEMENT

Mr. THURMOND. Mr. President, last week, the Senate Armed Services Committee conducted a hearing with national security, foreign policy and intelligence experts, who were all former executive branch officials under Presidents Bush, Reagan, and Carter. All three witnesses supported deploying United States military forces to Bosnia to implement the peace plan because they believe it is critical to preserve the credibility and reliability of the United States as a world leader and as a member of the North Atlantic Alliance. While the three witnesses endorsed the deployment of U.S. military forces to implement the agreement, they also highlighted their concerns about the likelihood of disaster and questioned the ability of the implementation force to achieve any meaningful mission objectives. In fact, the witnesses all agreed that the best that could be hoped for would be to sustain the ceasefire for the time period that NATO forces are in the region.

Last week, the President traveled to Europe to visit with our allies, and speak with the young men and women of the 1st Armored Division stationed in Germany who are to be deployed to Bosnia very shortly. One Sunday, President Clinton was briefed on the NATO implementation plan, and gave his conditional approval to the concept. Following that conditional approval, the President authorized the deployment of around 700 United States troops who will lay the goundwork for the arrival of the main body of the NATO Implementation Forces, who will deploy to Bosnia once the peace agreement is formally signed in Paris next week.

President Clinton spoke to the troops, informing them of the United States national interests that warrant their deployment to Bosnia to enforce the peace agreement. The President assured the troops that their mission is clear, limited and achievable and that the risks to their safety will be minimized. According to the director for strategic plans and policy in the office of the Joint Chiefs of Staff, Gen. Wes Clark, all U.S. forces should be in the region within 30 days of the formal signing of the agreement in Paris on December 14.

According to the Department of Defense, the overall concept of the mission of the implementation force will be to monitor and enforce compliance with the military aspects of the Dayton peace agreement.

The military tasks of the Dayton agreement include: Supervise the ceasefire lines and zones of separation; monitor, and if necessary enforce the withdrawal of forces to their respective territories within the agreed time periods; establish and man the 4-kilometer zone of separation; establish liaison with local military and civilian authorities; and create joint military commissions to resolve disputes between the parties.

All implementation forces, NATO and non-NATO, will operate under NATO rules of engagement. Those rules of engagement will permit the right to use force up to and including deadly force for self-defense to protect against hostile acts or hostile intentions, and, in order to accomplish the mission.

Despite a briefing by the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff, as well as congressional hearings this past week with administration officials, I continue to have grave concerns and questions about the clarify of the mission, and whether the goals and objectives of the mission can be achieved within the limited deployment framework.

I know that our young military men and women are well-trained, the best equipped in the world and ready to go. What I am most concerned about is whether all their training and equipment will have prepared them for the sniper fire, the landmines, the terrible terrain and weather in which they will have to live. I am also concerned about possible kidnapings that could occur and how our troops will be treated. Will they be treated as prisoners of war, or political or legal detainees.

In 1945, United States military forces were sent into to an area near Tuzla to keep Yugoslavian partisan out of Trieste. We were not officially at war, but the partisans resented the presence of the U.S. forces and ambushed U.S. patrols and aircraft with sniper fire, landmines, and booby traps. It took 9 years for an agreement to be reached before the 1 year mission was completed and U.S. forces came home.

Mr. President, there are already signs of dissensions among the parties to the agreement. The Serbs continue to press for a renegotiation because the agreement would require Sarajevo to come under control of the Moslem-Croat federation and Serbian civilians feel they will not be protected. Our French allies have raised concerns that their troops could become trapped if there is renewed fighting. Additionally, the United States is being viewed as being partial to the Bosnians as a result of their support and there is a feeling that United States military forces will not be impartial.

As I stated earlier, in statements on the floor and in hearings, I continue to have grave concerns about the vital interests that have lead the President to commit U.S. military forces to implement this peace agreement. I am not yet convinced that we have a vital national interest in Bosnia that requires the deployment of United States military forces, or that our national security interests are being threatened.

On Wednesday, Secretary of Defense Perry, Assistant Secretary Holbrooke and General Shalikashvili will appear before the Senate Armed Services Committee. I intend to ask more questions about the mission, objectives of the mission and the timeframe, the exit strategy; why it is necessary to have over 60,000 heavily armed military forces with armored vehicles as peacekeepers; how the implementation forces will separate the opposing forces; and how the U.S. military forces will avoid taking on nonmilitary tasks, when it appears that the civilian humanitarian services and operations will take at least 6 months to begin operation.

Mr. President, I do not intend to rubberstamp a commitment by the President. I will reserve final judgement until after the hearings have taken place, and then make a final decision.

I yield the floor.

PRIVATE SECURITIES LITIGATION REFORM ACT—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. HATCH. Mr. President, I rise today to speak in favor of the conference report to H.R. 1058, the Private Securities Litigation Reform Act of 1995. I was an original cosponsor of the Senate bill, S. 240, and am a strong supporter of the conference report.

This legislation will protect investors and consumers, while remedying abuses that have plagued securities issuers and companies—particularly in cases in which attorneys have used class action lawsuits to force settlements on parties that have done no wrong.

It is my hope that President Clinton will defend the interests of the American people by signing this legislation, rather than favor the trial lawyers who would benefit from his veto.

In my view, this conference report represents a significant step towards addressing some of the egregious litigation abuses seen in the legal system today. On a related front, the Senate's product liability bill is going to conference, and it is my hope that in the future Congress will pass more broad-ranging litigation reforms that will affect the entire civil justice system.

I would like to extend my gratitude to Senator D'AMATO, Senator DODD, and Senator DOMENICI for their hard work in bringing this significant and well-drafted legislation to fruition. This bill has been perfected over several congresses and is the result of a strong bipartisan effort.

Abusive securities litigation lawsuits have imposed a high and harmful tax on American businesses. Because of the fear of being sued—and the high costs associated with securities lawsuits—many companies have declined to go public. Other companies have declined to make innovations or disseminate certain information.

The unfortunate irony is that, while securities litigation laws were designed to safeguard investors, in reality the current system ends up hurting investors.

The current system hurts investors who could have invested successfully in those companies that decided not to go public due to fears of litigation.

It also harms investors who could have earned greater profits on their shares had the companies they invested in been more profitable—for example, if those companies had been able to invest more money in research and development rather than wasting it on securities litigation costs. Not only have investors gotten hurt, but certain lawyers have raked in exorbitant fees.

Companies have all too often been reluctant to disclose information for fear that doing so will provoke a lawsuit. That goes completely against the grain of the securities laws, which are designed to encourage openness and full information in the securities markets.

The conference report addresses some of the worst abuses that have been seen in securities litigation. At the same time, the Report preserves and reinforces the core values of the American stock market—integrity, openness, and the free exchange of information.

The conference report does so through a number of specific measures.

The legislation provides that discovery is stayed whenever a motion to dismiss is pending in a securities action.

Discovery costs have been estimated to account for 80 percent of the costs of defending a lawsuit in a securities action. The burden of this time-consuming and expensive discovery process will accordingly be significantly reduced. That should remove some of the skewed incentives that have frequently forced companies to settle securities lawsuits even when they have done no wrong.

The conference report specifically addresses abuses involving the use of so-called professional plaintiffs as lead plaintiffs in securities action lawsuits. Many plaintiffs have been motivated to file suit to receive a bounty payment or bonus.

There has also all too often been a race to the courthouse by plaintiffs' lawyers seeking to be the first to file a complaint in a securities action. Lawyers representing a class are often appointed by the court on a first come, first serve basis: the first lawsuit filed determines who will serve as lead plaintiff and who will be the lead attorney.

In many cases, the professional plaintiff has not even reviewed the complaint filed against the defendant. This legislation will require the lead plaintiff to file a sworn certified statement along with the complaint, stating: First that the plaintiff has reviewed and authorized the filing of the complaint; second that the plaintiff did not purchase the security involved at the request of an attorney or to be a party to the securities action; and third that the plaintiff is willing to serve as the lead plaintiff for the class.

A lead plaintiff may not serve as a lead plaintiff in a securities action more than five times in 3 years. The legislation also limits the class representative's recovery to the lead plaintiff's pro rata share of the settlement or final judgment. These provisions limit some of the skewed incentives that have led to the rise of professional plaintiffs.

Once a securities litigation class action lawsuit has been filed, the court will then determine separately which plaintiff is the most adequate plaintiff. Any party who has received notice of the suit may petition the court to serve as lead plaintiff within 60 days of when the suit was filed. In determining which plaintiff is the most adequate plaintiff, the court determines which party has the greatest financial interest in the lawsuit.

The most adequate plaintiff selects the lead attorney and negotiates attorneys' fees. That plaintiff also weighs in on settlement decisions and other significant decisions pertaining to the lawsuit.

The legislation also provides improved settlement notice to class members. Class members will have to be provided notice of a proposed settlement and specified information. That information would include, if the parties agree on a figure, the average amount of damages per share that would be recoverable or, if the parties do not agree an a particular amount, a statement from each party as to why there is disagreement.

Notice must also include an explanation of the attorneys' fees and costs involved; the name, telephone number, and address of the class lawyer; and a brief statement explaining the reasons for the proposed settlement. Those provisions will improve the information provided to individual shareholders and increase the involvement of individual class members in litigation decisions.

The conference report also limits attorneys' fees to a reasonable percentage of the amount of recovery awarded to the class.

On a separate note, this legislation creates a modified system of proportionate liability, under which each codefendant is generally responsible for only the share of damages that that defendant caused to the plaintiff.

To balance plaintiffs' needs, however, there is a provision to protect plaintiffs from insolvent codefendants. Where defendants have committed a knowing securities violation, those defendants will be jointly and severally liable for damages. Also, in the case of an insolvent codefendant, a proportionately liable codefendant would provide additional damages to up to 150 percent of its share of the damages.

There is even an additional, special protection for small investors: all defendants will be jointly and severally liable for uncollectible shares of insolvent codefendants for plaintiffs whose damages are more than 10 percent of their net worth, and whose net worth is less than $200,000.

This legislation is proconsumer and protects small investors.

In a separate measure, the legislation adopts the second circuit pleading standard so that, in a securities action, plaintiffs must state facts with particularity, and those facts must give rise to a strong inference of scienter or intent. This should help weed out at an early stage lawsuits filed against innocent defendants.

The bill also includes a cocalled safe harbor provision to protect forward-looking, predictive statements.

It structures damages so that they will reflect real losses rather than fortuitous market fluctuations.

Finally, the proposed legislation would establish new civil penalties against independent public accountants who fail to inform corporate officers of any illegal acts they discover while performing audits. That further protects investors.

In short, this legislation should protect individuals and free up resources that have imposed substantial and needless litigation costs on American businesses in Utah and all across this country.

As I noted, I would like to see Congress take a more comprehensive look at litigation abuses across the civil justice system. This legislation is certainly a significant step in that direction. I look forward to working with my colleagues to achieve broader reforms.

The PRESIDING OFFICER. Under the previous order, as modified, the Senator from New Mexico is recognized for up to 10 minutes, to be followed by the Senator from California for up to 30 minutes, to then be followed by the Senator from Nevada for up to 15 minutes.

The Senator from New Mexico is now recognized.

Mr. DOMENICI. Mr. President, I thank my friend from Utah, the floor manager, for arranging the time and for his diligent work.

Let me, right up front, indicate that there are many Senators and many Members of the House who deserve credit for getting this bill before us in this conference report. I personally want to thank the chairman of the Banking Committee, Senator D'AMATO, because without his guidance and total commitment we would not be here.

I want to thank my original cosponsor, Senator CHRIS DODD. Actually, the two of us fought a lonesome battle until this year. It looked like this would never happen. But with the change in the Congress, and the White House making some changes in the way they thought about this, we are here today with a bill that I understand the President may very well sign.

What are we doing here and why are we here? First of all, let me talk a little bit about an industry in America. In recent days there has been much conversation about the executive officer of Microsoft Corp. That is a high-technology industry, an industry that is involved in computers and everything that goes with it and the entire high-technology community of interest.

The high-technology, high-growth companies are the backbone of the America's economy and are vital to our ability to compete in a growing global market. We can no longer allow abusive lawsuits to stifle these companies' abilities to pursue new technologies and create new jobs.

The high-technology companies contribute about $400 billion in goods and services in the United States. They employ 2½ million people, which is 14 percent of the total manufacturing jobs in America. High-technology jobs are some of the best jobs also. The average salary is $42,000 per worker, and high technology is a larger segment of our economy than transportation, aviation, and the auto industry combined. It is a rapidly growing part of our economy and it is our future.

In my small State alone, there are 305 electronics firms with 16,000 high technology, high-paying jobs with a total payroll of $609 million, and they produce approximately $2.5 billion in goods and services.

From my standpoint, this bill will make their jobs more secure. It will make those companies that I have just described as a backbone of a new kind of industrial revolution in America more successful rather than less, and no one will be hurt in the process.

Let me right up front refer to four letters. It does not look like several letters because it is enormously thick, but there are four letters signed by about 1,000 chief executive officers and presidents of electronics and high-technology firms. The letters are not directed to the Senator from New Mexico or to the Senator from Utah or to the Senator from Nevada. They are directed to the President of the United States. In short, these letters are urging the President to sign this bill because it is good for their growth and the jobs and the well-being of the thousands of workers they represent.

Mr. President, Federal securities law that we are considering here today provides a comprehensive legal framework designed to do three things:

First, protect investors in the securities market. Let me repeat that. First, protect investors in the securities market.

Second, provide ground rules for companies seeking to raise money in our capital markets.

And, third, to encourage disclosure of more accurate information about publicly traded companies.

The trend is opposite to that third point because of the lawsuits that follow when information is disseminated.

This bill updates our securities laws to better achieve these objectives and in a better, balanced way. When the U.S. Supreme Court created the implied right of action—the class action—it noted that ''litigation under rule 10(b)(5) presents a danger of vexatiousness different in degree and kind from that which accompanies litigation in general,'' citation of the case, close quote.

''Vexatiousness'' is not a word that I use very often, nor do I hear it used very often. It comes from the verb ''to vex,'' which means to harass, to torment, to annoy, to irritate, and to worry. As a noun, it is synonymous with troublesome. In the legal context, it means a case without sufficient grounds in order to cause annoyance to the defendant or proceedings instituted maliciously and without probable cause.

In these frivolous securities class action cases, the lawyer hires the client instead of the other way around. It sounds a lot like modern-day champerty. In law school we studied about this thing called champerty. That is another word that is not heard very often. But it existed where a person assisted another with money to carry out his lawsuit. In times past, someone who would pay for, in whole or in part, the cost of litigation was engaged in champerty, including doing things that tend to obstruct the course of justice or to promote unnecessary litigation. It was such a serious offense that not too many years ago it was against the law.

This bill will hopefully curb this modern-day champerty, stop the vexatiousness and restore integrity to our security laws by filtering out abusive, frivolous class action lawsuits that harm investors and only benefit the class action attorneys. Senator BENNETT made a very good point earlier today: The company is the investors. We can no longer allow entrepreneurial lawyers to squeeze the research and development budgets, to depress dividend yields to all investors for the benefit of a few professional plaintiffs. We can no longer allow lawyers to muzzle the chief executive officers from making predictions and statements about the future of their companies.

Professional advisers, like accountants and outside directors, should not be held 100 percent liable just because they are deep pockets. This bill will force lawyers to be good lawyers and lawsuits to have merit.

This bill recognizes that stock volatility is not stock fraud. Let me repeat that. This bill recognizes that stock prices go up and down—that is stock volatility—it is not stock fraud. It recognizes that all investors benefit when there is more disclosure of information. It recognizes that predictions about the future are valuable information to investors. It recognizes that predictions may not come true. Such statements are predictions, not promises.

In the safe harbor provision that is currently in the bill before us, there are really three safe harbors. I will not go through all of them, but I will refer to the third one which has received most of the attention. It is a variation of the ''bespeaks caution'' doctrine. We tried to make it workable and not too cumbersome. The chief executive officer needs to identify the statement as a forward-looking statement, needs to provide meaningful cautionary statements and needs to identify some important factors that tell the audience why the prediction may not come true.

This bill retains the two-tiered liability. We wanted to change the economics of these cases so that the merits will once again matter. People should not be sued because they have deep pockets or a lot of insurance. We created special rules so that small investors will be made whole in the event of an insolvent codefendant who cannot pay investors for their losses.

We required disclosure of settlement terms and lawyers fees in plain English so that investors will know what they might recover and how much of the settlement fund the lawyers are asking for. And, in a sense, this makes the system much better in 12 ways:

First, it puts investors with real financial interests, not lawyers in charge of the case. It puts investors with real financial interests, not professional plaintiffs with one or two shares of stock in charge of the case.

The provisions that accomplish this include most adequate plaintiff; plaintiff certification; ban on bonus payments to pet plaintiffs; settlement term disclosure; attorney compensation reform; sanctions for lawyers filing frivolous cases; restrictions on secret settlements and attorneys fees.

Second, it provides for notification to investors that a lawsuit has been filed so that all investors can decide if they really want to bring a lawsuit.

It is likely that the people trusted to manage pension funds and mutual funds [the institutional investors] will get more involved. (Most adequate plaintiff provision).

Third, it puts the lawyers and his clients on the same side. This is accomplished by reforms that change economics of cases, in particular, proportionate liability, settlement terms disclosure.

Fourth, it prohibits special side-deals where pet plaintiffs get an extra $10,000 or $15,000.

It protects all investors, not just the lawyers' pet plaintiffs, so that settlements will be fair for all investors.

Fifth, it stops brokers from selling names of investors to lawyers.

Sixth, it creates environment where CEO's can, and will talk about their predictions about the future without being sued.

It gives investors a system with better disclosure of important information. (Safe harbor).

Seventh, better disclosure of how much a shareholder might get under a settlement and how much the lawyers will get so that shareholders can challenge excessive lawyers fees.

Eighth, no more secret settlements where attorneys can keep their fees a secret. (Restrictions on settlements under seal).

Ninth, it limits amounts that attorneys can take off the top. Limits attorneys' fees to reasonable amount instead of confusing calculations. (Attorney compensation reform, limiting lodestar method of calculating fees).

Tenth, it provides a uniform rule about what constitutes a legitimate lawsuit so that it will no longer matter where a case is filed. Investors in Albuquerque will have the same rules as investors in New York. (Pleading reform).

It stops fishing expeditions where lawyers demand thousands of company documents before the judge can decide if the complaint is so sloppy that it should be dismissed on its face. (Discovery stay).

Eleventh, it makes merits matter so that strong cases recover more than weak cases. Makes sure people committing fraud compensate victims. Improves upon the current system so that victims will recover more than 6 cents on the dollar.

Twelfth, by weeding out frivolous cases, it gives the lawyers and judges more time to do a good job in protecting investors in meritorious cases. High-technology companies' executives can focus on running their companies and growing their businesses. Investors will get higher stock prices and bigger dividends.

America needs securities litigation reform for many reasons. One reason we need this legislation is because the system as it currently operates encourages a race to the courthouse to file poorly researched, kitchen sink complaints by entrepreneurial class action lawyers unconcerned with the merits of their cases. These lawyers know that it is very easy to allege securities fraud, and they often use the current system's liberal pleading rules to extort settlements from innocent companies.

Entrepreneurial plaintiffs' lawyers favorite targets are usually high-technology, start-up firms which cannot bear the costs of fighting even the most frivolous lawsuit. Over the past 4 years a total of $2.5 billion has been paid in settlements in securites class action cases. This is money that could have been better spent on enhanced research and development, product development and high paying job creation.

Even when small, high-technology companies are forced to surrender and settle abusive suits without much of a fight, they still must divert important scarce resources toward the lawsuit and away from job creation and product development. Testimony at congressional hearings on securities litigation reform indicated that the typical frivolous securities lawsuit costs $8.6 million and 1,000 hours of management time just to settle the case.

John Adler, president and CEO of Adaptec, Inc. told the Senate Banking Committee that the money his company spent fighting a frivolous securities lawsuit would have paid for 20 additional engineers. Intel spent $500,000 in 1991 just to have two abusive cases withdrawn. That money would have paid for 10 production workers or 5 engineers at its facility in my home State. Legent Computer Corp. spent nearly $2 million in legal fees and several million dollars to comply with the plaintiffs' lawyers request for 290,000 pages of documents, even though a judge eventually dismissed the lawyers' complaint. Numbers like these make me realize that we need to change the current winner pays system, where innocent companies must expend vast amounts of time and resources just to get an abusive suit dismissed.

High-technology and high growth companies form the backbone of our economy and the foundation of our ability to compete in the growing global marketplace. They create jobs and grow the economy. We can no longer allow these abusive lawsuits to stifle our companies' ability to pursue new technologies and create new jobs. The general counsel of Intel Corp. told us during a hearing that had Intel been sued when it was a startup company, the lawsuit likely would have decimated its research and development budget and prevented it from inventing the semiconductor. Thousands of jobs would be in Japan instead of America.

Entrepreneurial lawyers also like to sue deep-pocketed professional advisers, like accountants and lawyers, even if they are only marginally involved in the alleged fraud. Under the current law rule of joint and several liability, these advisers can be made to pay the entire multimillion dollar judgment, even if they were unaware of any wrongdoing. That is because the current law says that if you conduct an audit or sign an opinion letter for a client who violates the securities laws, then you should have known of the wrongdoing. Because they face potentially massive liability for their relatively innocent conduct, auditors and lawyers often settle rather than fight the abusive lawsuit. Studies show that naming an accountant in a lawsuit adds 30 percent to its settlement value. Rather than continue to face unfair joint and several liability, auditors and lawyers have begun to refuse to advise startup firms most susceptible to abusive lawsuits. This hurts the companies and ultimately their shareholders.

Part of the problem is the race to the courthouse by entrepreneurial class action lawyers, who file lawsuits within hours of news that a company came up short on an earnings projection or will be forced to delay the introduction of a new product. Information provided to the Senate Banking Committee by the National Association of Securities and Commercial Law Attorneys [NASCAT] reveals that 21 percent of the cases are filed within 48 hours of the triggering event. The stock price drops after the company makes an announcement, and the lawyers quickly file lawsuits with little or no due diligence done to investigate whether the suits have any merit. In fact, I would guess that the lawyers do not really care whether the suits possess much merit. This is because courts rarely exercise their authority to impose sanctions on attorneys who file frivolous securities suits.

Abusive lawsuits not only drain scarce resources away from important company activities, but they also have a profound impact on the willingness of corporate executives to speak freely about their company's plans and expected future performance. Several corporate executives and general counsels told the Banking Committee that they had adopted a policy of not making public forward-looking statements out of fear that they would be sued for securities fraud if their predictions did not materialize. We should encourage companies to make forward-looking statements, because they contain precisely the type of information investors most desire—information about where the company is headed in the future. But we must remember, predictions are not promises of future performance, and executives who make forward-looking statements should be protected from lawsuits unless they intended to deceive investors.

I have spoken a great deal about how abusive lawsuits affect companies and their professional advisers. Even more egregious than the way the current securities class action system treats them is the way it treats investors. When attorneys file frivolous cases, investors eventually bear the costs of the lawsuit. When lawyers pursue meritorious cases, they often seek settlements that benefit them and leave investors with pennies on the dollar of their losses.

Often lost in the debate over securities litigation reform is the fact that not just companies, but investors are harmed by frivolous securities lawsuits. Former SEC Chairman Richard Breeden testified that "the people who are most badly hurt—by abusive securities lawsuits—are the company's shareholders, who indirectly pay all the costs" of the lawsuit. Current SEC Chairman Arthur Levitt also has correctly noted that investors are being hurt by litigation excesses.

When plaintiffs' lawyers engage in the predatory practice of filing an abusive securities lawsuit, shareholders eventually must bear the costs of the suit. When companies are forced to divert resources from research and development budgets to litigation budgets, stock prices drop and shareholders suffer. When companies must make a charge to earnings to pay the costs of settling an abusive lawsuit, dividends are lower and shareholders suffer. When corporate executives refuse to discuss the company's future plans out of fear that they will be sued, markets are denied access to the information investors need most to make informed investment decisions, and shareholders suffer.

During the 12 congressional hearings held on securities class action litigation, the most shocking thing I learned was the way plaintiffs' lawyers treat investors in cases of real fraud. According to studies and testimony presented at the hearings, in the typical settlement of a securities fraud lawsuit, investors receive around 6 cents on the dollar of their claimed losses, while plaintiffs' lawyers take the lion's share of the settlement fund as their fee award. This is because the current system allows attorneys to negotiate their settlement with little or no input from their purported clients, the injured investors. One of the most prominent securities class action lawyers claims to have the best practice in the world because he has no clients.

This same attorney once settled a class action for $12 million and asked for the entire amount as his fee award. This would have left his clients with nothing. When asked whether he had a duty to his clients to justify his fee request, this lawyer responded that his only responsibility was to justify his fee request to the court. A system which allows this sort of abuse needs to be changed. Investors deserve better.

THE SOLUTION

While I have spent some time talking about the problem, I would like to spend the remainder of my time discussing the solution we have developed. Our goal in crafting this legislation was to balance the interests of defrauded investors with those of the companies and professional advisors who are often the subject of abusive, meritless lawsuits. I believe that we have developed a balanced bill that provides relief from abusive suits while giving investors greater control and a larger recovery in cases of real fraud.

It contains provisions which place investors, not lawyers, in control of the lawsuit. Unlike the current lawyer-driven system, under this new law the investors with the greatest stake in the outcome of the litigation will control the case. Usually this will mean that pension funds and mutual funds, which represent thousands of small investors, will determine whether to pursue a lawsuit, who will be their lawyers, and when and for how much to settle the case. Because they have an interest in protecting their small investors by discouraging frivolous suits and pursuing cases of real fraud, institutional investors are in the best position to decide whether to go forward with a lawsuit.

Unlike the current system where the first lawyer to file the lawsuit controls the case, this legislation also will allow the investors to pick their lawyers and negotiate up front what their fee will be. This will result in reduced attorneys' fees and will leave more money in the settlement fund for defrauded shareholders. It will eliminate situations where the attorneys request significant portions of settlement fund as their fee and leave investors with pennies on the dollar of their claimed losses.

The conference report also requires that settlement notices to class members contain clear and concise disclosures of the terms of the class action settlement. Under the current system, investors often receive settlement notices shrouded in legalese, which give them little or no idea what the lawyers have agreed to do. Only after they have consented to be part of the class and accept the settlement do they realize that the lawyers have taken most of it and left them with next to nothing. Under the new law, lawyers will be required to explain to shareholders in clear terms the total amount of the settlement, the amount of attorneys' fees and costs sought, and the amount per share class members will receive. With this new information, investors will better be able to determine whether to accept the terms of the settlement.

The new system also will be good for investors because it eliminates many of the unfair practices currently associated with generating a securities class action. Lawyers will no longer be able to pay bonuses out of the settlement fund to individuals who lend their name to the lawsuit and act as the named plaintiff. Nor will they be allowed to pay bonuses to brokers or dealers for referring potential clients. These practices are unfair to the shareholders not afforded the luxury of acting as named plaintiff and should be eliminated. Their elimination will keep more money in the settlement fund for all investors, not a select few.

The conference report also will benefit companies, as well as investors by utilizing reasonable means to eliminate abusive frivolous lawsuits. Despite what opponents say about this bill, it will not protect the Charles Keatings of the world or prevent victims of egregious fraud from obtaining relief. No Senator would vote for a bill which allowed that to happen. Instead, the conference report contains provisions which will weed out frivolous cases early in the litigation process and impose fair liability standards on companies and their professional advisors to reduce the tremendous pressure on them to settle even the most abusive cases.

To weed out frivolous cases early in the process, the conference report adopts the pleading standard utilized by the second circuit court of appeals, where a large number of securities fraud lawsuits are brought. This court-tested standard requires plaintiffs to plead facts in their complaint which give rise to a strong inference of securities fraud.

The conference report also adopts the State-law trend of proportionate liability—liability based upon the degree of responsibility of each defendant. It retains joint and several liability for the really bad actors, those who knowingly defraud investors. It holds all others proportionately liable for the harm that they have caused. This will reduce the pressure to settle on professional advisors who may not even have been aware of the fraud, but who under the current system could be held responsible for the entire amount of damages.

Proportionate liability is not a novel concept—it's one many States concerned with a fair application of liability have used for years.

There are three provisions in this bill which provide additional investor protection, particularly for the most vulnerable small investors. First, the bill contains a provision specifically designed to improve fraud detection in the areas of auditing and financial reporting. Auditors will now be required to report instances of corporate fraud and this reporting often will take place before the fraudulent information makes its way into financial disclosure documents disseminated to investors.

The bill also contains language which will ensure that investors get compensated if the main perpetrator of the fraud is bankrupt. The conference report requires proportionately liable defendants to pay up to an additional 50 percent of their liability into the settlement fund in cases where the primary, knowing violator is insolvent. It also requires that small investors be fully compensated in all cases by holding all defendants jointly and severally liable for their entire losses.

The bill also contains a fair safe harbor for predictive statements which will allow companies to provide the forward-looking information investors desire without the fear of a lawsuit if the projections do not materialize. Under the current system, if one person in a company is aware of information which might contradict the company's projection, the company can be held liable for fraud. This forces companies to adopt a policy of not making predictive statements.

The new safe harbor, endorsed by the Securities and Exchange Commission, protects predictive statements in two ways. First, projections are protected from lawsuits as long as they are accompanied by meaningful warnings which identify important business factors which could cause the prediction to fail. This provision is based on the bespeaks caution doctrine, a concept in the securities laws which says that if a predictive statement is surrounded by sufficiently cautionary language discussing some of the reasons why the prediction may not come true, then the statement cannot form the basis of a lawsuit. Under this new rule, companies which desire the protection of the safe harbor will be required to disclose certain information to investors about the factors which might undermine their predictions. Companies need not disclose every factor, nor must they disclose the factor which eventually causes the prediction to fail. They simply must discuss some of the important business factors which could affect their prediction.

There has been much discussion about this first part of the safe harbor. Early drafts said that companies must disclose substantive factors, rather than important factors. In this Senator's opinion, these words are interchangeable and impose the same requirement on companies: discuss some of the important business factors which could affect your prediction. It imposes no hindsight state of mind requirement on companies regarding which factors they believed were most important. Nor should this provision be used by courts in a way which allows the current system's abusive discovery practices to continue. Courts should not read the word important to mean that plaintiffs are entitled to large-scale discovery on the issue of which factors the company believed were important. Courts should simply look at the four corners of the predictive statement, as well as the information about the company already in the market, and determine whether investors should have relied on the predictive statement.

Under this safe harbor, courts also may continue their practice under current law and find forward-looking statements immaterial on other grounds. There is an abundance of case law which says that soft forward-looking statements containing optimistic opinions without any factual representations cannot serve as the basis for one of these lawsuits. The conference committee wisely chose to leave this law intact. This sort of sales talk or puffing has no effect on a company's share price and courts should continue to quickly dismiss cases based on these types of statements. As well, courts also should continue to consider public information provided by sources other than the company or public information from the company not contained in the forward-looking statement when determining whether a predictive statement meets the securities laws' test of materiality. These concepts also are found in the cases, and the conference committee certainly did not intend to have any effect on this area of the law.

Should a predictive statement not contain sufficient cautionary language to fall into the first safe harbor, then a second safe harbor is available. Under the second safe harbor, the statement is protected unless it was made with actual knowledge that it was false. If a business entity made the statement, then the plaintiff must prove that the statement was made or approved by an executive officer with the actual knowledge that it was false. This will prevent the situation under current law which permits lawsuits to go forward based upon the existence of a memo or electronic mail by a low-level employee who disagrees with management's projection. This provision is based upon the standard Senator SARBANES proposed on the floor during the Senate debate, and I believe that this is an effective compromise.

Investors should have increased access to the company's thoughts about where it is headed in the future, and the current lawsuit-driven system discourages executives from talking about the future. The conference report's balanced safe harbor provision encourages companies to speak by recognizing that predictions are not promises, while prohibiting outright lies by corporate executives. Again, this is a provision supported by the Securities and Exchange Commission. Let me read into the record what the Commission says about the safe harbor in the conference report:

> While we could not support earlier attempts at a safe harbor compromise, the current version represents a workable balance that we can support since it should encourage companies to provide valuable forward-looking information to investors while, at the same time, it limits the opportunity for abuse.

Finally, this bill addresses the fact that attorneys and courts are unwilling to pursue sanctions against entrepreneurial lawyers who file abusive suits. This legislation requires courts to review the record at the end of each case to determine whether any of the attorneys violated rule 11 of the Federal rules. If the court finds a violation, then it must impose sanctions. Requiring courts to impose sanctions against attorneys who file frivolous cases will reduce the number of abusive lawsuits without discouraging individual plaintiffs from seeking redress in the courts.

Mr. President, I hope my colleagues will vote for this conference report. This legislation is substantially similar to the legislation we passed in July by a wide margin. I believe that the Senators who supported the bill in July should have every reason to vote for this conference report today. It is a well-balanced bill that protects investors from intentional fraud, gives them greater control of their cases and addresses many of the abuses inherent in our currently broken securities class action system.

I ask unanimous consent to have printed in the RECORD following my remarks a list of those from my home State of New Mexico who support securities litigation reform. The list includes several State senators and representatives, as well as Gary Johnson, the distinguished Governor of New Mexico.

I also ask unanimous consent that a copy of a series of letters from a group of high-technology and high-growth company CEO's, and venture capitalists to President Bill Clinton also be printed in the RECORD.

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

(See exhibits 1 and 2.)

Mr. DOMENICI. Mr. President, I want to especially recognize the extraordinary commitment Senator DODD has made to this legislation. When he was chairman we started the hearings, compiled a thorough report and together we developed legislation. He has steadfastly worked to make the bill a better bill for small investors, for all investors, for our capital markets and the companies using our capital markets. This knowledge of the securities laws helped craft the answers to the problem that we all saw.

I thank my colleagues Senators DODD and D'AMATO, as well as the rest of the conferees for all of their hard work on this important legislation. This is comprehensive reform, and companies as well as our legal system will work more efficiently because of it. Senator GRAMM pioneered the most-adequate-plaintiff provision and I thank him for his input.

I must thank several members of the House who have worked so hard to help bring about securities litigation reform. The chairman of the Commerce Committee, Mr. BLILEY and his distinguished subcommittee chairman, Mr. FIELDS, have worked tirelessly to ensure that this legislation is effective and actually works in the real world. I realize how difficult it can be to craft a complicated piece of legislation like this, and I appreciate their help. I also would like to thank Representative CHRIS COX from California, who practiced in this area prior to coming to Congress. His practical experience and expertise has helped make this a better bill. Finally, I thank Representative BILLY TAUZIN, a new member of the Republican Party who fought for many years as a Democrat to bring this legislation to the floor of the House. Mr. TAUZIN's hard work attracted over 200 cosponsors to his original bill at a time when there was very little interest by the House leadership in even bringing up the issue of securities class action reform. Mr. TAUZIN has worked on this issue since the beginning, and his dedication to this issue is to be commended.

SEC Chairman Levitt and Commissioner Wallman made constructive suggestions throughout the process. I am very pleased that they support the safe harbor provisions that have been worked out and that we were able to address their principle concerns about the entire bill.

Mr. President, I urge that Senators adopt this bill today and I urge the President to sign it. As we look back at this year, this will be one of the most significant pieces of legislation that attempts to rid the American economy and the entrepreneurial system from unneeded drag and unneeded cost so that it retains more of its vibrancy and growth potential.

I yield the floor.

EXHIBIT 1

NEW MEXICO SUPPORT FOR S. 240

GOVERNMENT

New Mexico Governor Gary Johnson.
State Senator Patrick Lyons.
State Senator Virgil Rhodes.
State Senator E.M. Jennings.
State Representative Robert Wallach.
State Representative Ted Hobbs.
State Representative Anna Marie Crook.
Santa Fe City Manager Isaac Pino.
Lovington City Manager Bob Carter.
State Secretary of Finance and Revenue David Harris.

BUSINESS AND INDUSTRY

Santa Fe Chamber of Commerce.
Greater Albuquerque Chamber of Commerce.
Roswell Chamber of Commerce.
New Mexico Association of Commerce and Industry.
Intel Corp.,—Rio Rancho.
Motorola—Albuquerque.
Specialty Constructors, Inc.—Cedar Crest.
Neff & Co.—Albuquerque.
Correa Enterprises Inc.,—Albuquerque.
Larribas & Associates, P.A.—Albuquerque.

We also have received many letters from private citizens, including many retirees who support securities litigation reform.

THE CEASS COALITION IN NEW MEXICO

SUMMARY

The Coalition to Eliminate Abusive Securities Suits (CEASS), an alliance of over 1,450 U.S. companies, professional firms and organizations representing high-technology, financial services, basic manufacturing sectors and others, is seeking federal legislative remedies to the rising threat of unwarranted securities litigation. CEASS member companies rank among the nation's fastest-growing and most innovative companies. CEASS supports the reform measures embodied in S. 240, the Private Securities Litigation Reform Act of 1995, introduced in the U.S. Senate by Senators Pete Domenici (R–NM) and Chris Dodd (D–CT).

In New Mexico, there are 24 CEASS members that are either headquartered or have facilities in the state. Together, these organizations employ over 11,000 residents. Included are many of the state's largest private sector employers—Intel Corporation, Motorola Inc., US West Communications and many more. Below is a detailed breakdown of CEASS members in New Mexico.

CEASS MEMBERS AMONG LARGEST NEW MEXICO EMPLOYERS (500 OR MORE EMPLOYEES)

Chevron Corporation.
Intel Corporation.
Johnson & Johnson.
MCI Communications, Inc.
Motorola Inc.
Phelps Dodge Corp.
US West Communications.

CEASS MEMBERS HEADQUARTERED IN NEW MEXICO

Diagnostek, Inc., Albuquerque.
Indian Motorcycle Manufacturing Inc., Albuquerque.
Mesa Airlines, Inc., Farmington.
Neff & Company, Albuquerque.
Specialty Teleconstructors, Inc., Cedar Crest.
Sunsoft Corporation, Albuquerque.

ALL OTHER CEASS MEMBERS WITH FACILITIES IN NEW MEXICO

AlliedSignal Inc., Las Cruces.
Arthur Andersen LLP, Albuquerque.
Baxter International, Albuquerque.
Borg-Warner Security Corp., Albuquerque.
Chevron Corporation, Gallup.
Chevron Corporation, Raton.
Eagle Industries, Inc., Albuquerque.
FHP International, Inc., Albuquerque.
Intel Corporation, Rio Rancho.
Johnson & Johnson, Albuquerque.
KPMG Peat Marwick LLP, Albuquerque.
MCI Communications, Inc., Albuquerque.
Motorola Inc., Albuquerque.
The Olsten Corporation, Albuquerque.
Phelps Dodge Corp., Lordsburg.
Phelps Dodge Corp., Tyrone.
Smith's Food & Drug Centers, Inc., Albuquerque.
Smith's Food & Drug Centers, Inc., Farmington.
Sun Microsystems, Inc., Albuquerque.
The May Department Stores Co., Albuquerque.
US West Communications, Albuquerque.

MEMBERS OF NEW MEXICO HOUSE DELEGATION WHO VOTED FOR SECURITIES LITIGATION REFORM (H.R. 1058)

Steven Schiff.
Joe Skeen.
Bill Richardson.

EXHIBIT 2

AMERICAN ELECTRONICS ASSOCIATION,
Santa Clara, CA, October 17, 1995.

Hon. WILLIAM J. CLINTON,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: As California members of the American Electronics Association, we are writing to strongly urge your support for securities litigation reform legislation which we expect to emerge from Conference Committee early this fall.

For nearly four years the California High Technology community has been pursuing meaningful reform of the securities litigation system. We have worked closely with the White House, the Securities and Exchange Commission, and the U.S. Congress. As a result of these efforts, both the House of Representatives and the U.S. Senate overwhelmingly passed securities litigation reform, by votes of 325–99 and 70–29, respectively. We believe these margins clearly demonstrate the consensus for reform and now we need your affirmative support to bring this effort to a successful close.

We want to stress our belief that U.S. capital markets function efficiently and effectively because of a strong and balanced enforcement system. We also want you to understand that the current system is no longer functional, promoting inefficient markets, costing jobs, and harming investors.

In Silicon Valley, California, nearly 53% of technology companies have been sued under Section 10(b)(5) of the Securities Act of 1934. Every single one of the top ten Silicon Valley Corporations—world class multinational competitors—have been accused of violating the anti-fraud provisions of the U.S. Securities laws. The current state of affairs was described best by a prominent Silicon Valley CEO who stated: ''There are only two kinds of California technology companies—those that have been sued, and those that are about to be sued.''

We want to emphasize that the provision most critical for technology companies is a strong, effective safe harbor for forward-looking statements—statements made by companies and others about the future prospects of earnings, products, technologies or the like. But the key to a safe harbor is that it must be safe. Properly constructed, a true safe harbor will promote maximum disclosure by corporate executives and provide investor protection. Under current law, if a company fails to meet management's projections or analysts' expectations it often finds itself faced with a lawsuit. Frequently, these lawsuits are based on changes of fraud, allegedly for false and misleading past statements of future expectations. And because of our inherent stock volatility, rapid product development, and economic and technological uncertainties facing technology companies, high technology firms are easy prey for these merit less lawsuits.

The California Public Employees Retirement System (CalPERS), which provides retirement benefits to nearly 1 million beneficiaries fully understands the ramifications of the current system. CalPERS argues that ''the current safe harbor has failed to encourage sufficient disclosure of forward-looking information, principally because the rule is unable to assure issuers that they will not be subject to shareholder suits upon disclosing projections.''

Unfortunately, as with many issues in Washington, the safe harbor has been the subject of a smear campaign designed to preserve the status quo for those that are profiting from the current system. Some have characterized the safe harbor as providing issuers with a ''license to lie.'' This is either a misrepresentation or a misunderstanding of the proposals. Providing safe harbor protection—that is, a greater degree of protection than provided for in law—has been the established policy of the Securities and Exchange Commission for 15 years.

Others have suggested that the safe harbor would protect fraudulent wrongdoers. Again, this is simply not correct. Truly fraudulent activity would still be fully actionable by private parties under any safe harbor construction. It is simply not possible to confine fraudulent activity to forward looking statements without also, at some point, mis-stating present fact. Moreover, nothing in any proposal would prevent the Securities and Exchange Commission from bringing an enforcement action against any person on the basis of a forward-looking statement. The safe harbor would only curb abusive lawsuits based on a revisionist view of future events.

Mr. President, by giving companies the comfort they need to talk about plans for the future—without risking a lawsuit when they simply miss the mark—the safe harbor will maximize disclosure of forward-looking information, improve the efficiency of the market, and permit investors to make sound decisions based on maximum information.

Once again, we want to stress the need for litigation reform, including for a strong safe harbor.

Sincerely,

Wind River Systems, Tekelec Corporation, Venture Management Associates, Information Storage Devices, Inc., HiTech Equipment Corporation, Poly-Optical Products, Inc., VALOR Electronics Inc., Fidelity Palewater, Inc., Sage Management Group, Radio Therapeutics Corporation, Elpac Electronics, Inc., Uptime Computer Solutions, Inc., ShareData Inc., TEAL Electronics Corporation, Aurum Software Inc., Magnetic Circuit Elements, Inc., Aurora Electronics, Inc., Weitek Corporation, BEI Electronics, Inc., Shelly Associates, Inc.

Data Instruments, Inc., TAU Corporation, Nextwave Design Automation, ACCEL Technologies, Inc., Emuiex Corporation, Optimum Optical Systems, Inc., VertiCom Inc., Comdisco Electronics Group, TeleSensory Corporation, Physical Optics Corporation, Endgate Corporation, Wells Fargo Bank, Catapult Communications Corporation, Orthodyne Electronics, Alzeta Corporation, Printonix, Inc., Leasing Solutions RNC (LSSI), Embedded Performance, Inc., Escalade Corporation, Autek Services Corporation.

Presence Information Design, INTA, TTM Inc., Graham-Patten Systems, Inc., Oxigraf, Frequency Products, Inc., Paragon Environmental Systems, Inc., Radian Technology, Illustra Information Technologies, Dynamic Network Solutions, Inc., Data/Ware Development, Subscriber Computing, Inc., Paragraph International, El Dorado Ventures, Petillon & Hansen, NFT Ventures, Inc., Pioneer Magnetics, Platinum Software, BioMagnetic Technologies, Inc., Lexical Technology.

ACT Networks, Inc., 3D Systems Corporation, WEMS Electronics, The Automatic Answer, Inc., Transport Solutions/RTC, Lumonics Corporation, Silicon Valley Group, Inc., The Cerplex Group Inc., Interlink Electronics, Baan Company, Nanometrics, Viasat, Inc., HSQ Technology, Qlogic Corporation, Silicon Systems, Inc., Giga-Tronics Incorporated, HNC Software Inc., ParcPlace Digitalk, Inc., DCP Technology Inc., Vitesse Semiconductor Corporation.

Canro Scientific Instruments, Router Wave, Xircom, Inc., Level One Communications, Inc., International Lottery & Totalizator, Onstream Networks, Inc., Wiz Technology Inc., Tandem Computers, Inc., ProBusiness, Inc., Innocal, InCirt Technology, Logical Services Incorporated, Com 21, Microsource, Inc., Scientific Technologies, Inc., Pacific Recorders & Engineering, Kofax Image Products, Allied Telesyn International Corp., Molecular Dynamics, Motion Engineering, Inc.

Trillium Consumer Electronics, Inc., ATG Cygnet, Inc., Semiconductor Systems, Inc., Reset Inc., Triconex, StrataCom, Inc., Quantic Industries Inc., Advanced Matrix Technology, Inc., Netsoft, Motion Engineering Inc., Inhale Therapeutic Systems, Continuous Software Corporation, Xilinx, Inc., RJS, Inc., Measurex Corp., Sonatech, Inc., MasPar Computer Corporation, Paracel, Inc., Fisher Research Laboratory, Inc., Network General Corp.

Gamma-Metrics, Expersoft, D.S. Technologies Inc., Liconix, Creative Computer Solutions, Inc., 3Com Corporation, Condor Systems, Inc., Atmel Corp., Proxim, Inc., Network Equipment Technology, Inc., American Telecorp, Inc., InfoSeek, DiviCom Inc., Remedy Corporation, Harmonic Lightwaves, Inc., TopoMetrix Corporation, Dionex Corporation, Orbit Semiconductor, Inc., Opti, Inc., MicroSim Corporation.

Kavlico Corporation, Absolute Time Corporation, DJC Data Technology Corporation, WireLess Data Corporation, California Amplifier, Inc., Dynamic Instruments, Inc., Savi Technology, Inc., Komag Incorporated, Megapower Corporation, Spatializer Avoid Laboratories, Inc., Newpoint Corporation, Redwood MicroSystems, Inc., Harmonic Lightwaves, Inc., Unisen, Inc., California Microwave, Inc., SEEQ Technology, Inc., Quantum Materials, Inc., Sierra Semiconductor Corporation, Alpharel, Inc., Titan Electronics, Uniax Corporation, De La Rue Giori of America, Liikkuva Systems, Brooktree Corporation, GammaLink, Calimetrics, Inc., Tyecin Systems, Inc., AccSys Technology.

SILICON VALLEY, CA,
November 3, 1995.

Hon. WILLIAM J. CLINTON,
The White House, Washington, DC.

DEAR MR. PRESIDENT: We wish to state unequivocally that securities litigation reform legislation is of critical importance and interest to our companies. We understand from numerous sources within the White House that this Administration believes that Silicon Valley companies do not consider securities reform a pivotal issue.

By delivery of this letter to you. Mr. President, we wish to underscore the degree of our intensity in support of meaningful reform.

For almost four years we have devoted substantial energy and efforts toward making common sense changes in the nations securities laws, thereby hoping to end the relentless onslaught of frivolous lawsuits against our companies. As a result of discussions with your staff we have acted in good faith and have moderated our position to meet your concerns.

The high technology companies are united on this issue. The signatories of this letter represent the leading companies of Silicon Valley, and speak with confidence that we reflect the views of thousands of technology companies nationwide.

Mr. President, believe us, this is a definitive issue for our industry.

Sincerely,

National Semiconductor Corporation, Quantum, 3COM, DSV Partners, Institutional Venture Partners, LSI Logic Corporation, Cadence Design Systems, Symantec Corporation, Oracle Corporation, Sybase, Inc., New Enterprise Associates, Silicon Graphics Inc.

Sun Microsystems, Inc., Intel Corporation, Applied Materials, Inc., Varian Associates Inc., Kleiner Perkins Caufield & Byers, Hewlett-Packard Company, Raychem Corporation, Advanced Micro Devices Inc., Adaptec, Inc., Centigram Communications Corporation, Apple Computer, Inc., Tandem Computers, Trimble Navigation Limited, Xilinx, Inc., Adobe Systems Inc.

AMERICAN ELECTRONICS ASSOCIATION,
Santa Clara, CA, October 13, 1995.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: We are writing to urge your support for securities litigation reform legislation which we expect to emerge from Conference Committee early this fall.

For nearly four years the U.S. high technology community has been pursuing meaningful reform of the securities litigation system. As a result of these efforts, both the House of Representatives and the Senate overwhelmingly passed securities litigation reform, by votes of 325–99 and 70–29, respectively. We believe these margins clearly demonstrate the consensus for reform. We need your affirmative support to bring this effort to a successful close.

We were pleased to read the report during your recent Silicon Valley visit that you would ''gladly sign'' legislation to eliminate frivolous lawsuits. At the same time, we gather you do not fully support the legislation passed by the Senate, the legislation most likely to reach your desk.

In Silicon Valley, more than half the technology companies have been sued under Section 10(b)(5) of the Securities Act of 1934. Inherent stock volatility, rapid new product development, and economic and technological uncertainties make high technology firms easy prey for these meritless and costly lawsuits. According to the American Electronics Association (AEA) every one of the top ten Silicon Valley companies—world-class, multinational competitors—has been accused of violating the anti-fraud provisions of the U.S. securities laws.

The provision most critical for technology companies, like ours, is a strong safe harbor for forward-looking statements—projections made about the company's future prospects. Failing to meet the expectations of analysts who follow the technology industry is inevitable. However, it is hardly intentional and it is certainly not fraudulent. Yet plaintiffs' lawyers seize upon the inherent volatility in our industry to create a false picture of ''fraud'' where none in fact exists.

The proliferation of class action lawsuits has prompted companies to conclude that the legal risks of providing projected earnings, revenue and market information to Wall Street analysts or the investing public are too high. As such, many companies no longer release future oriented information and refuse to comment directly on analysts' projections, resulting in less public information, less efficient markets, fewer jobs, and in the end less informed investors.

Except for those who profit from the current system, there is nearly universal agreement that the current regulatory safe harbor is no longer functional. Nonetheless, the beneficiaries of the status quo have launched an aggressive campaign to kill the safe harbor. They have suggested that the proposed safe harbor would be a ''license to lie,'' or that it would ''protect'' fraudulent wrongdoers. The fact is that fraudulent activity would continue to be fully actionable by private parties under either bills' safe harbor construction. Moreover, nothing in any proposal would prevent the Securities and Exchange Commission from bringing an enforcement action against any person on the basis of a forward-looking statement. The purpose and goal of the safe harbor is not to provide a ''license to lie'' but to provide a forum in which companies can safely provide valuable information to the investing public.

Mr. President, it is important for us to have you understand our position. Without strong, clear safe harbor protection—similar to that enacted by either the Senate or the House—reform efforts will be virtually meaningless. We need your active support to ensure that the legislation enables corporate executives to speak candidly about the future and to ensure that investors receive the information they need. In so doing, businesses will win, investors will win, and the marketplace will win.

Sincerely,

Adaptec, Inc., National Semiconductor Corporation, Quantum, 3COM, LS Logic Corporation, Oracle Corporation, Raster Graphics, Silicon Graphics Inc., Sun Microsystems, Inc., Intel Corporation, Applied Materials, Inc., Varian Associates Inc., Hewlett-Packard Company, Cypress Semiconductor, Raychem Corporation, Advanced Micro Devices Inc., Centigram Communications Corporation, Apple Computer, Inc., Tandem Computers, Trimble Navigation Limited, Xilinx, Inc.

AMERICAN BUSINESS CONFERENCE,
Washington, DC, November 1, 1995.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: Shortly, you are likely to receive from Congress legislation designed to reform our nation's system of securities-related litigation. We are writing to urge you to sign that legislation when it reaches your desk.

As you know, bills designed to curtail speculative securities litigation—so called strike suits—passed the House and Senate by wide, bipartisan margins earlier this year. The House and Senate conferees will be meeting presently and a draft conference report has already been written. That draft report has been warmly endorsed by Senator Dodd, who called it a ''balanced, moderate bill that addresses the needs of legitimately defrauded investors, while protecting our nation's businesses from frivolous lawsuits.''

We, and the organization we co-chair, the American Business Conference (ABC) agree with Senator Dodd's assessment. For far too long, America's entrepreneurial, growth companies have been harassed by speculative lawsuits brought by a small coterie of lawyers in the name of investors who often are unaware that a suit has been filed. These suits are initiated for the purpose of securing a settlement; they amount to little more than perverse transfer payments from one group of investors to another with a large slice going to the plaintiffs' lawyers.

Those companies that manage to escape being sued suffer as well. They know that the promulgation of so-called forward-looking information is an open invitation to a lawsuit because statements about future prospects are uncertain and therefore vulnerable to legal assault after the fact.

This means less communication of forward-looking information to investors, a less efficient securities market, and, ultimately, a higher cost of capital for entrepreneurial firms unable to explain fully why investors should seek them out. Our economy cannot afford this absurd situation to continue; it is costing jobs, it is hampering new business development, and, ultimately, it is a tax on our future standard of living.

Having spoken at length with our colleagues in ABC and with other business leaders from California to Massachusetts, we can assure you that no business-related issue is being more closely watched by America's entrepreneurs than is the fate of this reform legislation. It deserves your wholehearted support.

Sincerely yours,

GEORGE N. HATSOPOULOS,
Chairman and President, Thermo Electron Corp. Waltham, MA.
Co-Chairman, American Business Conference.

CLARK A. JOHNSON,
Chairman and C.E.O., Pier 1 Imports, Inc., Fort Worth, TX.
Co-Chairman, American Business Conference.

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COALITION TO ELIMINATE ABUSIVE SECURITIES SUITS,
Washington, DC, November 1, 1995.

Hon. CHRISTOPHER DODD,
U.S. Senate,
Washington, DC.

DEAR SENATOR DODD: Earlier this year, overwhelming majorities in both Houses of Congress (325–99 in the House and 69–30 in the Senate) passed legislation that would reform our nation's securities litigation system. The overwhelming margins of support attained in these votes clearly reflect a bi-partisan consensus that the current securities litigation system needs to be fixed, and fixed quickly.

In short, the status quo is stifling our nation's growth companies while padding the pockets of plaintiffs' attorneys. Over the past four years, a total of $2.5 billion has been paid in settlements in securities class action cases analyzed by National Economic Research Associates, Inc.—a ''disproportionately large number'' of which involve suits against high-technology companies—with plaintiffs' attorney fees averaging 32% of the settlement.

As concerned leaders of the American business community, we urge you to capitalize on this display of legislative solidarity and move this important legislation swiftly through conference committee and to President Clinton's desk.

Sincerely,

Abbott Laboratories; Banc One Corp.; American Greetings Corp.; The Carlyle Group; Ceridian Corp.; Chrysler Corp.; Household International, Inc.; Beneficial Corp.; Carolina Power & Light Co.; Chevron Corp.; Eastman Kodak Co.; Nashua Corp.

Gilbert Amelio, National Semiconductor Corp.; James A. Unruh, Unisys Corp.; John East, Actel; Allen Weintraub, The Advest Group, Inc.; Robert N. Pratt, Alta Gold Co.; Eric Benhamou, 3Com Corp.; Edward Abrams, Abrams Industries, Inc.; John G. Adler, ADAPTEC, Inc.; Randall Wagner, Agatheas & Wagner, P.A.; Kurt Wiedenhaupt, American Precision Industries, Inc.; Wayne G. Vosik, American Travellers Corp.; James C. Beardall, Anderson Lumber Co.; Pier C. Borra, Arbor Health Care Co.; Safi Qureshey, AST Research, Inc.; Lawrence Lefkowitz, Ampal-American Israel Corp.; Lawrence J. Young, Angelica Corp.; Frank Christianson, Arctic Circle Restaurants; George F. Pickett, Jr., Atlantic Southeast Airlines, Inc.

David K. Chan, Auravision Corp.; Robert Spies, Berol Corp.; Michael P. Bick, Biopool International; James A. Bixby, Brooktree Corp.; Larry J. Weber, Bauer Built, Inc.; Kenneth A. Olson, Berry Petroleum Co.; William W. Neal, Broadway & Seymour Inc.; Michael B. Crutcher, Brown-Forman Corp.; David H. Gunning, Capitol American Financial Corp.; John E. Jones, CBI Industries Inc.; David Thiels, Century Telephone Enterprises, Inc.; John West, CIMLINC Inc.; Robert Bogin, Capitol Multimedia, Inc.; D. Tad Lowrey, CenFed Bank, A Federal Savings Bank; John Stevens, CIMCO Inc.; Thomas H. Lowder, Colonial Properties Trust.

Van B. Honeycutt, Computer Sciences Corp.; Robert J. Paluek, Convex Computer Corp.; J.J. Finkelstein, Crymedical Sciences, Inc.; J. Bruce Baily, Cyclopss Medical; S. Duane Southerland, Conso Products Co.; Denny Callahan, Crowley's; Roy A. Myers, Curtice Burns Food, Inc.; Gerald D. Rogers, Cyrix Corp.; Michael W. Pope, Dionex Corp.; David H. Wiggs, Jr., El Paso Electric Co.; Michael C. Ruettgers, EMC Corp.; Donald M. Vuchetich, Detroit & Canada Tunnel Corp.; Robert J. Dickson, Dynamet Inc.; Thomas E. Sharon, Electromagnetic Sciences, Inc.; Steve Sarich, Jr., 321 Investment Co. Quentin J. Kennedy, Sr., Federal Paper Board Co., Inc; Dan Queremoen, Fluoroware, Inc.; Joseph Franklin, Frequency Electronics, Inc.; Mark A. Hofer, Genzyme Corp.; Michael E. McKee, First Federal Savings & Loan Association of Montana; Darrell G. Knudson, Fourth Financial Corp.; James E. Herring, Friona Industries, L.P.; Tony Tako, Gerrad & Co.; John T. Williams, Gray Communications Systems, Inc.; Melvin J. Melle, The Hallwood Group Inc.; Anthony Graffia, Hartford Computer Group. Inc.; Hans Helmerich, Helmerich & Payne Inc.; Umang Gupta, Gupta Corp.; Derek C. Hathaway, Harsco Corp.; Robert J. Purger, Health Care REIT, Inc.; John Herzog, Herzog Surgical Inc.

Tracey T. Powell, Home Access Health Corp., Richard L. Molen, Huffy Corp. David W. Scar, Integrated Circuit Systems, Inc.; Frank Deverse, International Microcircuits; Robert W. Hampton, Hornbeck Offshore Services, Inc.; Gerald S. Casilli, IKOS Systems, Inc.; E. Michael Thobew III, Interlink Electronics; Peter H. Van Oppen, Interpoint Corp.; James H. Morgan, Interstate/Johnson Lane; David L. Angel, ISD; Vince Martin, Jason Inc.; Robert Johnston, Johnston Associates Inc.; W. Richard Ulmer, Invitro International; Ivey Jackson, Jackson Insurance Agency, Inc.; Gerald M. Gifford, John G. Kinnard & Co., Inc.; Lawrence J. Cawley, Kaydon Corp.

Dale Gonzalez, KIT Manufacturing Co.; Michael J. Koss, Koss Corp.; Carl R. Wiley, Lane Plywood, Inc.; Frank H. Menaker, Jr., Lockheed Martin Corp.; Richard M. Ferry, Korn/Ferry International; C. Scott Kulicke, Kulicke and Soffa Industries, Inc.; Ronald B. Cushey, Live Entertainment, Inc.; Thomas E. Sharon, LXE, Inc.; Robert Watson, The Managers Funds L.P.; Michael Ricci, Marco Mfg., Inc.; Debra Coleman, Merix Corp.; Thomas Hiatt, Middlewest Ventures; Diane R. Torney, Marcam Corp.; William N. Alexander, McGladrey & Pullen; Greg C. Zakarian, MicroCarb Inc.; Clair G. Budke, Minnesota Society of CPAs.

Kerry Budry, Qual-Effic Services Inc.; Allen Becker, Reflection Technology, Inc.; Robert L. Montgomery, Reliv International, Inc.; Ronald H. Kullick, Ribi Immuno Chem Research, Inc.; Gary Conradi, Raven Industries; Robert M. Steinberg, Reliance Group Holdings Inc.; Gary L. Crocker, Research Industries; Shan Padda, Sabratek Corp.; Jack Masters, Modagrafics, Inc.; John M. Nash, National Association of Corporate Directors; William F. Coyro, Jr., National TechTeam Inc.; Brian D. McAuley, Nextel Communications, Inc.; S. Jay Stewart, Morton International, Inc.; E. Michael Ingram, National Data Corp.; George A. Needham, Needham & Company, Inc.; J. Clarke Price, Ohio Society of CPAs.

John Schlosser, St. Francis Bank; Robert W. Philip, Schnitzer Steel Industries, Inc.; William G. Malloy, Scientific Games, Inc.; Charles F. Valentine, Security Federal Savings & Loan Assoc.; Peter Nisselson, SBM Industries Inc.; Lyndon A. Keele, Science Dynamics Corp.; Don R. Scifres, SDL, Inc.; Anthony M. Marlon, Sierra Health Services, Inc.; Maxell Fox, Silent Radio Inc.; John J. Gillway, Jr., Sizeler Property Investors, Inc.; James C. Bly, Jr., Source Capital, Ltd.; Paul Richman, Standard Microsystems Corp.; Terry L. Kirch, Resource Information Management Systems, Inc. (RIMS); Grady R.

Hazel, Society of Louisiana CPAs; Michael Budagher, Specialty Constructors, Inc.; Douglas R. Starrett, L.S. Starrett Co.; Thomas Goldrick, Jr., State Bank of Long Island; Thomas L. Elliott, The Sunbelt Companies, Inc.; Lawrence J. Fox, Symix Systems, Inc.; David F. Simon, U.S. Healthcare, Inc.; Ryal R. Poppa, Storage Technology Corp.; Patrick L. Swisher, Swicher International, Inc.; M.A. Self, Tioga International, Inc.; Daniel Ogita, Unibright Foods, Inc.; Gene Koonee, United Cities Gas Co.; Thomas P. Stagnaro, Univax Biologics, Inc.; Steven J. Appel, Value Merchants, Inc.; Bruce S. Chelberg, Whitman Corp.; C. Edward Mordy, United Wisconsin Services, Inc.; MacRay A. Curtis, Utah Association of CPAs; Frank Fischer, Ventritex, Inc.; James E. Wilf, Wilf & Henderson, P.C., CPAS.

Edward W. O'Connell, Wiss & Co.; J. Oliver McGonigle, The YES Group Inc.; Addison Piper, Piper Jaffray Companies, Inc.; William A. Valerian, Home Bank, F.S.B.; C. William Thaxton, YES Financial Inc.; Frederick A. Stampone, Pep Boys; DeLight E. Breidegam, Jr, East Penn Manufacturings Co.; Raymond V. Glynn, TELCORP; Jean C. Tempel, TL Ventures; J.W. Bernard, Univar Corp.

The PRESIDING OFFICER. Under the previous order, the Senator from California is now recognized for up to 30 minutes.

Mr. BRYAN. Mr. President, my distinguished colleague needs another minute or two. I thought perhaps, with the acquiescence of the distinguished floor manager, we might get some additional unanimous consent—I know he has several colleagues who asked to speak, or at least I saw his list. I am perfectly agreeable that we might do that now. If he is not prepared to do so, we would——

Mr. BENNETT. I do not wish to interrupt the Senator from California. I do not have the list in front of me, so why does she not go ahead.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mrs. BOXER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mrs. BOXER. Mr. President, I rise to speak against the conference report. This legislation claims to reform private litigation under the Federal securities laws. I believe there is a clear need for reforms in the securities laws. For example, we need to ban the payment of bonuses by a small minority of unscrupulous lawyers to professional plaintiffs. We need to prevent lawyers from dipping into Securities and Exchange Commission disgorgement funds. These are funds created by Government agency litigation, not by the private lawyers' litigation, and private lawyers should not be paid from those funds.

We should also ban the payment of referral fees to stockbrokers who drum up plaintiffs and litigation for plaintiffs' attorneys. Securities lawsuits should redress real wrongs and not promote strike suits to shake down innocent defendants.

This conference report prohibits those three practices I just described. I support those provisions. But the legislation goes much, much further. It uses, in my view, legitimate problems as an excuse to gut securities protections for the average American. I cannot be a party to that. I feel it is very important that this debate be as inclusive as it can be of all aspects of this because I believe someday, as Senator BRYAN has said, this vote is going to come back to haunt people. And I want the RECORD to be clear as to where this Senator from California stood.

The real effect of this legislation, absent those three good parts that deal with frivolous lawsuits, the real effect of this legislation is to unleash con artists and swindlers to prey on the investing public and bilk them out of hundreds of millions, perhaps even billions of dollars. Because of this, I call on my colleagues to vote no. And I call on the President, if this legislation passes, to veto it. If you are fighting for the average American, you have to veto this bill because it is going to hurt the average American.

Mr. President, we are in a time when the middle class, especially the elderly middle class, is being asked by the majority in this Congress to give up, in my opinion, basic old-age protections. This Republican Congress wants to deeply cut Medicare, to give a tax break to the rich, and they even repeal Federal nursing home standards.

So the middle class, the elderly middle class are getting hit. We must remember that securities fraud is aimed at the elderly—there are many studies that show this—aimed at the elderly. So this is a double whammy. In other words, what we are doing here today cannot be divorced from the budget battle we are waging. On the Democratic side of the aisle, we are fighting to protect the middle-class elderly. But we do not control the votes. They are going to get hurt somewhat. Why offer them this double whammy?

I tried to get special safe harbor protections for the elderly in this bill, but I could not. I could not win that fight. So the elderly are at risk here. As a matter of fact, all of us who invest, all of us are at risk here. But who will get hurt the most? Not the wealthiest of the investors, because if you are worth millions and millions of dollars you can take a hit and wind up on your feet. Not the poorest of the poor, because if you are the poorest of the poor, you do not invest. So the wealthiest and the poorest are probably going to be all right.

But it is the middle class that is going to get hit. This bill is antimiddle class and it is antisenior citizen. It would jeopardize the retirement funds and old age security of millions of our citizens, and for that reason, I hope colleagues will vote no.

The conference report is named, or I should say misnamed, "securities reform." But the conference report does not reform the Federal securities laws, nor does it reform litigation under those laws. It does exactly the opposite, in my view. It encourages securities fraud, fraud on the most innocent and vulnerable investors.

I remember being visited by the victims of fraud, the victims of Charles Keating, and they said, "Senator, you have to stand on that floor, and you have to tell your colleagues to prevent that from happening to anybody else." Those victims of Keating were able to recover $200 million plus because of the laws we have in place today. Not after this bill. Not after this bill.

This legislation would even hurt business. Why do I say that? If you make the securities laws less protective of the vast majority of investors, what will happen is people will have doubts about the safety of securities. So they are going to wind up not investing in securities, not lending their money to start up, holding their capital back, maybe just buying Government bonds, a safe investment, and, therefore, these honest companies, because of the fraudulent ones, will have to pay a premium when they sell their securities. It will wind up being kind of like a fraud tax because people will say, "I'm very worried, I'm not going to give you my money. There has just been a scandal." And they say, "OK, we'll pay more interest." So in the end, the honest companies will get hurt.

I am a former stockbroker, and I have had the experience and honor of helping people with their investments. For the most part, they happened to be elderly people who entrusted me at that time many, many years ago. I know how they hung on every price change, because they relied on their dividends and they knew some day if they had a family emergency, they would have to sell those securities. They also relied on the honesty of the companies. If we ever ran into a situation where there was a company that was not being honest when they made projections or they talked about their company, we saw those stock prices go down.

It seems to me we owe it to the investors and to the good companies and to the good stockbrokers to keep a very strong and very powerful securities law, because I really believe after the first scandal—and there will be such a scandal, in my view, if this goes through—people will just be afraid, afraid to invest their money.

Mr. President, this conference report would make losers of millions of people, particularly small investors with IRA's—that is individual retirement accounts—pension plans, mutual funds. It is these average Americans who will be the first victims of the fraud which will be unleashed by this legislation. The legislation effectively repeals much of the Nation's antifraud laws passed in the thirties in response to the rampant fraud that contributed to the stock market collapse of 1929. My goodness, can we not learn from history around this place? Do we have to see it happen again?

This legislation really could be called a roadmap to swindlers and con artists who will use it to defraud the public and undermine the public's faith in the markets. That is why organizations representing millions of average investors oppose the legislation.

Let me name a few. In my own home State of California, the California Congress of Seniors is opposed. ''We feel,'' they say, ''this legislation puts all elderly Americans who save their money in jeopardy because it would make it practically impossible to sue a swindler for securities fraud.''

State and local governments would lose under the legislation.

The California Association of County Treasurers and Tax Collectors is opposed. This is a conservative group of Americans entrusted with making sure that county funds are invested wisely. What did they say about this? ''We strongly urge you to oppose the Securities Litigation Reform Act. In recent years, local California governments have lost more than $2 billion in the securities markets, partly due to derivative investments. Some of these governments have pending securities fraud cases. Others are still deciding whether to use the courts to pursue the recovery. Now is not the time to weaken defrauded investors' rights,'' they say, and this comes from the local people.

I thought this crowd in Congress respects the local people. I thought they respect the people at the county level, the State treasurers, the States attorneys general. I guess they only respect them when they finally agree with them, but if they do not agree with them, they do not respect them.

This is dangerous legislation, and that is what it is called by the California State organization.

As the city and county treasurers and tax collectors point out, State and local governments, as investors of public funds, bring many securities fraud suits. We know about Orange County where they are trying to recover from unscrupulous brokers. The city of San Jose in 1984 nearly went bankrupt because it unknowingly purchased risky securities. Now they were able to sue. Their city attorney who pursued that case came before the Banking Committee on which I serve, and I am proud to serve on it, and she said, ''Don't change the laws. We had a very hard time under current law recovering our money, but we were able to do it. Don't weaken those laws.''

That fell on deaf ears.

Government agencies that have been defrauded and forced to use the Federal antifraud laws are not confined to California. There are many examples: Ohio and Florida where local government agencies lost millions through securities frauds.

Taxpayers are the ultimate losers, so not only are you putting individual investors at risk, I say to my colleagues, but you are putting taxpayers at risk who pay local taxes because local governments buy securities, too.

(Mr. SANTORUM assumed the chair.)

Mrs. BOXER. Mr. President, I talked about the fact that one of my major concerns is the impact of this legislation on senior citizens who are the clear targets of fraud. Why is that? They count on their pension plans. They have little ability to replace their lost investments other than to sue for fraud, and they need protections that this bill would take away.

Senior citizens save for a lifetime. They often invest, as I say, a significant part of those savings in securities. Their pension plans are usually full of securities. These invested savings must carry them through old age and retirement, and this bill makes it easier to get away with securities fraud. So it is going to be, among others, senior citizens and their pension plans that will be the major victims.

Many of our seniors are old, they are frail. They cannot return to work like some of us who can come back if somebody perpetrates a fraud on us. We have years ahead that we can work, although I am getting older every day and have fewer years myself.

The fact is, the seniors cannot go back to the workplace, so if they are bilked of their money, they have to take it on the chin, they have to lose their dignity as they go to their children or really live in abject poverty.

That is why the American Association of Retired Persons is against this bill—AARP. They sent a letter to the Banking Committee and said:

> For many older people, the money at stake represents a lifetime of savings, a lump sum pension payout, or proceeds from the sale of a home. Private lawsuits brought by victims of fraud often represent the only legal recourse available to redress the wrongs committed by unscrupulous financial practitioners.

The AARP is not alone. The National Association of Public Employee Retirement Systems is also opposed. If you start listening to the people who oppose this bill, what you will realize is that it is most people. It is the special interests who favor the thing. Those are the people who are being protected. The aiders and abettors of fraud are being protected and the perpetrators of fraud are being protected, but the people who are responsible for protecting other people's money, such as county treasurers and attorneys general of various States, these people—the AARP, who protect seniors—are opposed. The AARP says that the President should veto this bill.

Newspaper editorials. I think it is important to take a look at these newspaper editorials, Mr. President, because they do not have an ax to grind. They are looking at the legislation. As a matter of fact, newspapers are considered, in many cases, to be more conservative than the average person. Let us hear what the Chronicle in the bay area has to say about this. It is called Opening the Door to Fraud.

''Securities fraud lawsuits are the primary means for individuals, local governments and other investors to recover losses from investment fraud—whether that fraud is related to money invested in stocks, bonds,'' et cetera. And they say, under the conference report, investors would be the losers.

Dozens of other newspapers and magazines have editorialized against this legislation, calling for it to be defeated or vetoed.

Let us look at the largest paper in my State, the Los Angeles Times. The Los Angeles Times had this to say about the legislation: ''This isn't reform—it's a steamroller.''

It is a steamroller. They are very, very critical.

The Oakland Tribune summarized the conference report this way. They say:

> President Clinton should veto the measure because it leaves individual investors and an array of institutional investors like pension funds, municipalities, and other government units without enough protection from manipulators like Charles Keating, Ivan Boesky, and Michael Milken. . . .

Where are the people here in this institution? Do they not remember these names from the 1980's? Do they not remember reading about the Great Depression? Do they not remember the S&L scandal, which was caused by the deregulation that was so wild that there was rampant fraud?

Let me say this. According to the Oakland Tribune:

> If this law had been if in effect when thousands of investors, many of them Californians, had sued Charles Keating over the Lincoln Savings and Loan scandal, the plaintiffs would have recovered only $16 million. Under current securities-fraud laws, they were able to recover $262 million.

I ask, do you think the people who were bilked by Charles Keating had a right to recover their losses? If you say yes—and I would be surprised if you did not—how on Earth can you vote for this bill which would have made it impossible for them to recover any more than $16 million when the losses were in the $200 million range?

The Muskegon, MI, Chronicle had this to say:

> How come GOP's contract allows ripoffs of investors?
>
> . . .Let the bill's backers explain to the rest of us why stock swindlers need to be ''protected'' from lawsuits.

In the Republican GOP Contract With America, there is a very specific reference to changing the securities laws. As a matter of fact, I had a huge debate with the author of the original bill, who then backed off some of the provisions, like making it retroactive, when he realized it might hurt his own district. But I am glad that the Muskegon Chronicle in Michigan—and I have never been there and I do not know anyone who writes this—caught on. This is directly coming from the Republican contract. ''Let the bill's backers explain to the rest of us why stock swindlers need to be 'protected' from lawsuits.''

I do not think anybody has answered that. They talk about frivolous lawsuits, but they neglect to talk about these basic problems with the bill, which is that it strips away important protections that investors rely on.

Money magazine has run four editorials calling for the defeat of this legislation. Money magazine. Here it is. Could you ever write a more apt title? It is, ''Congress Aims at Lawyers and Ends up Shooting Small Investors in the Back.'' That is exactly what happened with this bill. A laudable purpose, where you get a 100-to-0 vote on the three provisions that deal with cutting back on frivolous lawsuits. But they use that as an excuse to open up all the securities laws, undo the protections and ''end up shooting investors in the back.''

They say:

At a time when massive securities fraud has become one of this country's growth industries, this law would cheat victims out of whatever chance they may have of getting their money back. . . . In the final analysis, this legislation . . . would actually be a grand slam for the sleaziest elements of the financial industry at the expense of ordinary investors.

My colleagues, if you are watching this in the comfort of your offices, if you are not tied up in a meeting or a committee, just look at this. Money magazine. What is their purpose? To help investors. They say, ''Congress Aims at Lawyers and Ends up Shooting Small Investors in the Back.'' The next scandal that we have, you will all be on the floor saying, ''My God, I did not think that, and I did not know that, and I did not read the fine print, and so on and so forth.'' You have a chance today to stick with the Senator from Nevada and stick with the Senator from Maryland and stick with this Senator from California and vote with us against this conference report. It is hurtful to the average investor.

USA Today editorialized:

The bill's sponsors claim this step is needed to rein in an explosion of frivolous litigation. But the facts don't back them up. . . . These bills are a blatant payoff to the corporations, brokers, accountants, and others who give millions to congressional campaigns.

That is a pretty tough indictment of what they view—USA Today—as special interest legislation.

The Miami Herald goes so far as to call this bill ''a license to steal.'' They say: ''. . . Senate bill bars lawsuits against many who bilk investors. How does this help the economy?'', the Miami Herald asks. ''This is licensed larceny, and it's unconscionable.''

Then we have an interesting letter I want to share. The Fraternal Order of Police have written a very good letter to President Clinton. They call on him to veto this bill. They drew an interesting parallel to the war on crime.

They say:

On behalf of the National Fraternal Order of Police, I urge you to veto the ''Securities Litigation Reform Act''. . . . The single most significant result of this legislation would be to create a privileged class of criminals. . . . Our 270,000 members stand with you in your commitment to a war on crime. . . . I urge you to reject a bill which would make it less risky for white collar criminals to steal with police pension funds while the police are risking their lives against violent criminals.

There are a lot of different kinds of crime. White collar crime. You look at the guy and he looks terrific, but he is stealing your money because he does not tell you the truth about investment, and this bill would take away your protection. I think it is very interesting that the Fraternal Order of Police felt it important to talk about this kind of crime—white-collar crime.

The National Council of Individual Investors is also opposed. They wrote the President:

We are writing to express our strong opposition to the recent draft conference report on securities litigation reform. The conference report fails to treat the American investor fairly. For example, as currently drafted, the bill would have cost the victims of the Keating savings and loan fraud over $200 million more than they otherwise lost. In the interests of protecting individual investors from fraud, we strongly urge you to oppose, and if necessary, veto this legislation.

Now, I have to say if BARBARA BOXER stands on the floor of the Senate and gives her views, because I usually line up with consumer groups you might say BARBARA BOXER always lines up with the consumers. But my goodness, you have got every respected investor advocacy organization, senior citizen organization, consumer organization, local elected people, States attorney generals, it goes on and on and on. They are all telling us ''Don't fall for this bill.''

There is a lot of discussion about a safe harbor. The SEC was right in the middle of developing a new safe harbor provision. But, no, we could not wait. It reminds me of when Congress got in the middle of deregulating the S&L's and said, ''We know better.'' Look what happened.

We are doing the same thing here. Why not let the professionals deal with this. They say, well, the SEC now likes this safe harbor. I read the letter. I think, frankly, there was a lot of pressure put on people over there. That story will come out another day.

When you read the fine print of this legislation, any swindler can cover himself, make some cautionary statement about a forward-looking prediction, and find cover in this new safe harbor.

Mr. President, the Senate should not be a party to this kind of lawmaking. It should not be a party to this kind of lawmaking.

This bill even says that the lawyer in a securities fraud case has to be picked by the wealthiest investor—the wealthiest.

Now, it is one thing to go after professional plaintiffs, and I am ready to do that any day of the week. Sign me on. It is another thing to say in each and every case the wealthiest investor is the one who will be involved and be responsible, and choose the attorneys and all the rest. Talk about wealth being power—maybe that wealthy individual could care less about the circumstance. And other smaller investors care more because proportionately they are more hurt. The wealthy one gets the opportunity to control the lawsuit.

I ask, what are we doing here? I think this bill is much worse than when it left here. It went to conference and it got much worse. I hope some people who voted for it, sent it off to conference, will reconsider.

This conference report stacks the deck against the investor—anyone and everyone who has respect and objectivity in this Nation has come out against this bill.

Even an excellent amendment by Senator SPECTER was dropped, a very important amendment. It applies to complaints filed at the initiation of a securities lawsuit. It had to do with the burden of proof necessary to file a case dealing with motive and opportunity to defraud. It was dropped in the conference. Close the door, you drop the progressive provision that would have protected investors. That was a very bad change in this bill. This bill is worse, much worse now, than when it left here.

Mr. President, in conclusion, this legislation will hurt the public. Everyone says in America that we have the safest securities markets in the world. Everyone is so proud, so proud. Yet they are cutting the heart out of these protections.

It will do the public great harm. It is not reform. It is repeal. It is repeal—repeal of protections that have made our securities markets the safest in the world. This bill will hurt investors and ultimately honest companies that sell securities.

The only winners, in my view, will be those crooks who get away with it. Before we come back here and say, ''My God, what have we wrought,'' we should go back. In the end, this legislation will erode the confidence and efficiency of the Nation's securities markets. Our Nation will be the loser.

What the conference committee did is they took legitimate problems and they used them as an excuse to destroy the very protections that small investors need.

I hope that people will vote ''no'' on this. Barring that, I hope that the President will veto it. I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Nevada is recognized for 15 minutes.

Mr. REID. Mr. President, I received a call from a reporter from Nevada, and the big news in Nevada is the two Senators in Nevada disagree on something. We normally agree on almost everything. This is one of the rare issues where the two Senators from Nevada disagree.

Mr. President, I was 1 of the 69 Senators that voted for this bill when it came the first time. I am going to be one of those Senators that will vote to confirm the conference report that we just received. I think this is an important piece of legislation.

Mr. President, in my legal career, I have had about 100 jury trials. I understand the trial practice. I think this is an area of the law that has been abused by trial lawyers. I think the small group of lawyers has abused the license they received to protect the consumers of this country. They have become more concerned about protecting themselves and not the consumers to which they allege they protect.

This legislation, Mr. President, should pass. It is important, I believe, to the integrity of this aspect of the law.

It is often said that the truth is the first casualty in a war. I believe this adage to be particularly appropriate to the debate over the bill now before this body. I realize that there is a great deal of money at stake with this legislation. I am aware that a small but shrewd group of plaintiffs' lawyers stands to lose a lot of money because of the reforms brought through this legislation.

That does not, however, excuse the frightening fictions that I believe are being paraded in some aspects by this bill—by the people trying to kill this conference report.

I first became suspicious about the opposition to this legislation when I met with a group of people who were attempting to defeat it. In my conference room, in my office here in Washington, I met with a group of people, most of whom were from Nevada but some from other parts of the country, and they were in here to tell me how bad this legislation was. I proceeded to listen to them. Everything they talked about was not in the Senate bill but was in the House bill.

I listened to them and, trying to shake the fact that sometimes I like to cross-examine people that come to visit me, I could not overcome the temptation on this occasion. I said to the group, ''Who paid your way here?''

A number of faces turned very red and they said the name of one of the lawyers, plaintiffs' lawyer, who has made a fortune in this litigation.

I asked the next question, ''Where are you staying?''

And they said, ''The Willard Hotel.''

And I said, ''Who pays for that?''

The same red faces, the same affirmative answer, ''The plaintiffs' lawyers were paying for this.''

They have every right, but I think the record should be very clear. There is a small group of plaintiffs' lawyers attempting to maintain a lock they have on part of the litigation world that I think has gone too far.

Mr. President, I am sorry my friend from California has left the floor, but the same is true about the Money magazine that was referred to. Money magazine has previously editorialized on the bill without considering the legislation as a whole. Indeed, there seemed to be an almost exclusive focus on the House bill. They were writing about something that was fictionalized as being here.

It is the House bill that was part of the Contract With America. Today, we have a bill almost identical to that which this body passed earlier this year.

Some of their editorials claimed that the legislation would potentially force investors and the lawyers who lose a case to pay the winner's entire legal fees. Of course, the facts are totally different from that. The compromise agreement drops the fee-shifting agreement of the bill.

Money magazine's claim is that the legislation would ''allow executives to deliberately lie about their firm's prospects.'' Facts: Executives who deliberately lie about their company's prospects would be liable under the compromise.

Another claim they made is that the legislation will ''prohibit the investors from suing the hired guns who assist a fraudulent company, the so-called aiders and abettors, including accountants, brokers, lawyers and bankers.'' That is not true.

They go on to say the legislation ''would ratify a court ruling that throws out any suit that isn't filed within 3 years after the fraud took place, even if no one discovers the crime until after the deadline.'' The compromise, as I understand it, does not address the statute of limitations. It merely leaves current law generally as it now is.

Money magazine's claim is that in order to bring a lawsuit, plaintiffs may be ''forced to post a prohibitive, multimillion-dollar bond to cover the defendant's legal fees just in case the suit is later thrown out of court.'' The provision in the House bill requiring the posting of a security bond prior to bringing the suit has been dropped.

Mr. President, I ask unanimous consent that the entire text of the refutation of one of Money magazine's editorials be printed in the RECORD.

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

RESPONSE TO MONEY MAGAZINE EDITORIALS

Recent Money magazine editorials object to securities litigation reform legislation on the bases of provisions that have been amended in the compromise agreement, or because of grossly distorted characterizations of the effect of the provisions. Stripped of their rhetorical excesses, the complaints in the editorials have little substance and even less relevance to the current compromise agreement. In fact, the compromise is good for America's investors—which is why both individual investors and institutional investor organizations are strongly backing the bill. Below are responses to every one of Money's claims in both the September and November editorials.

Money's claim: The legislation would ''potentially force investors and their lawyers who lose a case to pay the winner's entire legal fees, if the judge later rules the suit was not justified.''

The facts: The compromise agreement drops the fee-shifting provision of the House bill. The compromise makes evenhanded procedural revisions to the Federal Rule of Civil Procedure 11. Rule 11 requires that attorneys and unrepresented parties have some factual and legal basis for filing any claim or defense. It already authorizes (but does not require) sanctions against those who violate its mandates. The compromise requires courts to make a finding after a case is adjudicated as to whether either side—either the plaintiff or defendant—violated the Rule. The same substantive rule applies to every other action brought in federal court. If the court finds a violation, and it is not de minimis, then the court must impose sanctions. The court has the discretion not to award attorneys fees and costs if it determines that such a sanction would impose an undue burden on the party that violated Rule 11. The compromise does not sanction a party merely because they lost their case. Every case that is not settled has a loser, but courts rarely find Rule 11 violations. Opponents of this provision apparently do not support Rule 11 or do not trust federal judges to appropriately exercise discretion in awarding sanctions.

Money's claim: The legislation would ''allow executives to deliberately lie about their firm's prospects.''

The facts: Executives who deliberately lie about their company's prospects would be liable under the compromise. The new safe harbor in the compromise has been carefully drafted to ensure that there is no ''license to lie.'' Thus, projections made without adequate risk disclosure are not protected by the safe harbor if they are made with ''actual knowledge'' that the statements are false or misleading—a standard proposed by Senator Sarbanes during floor debate over the Senate bill to ensure that corporate executives who lie to investors would be covered by the save harbor. Forward-looking statements made with sufficient, specific non-boilerplate risk disclosure are protected by the safe harbor. This is a codification of the ''bespeaks caution'' doctrine already being applied by the courts. In addition, the compromise retains the limitations on the scope of the safe harbor contained in the Senate bill, such as the exclusion of any issuer who has been convicted of a securities law violation in the past three years. In addition, there is no safe harbor protection for projections made in connection with blank check companies, penny stock offerings, initial public offerings, partnership offerings, roll-ups, tender offers, and going private transactions.

This compromise safe harbor language balances two important public policy objectives: encouraging increased voluntary corporate disclosure to investors, and ensuring the liars are not protected. Money magazine and others that take an extreme position simply ignore half of the objectives of the safe harbor.

Money's claim: The legislation would ''prohibit investors from suing the fired guns who assist a fraudulent company, the so-called aiders and abettors, including the accountants, brokers, lawyers and bankers.''

The facts: Aiders and abettors are not immune from liability. The compromise agreement authorizes the SEC to bring enforcement actions against those who aid and abet a securities fraud, thus reversing the Supreme Court's Central Bank decision as it applies to the SEC. For private actions, where there has been significant abuse of aiding and abetting liability by ''strike suit'' lawyers seeking to increase the settlement value of a case, the bill leaves current law as it is. However, nothing prohibits investors from suing so-called ''aiders and abettors'' as primary violators, and in fact, many cases were simply refiled after Central Bank alleging a primary violation of the securities laws. This balanced provision ensures that no wrongdoer will escape liability, but prevents aiding and abetting liability to be used as a dragnet to sweep in ''deep pocket'' defendants to 10b–5 claims, regardless of their culpability, merely to coerce settlements.

Money's claim: The legislation ''would ratify a court ruling that throws out any suit that isn't filed within three years after the fraud took place, even if no one discovers the crime until after that deadline.''

The facts: The compromise agreement does not address the statute of limitations in current law. It merely leaves current law as it is. Despite dire predictions that the Supreme Court's one and three year statute of limitations would end all private 10b–5 actions, these actions have flourished since the 1991 decision.

The current statute of limitations has governed express causes of action under the securities laws for more than 60 years, and 10b–5 actions for more than four years. There is absolutely no evidence that legitimate 10b–5 cases have been frustrated.

As one court has observed, ''[p]rudent investors almost always can smoke out fraud (or enough smoke to justify litigation) within three years. [The three-year statute of repose] cuts off only the claims of the most trusting or somnolent—or the most wily, those who wanted to wait as long as possible.'' *Short* v. *Belleville Shoe Mfg.*, 908 F.2d 1385, 1392 (7th Cir. 1990). A longer period would allow speculators too much time to wait and see how their decisions to buy or sell securities turned out, permitting them to use lawsuits to cover their losses in the market. The current law curtails their ability to institute fraud claims ''based on wisdom granted by hindsight.'' *Short*, 908 F.2d at 1392.

Money's claim: In order to bring a lawsuit, plaintiffs may be ''forced to post a prohibitive multimillion dollar bond to cover the defendants' legal fees just in case the suit is later thrown out of court.''

The facts: The provision in the House bill requiring the posting of a security bond prior to bringing suit has been dropped. The new provision gives the court *discretion* to require an undertaking from the plaintiffs *or* defendants in a class action, and/or their attorneys. The court may decide that no undertaking is warranted. This is not a novel or unprecedented provision. Other sections of the securities laws already have similar undertaking provisions. Plaintiffs have not been deterred from bringing lawsuits under those sections.

Mr. REID. Mr. President, we are here today considering the compromise legislation agreed to by the conferees yet the bill's opponents are still running ads in opposition to the House bill. The House bill is gone, history. We have never given it any credence here. But they are doing this in an effort to slant and improperly cite what this bill really stands for. These ads are replete with half truths, hyperbole, and outright distortions. Indeed, it is as if the opponents have failed to read the compromise agreement and have chosen instead to repeat the earlier criticisms of a different bill, the House bill.

Interestingly, this is not unlike their actions in the class action suits they file alledging meritless claims. I believe the status quo makes a mockery of the judicial system.

The much-debated safe harbor provision of the conference report provides investors with protection. It increases corporate disclosure on forward-looking information and ensures that investors are protected against fraud.

I ask the bill's opponents how the compromise can be so pernicious if it received support from Arthur Levitt, Chairman of the Securities and Exchange Commission. In a recent letter, Mr. Levitt said, ''The current version represents a workable balance that we can support since it should encourage companies to provide valuable forward-looking information to investors while, at the same time, it limits the opportunity for abuse.''

It seems pretty clear. These words are from a man charged with protecting the rights of all investors—big investors, small investors, medium-size investors.

Another red herring commonly referred to and flouted by some opponents of this legislation is it will allow for another Charles Keating. They add this to their Parade of Horribles, but it is without foundation. Most of the losses from the Keating case did not involve securities fraud and would not be affected by this legislation. But even for those losses caused by securities fraud, a number of the fully solvent defendants would be jointly and severally liable under the compromise because they committed a knowing fraud.

There are also provisions that everyone on this floor understands that protect small investors. If you have $200,000 or less, you lose 10 percent of it. The same rules apply. Small investors are protected in the legislation in this compromise, in this conference report.

So the Charles Keating talk that we hear so much about is a red herring.

Importantly, this bill includes a provision that requires auditors to take additional steps to detect fraud and report illegal acts directly to the Securities and Exchange Commission.

Mr. SPECTER. Will the distinguished Senator yield for a moment for a unanimous-consent request?

Mr. REID. I am happy to.

UNANIMOUS-CONSENT AGREEMENT

Mr. SPECTER. Mr. President, I make this request on behalf of Senator DOLE, so all Senators may be advised as to what the schedule will be.

I ask unanimous consent that the vote on the conference report occur at 4:45 p.m., with the time between now and then divided as follows: Senator HEFLIN, 7 minutes; Senator GRAHAM, 7 minutes, Senator GRAHAM of Florida; Senator SHELBY, 7 minutes; Senator BIDEN, 7 minutes; Senator WELLSTONE, 7 minutes; Senator COHEN, 5 minutes; Senator SARBANES, 5 minutes; Senator BRYAN, 10 minutes; Senator DODD or his designee, the remainder of the time which, who knows, may be zero, like this morning.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. REID. Mr. President, this provision will help prevent fraud before investors' assets are lost, thereby eliminating the need for litigation.

Another myth commonly put forth by the opponents is that it includes a loser-pays provision. We have talked about that before regarding the Money magazine assertion. That was simply without foundation. The truth is that no one will be required to pay the other side's fees because they simply lose a case. What it does, is tighten rule 11 sanctions against attorneys who file frivolous lawsuits. Rule 11 merely requires that attorneys have some factual and legal basis for filing any claim. This does not seem unreasonable. It already authorizes rule 11 sanctions against those who violate its mandates.

This conference report is a balanced and a fair representation of what this Senate said that it wanted. I, like my friend from Connecticut and others, said we are not going to support legislation that is more in keeping with the House than the Senate. We will vote against it. But I think the 69 Members of the Senate who voted for this legislation the first go-around should vote for it again.

This is good legislation. It is fair. It is balanced. It may hurt the small minority of attorneys reaping a windfall—and that is an understatement, under the current laws—but it provides much-needed protection to investors and restores some sanity to our already overburdened courts.

Mr. President, I ask unanimous consent any time I have remaining be delegated to the Senator from Connecticut.

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

The Senator from Utah.

Mr. BENNETT. Mr. President, I yield the Senator from North Carolina 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator is recognized for 1 minute.

Mr. FAIRCLOTH. Mr. President, I rise in strong support of the conference report on H.R. 1058. I was pleased to be an original cosponsor of this bill in the Senate.

Mr. President, securities litigation reform is a rather ominous title for a bill. It certainly is not an issue well known to many Americans. But the fact is, this legislation is very important for our economy, and very important for job creation in our country.

This legislation is really part of a larger issue—legal reform. Too many lawsuits are crowding our court system and they are sapping the productivity of many companies. Last year, over 220,000 civil lawsuits were filed in Federal court.

Since 1980, there has been a 73-percent increase in the number of civil suits filed in Federal court.

It is estimated that securities class action suits have increased threefold in just the last 5 years. Yet, a small number of lawyers are pushing these suits.

In fact, every 4 working days, one particular law firm files a securities class action lawsuit.

The cost of these suits is no small matter. At the end of 1993, over 700 class action suits were seeking $28 billion in damages.

Very simply, this bill will attempt to put an end to frivolous class action lawsuits that are filed against America's publicly traded companies.

These strike suites often have little merit, but they are filed for the sole purpose of blackmailing companies into settling rather than going to court.

Everyone of us knows that it is less expensive to settle a lawsuit up front than it is to go all the way to trial. Of course, once the suits are settled, the attorneys that brought them, keep most of the money.

The impact of these suits is having a detrimental effect on our economy. Many companies are afraid to go public and sell stock.

By remaining private, they can avoid these kinds of suits, but they also sacrifice an increase in growth and jobs that can come from going public. This is costing America jobs.

Some have even suggested that companies from overseas are afraid to establish businesses in America out of fear that they too will fall victim to these suits.

Money that would otherwise be spent on new job growth, or on research and development is being paid to lawyers to settle these suits or—worse yet, money is wasted fighting them.

The cost to U.S. companies is not caught in a vacuum. As is always the case, excessive litigation costs are passed along to consumers in the form of higher prices. All of this has a ripple affect on our economy. Mr. President, it is making America less competitive.

In my home State of North Carolina—116 companies have contacted me and asked for my help in passing this bill. They are united in their effort to end these abusive lawsuits.

Together these companies employ 118,000 in North Carolina. This is why this bill is so important for jobs in my State and in this country.

These suits are often targeted at emerging high-technology companies. This is a particularly disturbing development.

America is the undisputed world leader in technology. Germany, Japan, France, England, none of these countries or other countries even comes close to what this country is doing in terms of technology and innovation. Eighteen of the thirty largest high-technology firms in Silicon Valley have been sued since 1988. It has cost them $500 million to settle these suits.

Yet, this small pool of lawyers, like sharks in the ocean are just circling—waiting for the stock prices to fall—then they move in with the strike suite. They are waiting to attack these companies and transfer the wealth to themselves.

We cannot let this happen. America's leadership role in technology is too important to have it fall prey to disreputable attorneys.

Mr. President, let me give a few examples of just how bad the situation has gotten with these suits.

One individual has filed lawsuits against 80 companies in which he held stock. One Federal judge suggested that maybe his investment results were a matter of design to pursue a lawsuit. The investor wanted us to believe that he was just the world's most unlucky investor. I have my doubts.

Another individual has filed 38 lawsuits, 14 of them with the same law firm.

Another man—a retiree—since 1990 has filed 92 lawsuits—one for every one of his 92 years of age.

Further, these lawsuits have so little merit, they are often filed within hours after a stock price drops. Many times the drop is due to simple movement in the markets, yet, the lawyers only have to file a preprinted complaint alleging fraud and race to the courthouse.

The trick is that this allows them to become the lead attorney on the class action case. And by this—they make the most money.

The National Law Journal reported that of 46 cases studied, 12 were filed within 1 day, and another 30 within a week of publication of unfavorable news about a company.

A good example is the Philip Morris case. This case has been discussed often, but it bears repeating.

After Philip Morris announced that it would reduce the price of its Marlboro cigarette by 40 cents a pack—a lawsuit was filed within 5 hours—by a plaintiff who held just 60 shares.

Four more suits were filed the same day, and five the next day. Two of the lawsuits contained identical complaints.

In fact, one suit came so fast from a computer generated legal form—that the attorney forgot to change the form in parts—so he misidentified Philip Morris as a toy company.

This is kind of frivolity that America's companies are fighting—and, regrettably, having to pay for.

Mr. President, the conference report is an attempt to put an end to these outrageous legal practices.

Mr. President, let me assure you that nothing in this bill will prevent anyone from filing a legitimate fraud case against any company.

If it did, I do not think 50 Members of the Senate would have cosponsored the bill. I don't think 69 Senators would have voted for it when it passed the Senate.

For those that oppose this bill in the name of the consumer, I think are not fairly representing the consumers of this country.

Mr. President, a point that is not often made is that consumers, and the plaintiffs in the class action suits rarely benefit from these lawsuits. Study after study shows that lawyers get the lions share of the settlements.

We had testimony that the average investor receives 6 or 7 cents for every dollar lost in the market because of these suits—and this is before the lawyers are paid.

Mr. President, in my opinion, consumers and investors will be helped by this bill. Any consumer that has a job—or wants a job—or wants to keep a job will be helped by this bill.

With this conference report, more of America's capital will be put to job creation and not wasted on one sector of the legal profession. That is really the principle issue here.

Mr. President, the conference report will do a number of things to curtail the abuses in our legal system.

First, the bill allows the courts to determine who the lead plaintiff will be. The conference report will also put some teeth behind the rule that attorneys cannot file frivolous lawsuits.

Mr. President, the conference report will also help investors by allowing companies to dispense more information to the public without the fear of being sued. This is the "safe harbor" provision.

This is critically important to the flow of information for investors.

It is a shame that due to the actions of a small cadre of lawyers—that the free flow of information has been cut off. Now investors can only get carefully written legal gibberish that is meaningless. This is wrong, and this bill changes that.

Mr. President, let me conclude by saying that I would strongly urge my colleagues to support the conference report. This is the beginning of meaningful legal reform. I think this bill is a good, fair, and balanced bill, protecting the rights of investors as well as companies.

Mr. HEFLIN. Mr. President, I rise today to discuss the conference report on H.R. 1058, the Securities Litigation Reform Act. After months of secret negotiations from which supporters of small investors, consumers, senior citizens, and public officials who invest taxpayer money were excluded, the proponents of the bill have agreed upon the conference report.

Now that the light of day has been shed on the results of the negotiations it is clear that the conference report is far more devastating for investors than the bill which the Senate passed earlier this year. The conference report fails to fix the glaring inequities between investors and unscrupulous corporate insiders. It has taken some of the worst provisions from both the House and the Senate bill and combined them to form this unacceptable report.

Unlike the Senate bill, the conference report now broadly immunizes oral or written forward-looking statements by corporate insiders with only a requirement that there be "cautionary" language to accompany the statement. The determination of what is "cautionary" invites litigation, but for those who have already lost their life savings based on this safe harbor this litigation is too late.

Pursuant to the conference report the individual investors who have been victimized by an unscrupulous broker, or fraudulent statement will probably never have their day in court. This is due to the inclusion of a House provision which allows the court to impose a bond requirement to cover the payment of fees and expenses, with no limitation on the amount of the bond. If an individual investor attempts to seek justice from a large corporate defendant, such a bond would probably be unattainable.

Another change from the bill passed by the Senate is the financial risk imposed on investors of having to pay the full legal fees of big corporate defendants if they lose. The new penalty for a plaintiff for a violation of the Federal rules requires that he or she pay all of the corporate defendant's legal fees and expenses for the entire case. This full fee-shifting sanction would be calculated after the case has been completed, when the court must make findings. By the way, if the defendant is found at fault, he is fined only the fees and expenses that are a direct result of a frivolous filing. This English rule, fee shifting, could virtually eliminate all securities claims, the meritless along with the meritorious.

In another move away from the Senate bill the conferees dropped proinvestor language which clarified the burdensome pleading requirements of the bill. In a blow to investors, the proponents have retained an extremely difficult pleading requirement. The report will require plaintiffs to allege facts giving rise to a strong inference that the defendant acted with the required state of mind. This state of mind or intent requirement must be obtained before any discovery or testimony has even taken place. Most courts have rejected this high standard as being in conflict with the purposes and express language of the Federal rules. The report not only adopts this language but raises the requirement even more.

Furthermore, the conference report fails to correct some of the major problems in the Senate bill. These problems include the extremely short statute of limitations and the abrogation of joint and several liability in all but a very limited number of circumstances. The report retains the immunity for aiders and abettors which would have been a boon to the defendants in the Lincoln Savings failure case. The report also retains the requirement that the court appoint a most adequate plaintiff, thus eliminating the issues of concern to smaller investors and inserting the concerns of the wealthiest investor.

I have recently received letters from organizations expressing their concern with this report and legislation. The Fraternal Order of Police state that this legislation would create a privileged class of criminals, by immunizing many of those involved with the markets from civil liability in cases of securities fraud. The UAW describes the legislation as one-sided and contends that it will allow for limited remedies to be available for the investor and pension funds which lose money due to fraudulent investment schemes. I believe that if a more balanced approach to securities law reform could be reached, the proponents could gain the support of these groups and hundreds of others.

The stock market recently broke 5000 and is as robust and active as at any time in our Nation's history. Small investors driven away from the markets due to the crash in the early eighties are starting to return to the markets. This is not the time to pass legislation which will erode public confidence in the integrity of the markets. I strongly urge my colleagues to vote against this report and send it back to the conferees, demanding a more balanced approach to securities law reform.

Mrs. MURRAY. Madam President, I am pleased to come to the Senate floor today to express my support for a bill I cosponsored, the Private Securities Litigation Reform Act of 1995. I commend Chairman D'AMATO and Senators DODD and DOMENICI for their work on this bill. They have done a fine job of crafting a strong bipartisan measure and then guiding it successfully through conference—and I have been pleased to work with them on this issue over the past 3 years.

Madam President, this is an important day for many of the small investors in Washington State and throughout the country. This bill takes the power out of the hands of a few lawyers and puts the power back in the hands of the investors. We all know that in many of these class action lawsuits, the investor often recovers as little as 10 percent of the damages caused by fraudulent activity while their lawyer takes millions.

Madam President, I recently heard from a constituent who received a settlement in a suit against a high technology firm in Washington State. This particular investor received a prorata share of the damages amounting to 3 cents per share, or just $30, while the lawyer in that suit walked away with the rest. The individual in this suit told me, ''my investment was hurt much more by my lawyer's actions, and his extortion of $1 million from the firm, than by any alleged actions on the part of the company's management.''

Madam President, this is neither what our investors want nor expect. It is outrageous and needs to be corrected.

The legislation before us will reform our securities law so that investors will have more of a say in the outcome of their suit. It will restore the plaintiff's role and enable them to exercise traditional plaintiff functions—including the selection of lead counsel, negotiating fees, and determining the distribution of settlements. Quite simply, it puts some common sense back into our legal system.

Madam President, I've seen the ads denouncing this legislation, and I've heard the arguments opposing this legislation. This bill has inspired some very intense, focused, and well-funded opposition.

The bill's opponents claim this legislation will harm small and elderly investors. Well, I believe that assertion is completely false. In no way does this bill take away one's ability to file suit. Nor does it undermine the Securities and Exchange Commission's ability to sue for damages in securities fraud. In fact, the legislation enhances the SEC's ability to do so.

Madam President, Americans have a right to know their investments are secure—that our money has been invested in good faith. Today, investors are denied valuable information because companies are reluctant to disclose forecasts in fear of litigation. This serves nobody well; and it especially hurts investors that are trying to make sound, well-educated investments.

I am pleased to note that the SEC has endorsed the safe harbor provision in this bill. SEC Chairman Arthur Levitt has written, ''the current version represents a workable balance that we can support since it should encourage companies to provide valuable forward-looking information to investors while, at the same time, it limits the opportunity for abuse.'' I agree with Chairman Levitt and I value his opinion. This safe harbor provision will be good for both investors and corporations.

Ultimately, if an investor has been the victim of fraud—no matter how big or how little—they have a right to equal treatment under the law. This legislation ensures that will happen, better than under today's laws.

And, Madam President, Congress has a unique role in promoting investor confidence. We must encourage investments; investments that are needed for capital formation, economic growth, and job creation.

This is especially true in Washington State—which is home to many high technology and biotech companies. And investors in Washington State like to invest in these companies.

Unfortunately, Washington State's investors are well aware of the damage that is caused by unwarranted court cases. They know these cases inhibit job creation and slow economic growth.

They know how companies are forced to waste resources and settle suits with capital that could have been used for the research and development of a new product.

I have heard from many of these companies in my home State. Companies such as these—new, growing, forward-looking—are a point of pride in the Pacific Northwest. They reflect the high technology, high wage economy of the future.

Nobody likes to see these companies attacked by a few overzealous lawyers. These companies lose millions of dollars each year fighting the allegations of fraud—while the actual investor receives just pennies on the dollar when a settlement is finally reached.

Madam President, this system needs reform, and Congress is obligated to correct the situation. And, I want to make it very clear—this bill retains an investor's right to bring suit if they are victims of securities fraud.

At the same time, it will clamp down on the abusive suits they prey on investors and small business owners. It is honest effort to reduce the excessive costs that burden our investors and our economy.

Madam President, let me conclude by recalling the first Senate vote on this bill. When I voted for this bill in June, I said I would not support a conference report if it contained some of the more onerous provisions in the House bill. Well, not only is this conference report almost identical to the Senate bill, it is even stronger in some respects. It is a good compromise and it restores some common sense to our legal system. I urge my colleagues to support this legislation.

SAFE HARBOR

Mr. FRIST. Mr. President, I would like to briefly discuss with Senator DOMENICI one important issue concerning the section 102 ''Safe harbor for forward looking statements.'' It is the clear intention of the conference committee that reckless conduct cannot constitute actual knowledge for purposes of the safe harbor, isn't it?

Mr. DOMENICI. Yes. It is the clear intention of the conference committee that reckless conduct will not constitute either actual knowledge or be construed to constitute a knowing commission of a violation of the securities laws for purposes of section 102 safe harbor provisions of the Private Securities Litigation Reform Act of 1995.

Mr. KYL. Mr. President, I rise to support the Securities Litigation Reform Act of 1995. I thank Senators DOMENICI, DODD, and D'AMATO for their sponsorship of this bill, and their leadership in reforming securities class actions. I am pleased to support this bill, which will reform the legal process by which injured parties can recover damages for securities fraud and negligence. It reduces abusive litigation that clogs our judicial system and results in reduced recoveries to the plaintiffs. Too often the attorneys, not the investors, are the primary beneficiaries of these securities suits.

The Senate Banking Committee passed a version of H.R. 1058 by a vote of 11 to 4 this spring. The full Senate passed this version on June 28 by a vote of 70 to 29. Clearly there is a bipartisan consensus for change. I supported this bill because I believe it modernizes our securities class action litigation system by reducing the potential for frivolous securities lawsuits, while assuring that defrauded securities investors receive a greater share of the settlements or awards in their cases.

H.R. 1058 contains several important reform provisions. It eliminates referral fees currently paid by some attorneys to plaintiffs who successfully recommend them to represent all the plaintiffs in a class action. It requires the courts to appoint, as lead plaintiff, the party willing to serve who has the greatest financial interest, thus doing away with the so-called professional plaintiff who shops for cases to file—frequently as the agent for a lawyer—with little financially at stake. The bill would allow the small investor to recover completely through joint and several liability. And it imposes an affirmative duty on auditors to disclose financial fraud to the Securities and Exchange Commission [SEC], unless the fraud is properly addressed by management.

In many cases it is the attorneys, not the investors, who are the primary beneficiaries of these securities suits. For example, National Economic Research Associates, Inc. reported that, in a 12-month period ending July 1993, the average settlement in securities class actions amounted to $7.36 million. Attorneys earned an average of $2.12 million per settlement, roughly 30 percent of the total. Investors recovered only about 7 cents on the dollar when compared with the amount of losses alleged.

Some argue that the small investor will not be able to find relief under this legislation; that, for example, the victims of the Lincoln Savings & Loan bond fraud would not have recovered their losses. This is incorrect. First, the final bill includes a provision that requires the SEC to determine whether investors who are senior citizens, or those groups with qualified retirement plans, require greater protection against securities fraud. If so, the SEC must submit a report to Congress containing recommendations on protections that the Commission determines to be appropriate to thoroughly protect such investors.

Second, H.R. 1058 retains joint and several liability recovery for small investors with securities claims. Even if the Lincoln S&L investors had sued only for those claims covered under H.R. 1058, many of them would have been fully compensated. H.R. 1058 specifically provides that, if one defendant is insolvent, the remaining codefendants will remain both jointly and severally liable to investors whose net worth is under $200,000, and who lost more than 10 percent of their net worth. All of the Lincoln investors who met this standard would have been fully protected had H.R. 1058 been law. In fact, those investors may have been able to recover more under H.R. 1058. This bill imposes statutory restrictions on the size of lawyers' fees in securities actions. Perhaps, had the plaintiffs' lawyers been prevented from taking more than the $65 million in fees off the top of the settlement fund, the Lincoln S&L investors would have received full compensation for their losses.

H.R. 1058 provides investors who have been injured as a result of the negligence of another the opportunity to file suit. At the same time, it reduces abusive litigation, which clogs our judicial system and hurts those plaintiffs with meritorious claims. It is important that recoveries go to the plaintiffs and not to cover court costs, attorneys' fees, and other transaction expenses.

Mr. President, the Securities Litigation Reform Act will eliminate frivolous securities class actions. I urge my colleagues to support this bill.

Mr. FRIST. Mr. President, I speak today in support of the conference report to H.R. 1058, the Private Securities Litigation Reform Act of 1995. The conference report is a moderate and carefully balanced compromise bill that permits investors in securities to continue to file and win legitimate lawsuits. However, the bill does something that is much needed at this time: It gives issuers of securities the ability to quickly dismiss meritless and abusive lawsuits.

The current system of securities litigation is clearly broken. Why? Because it makes millionaires out of attorneys who repeatedly file frivolous lawsuits. As a matter of fact, securities litigation costs American industry $2.4 billion a year, with one-third of this amount being paid to plaintiffs' attorneys. This results in companies being forced to lay off worker and consumers paying higher prices for goods and services.

The bottom line is that the current system of securities litigation does not benefit investors or consumers: it benefits a handful of attorneys.

Here is how the perverse system of securities litigation currently works: There are a handful of plaintiffs law firms in this country that specialize in filing securities class action lawsuits. This is shown by the fact that seven plaintiff law firms in this country receive 63 percent of the legal fees generated by securities class action cases. These law firms monitor the stock prices of businesses with computers. When a corporation's stock price suffers a major drop, the plaintiff's law firm immediately files a lawsuit. Some 20 percent of securities lawsuits are filed within 48 hours of a major drop in the stock price.

The reason that these law firms are able to file their lawsuits so quickly is that they are suing on behalf of professional plaintiffs, who receive a fee for permitting themselves to be named in the lawsuits. The Securities Subcommittee of the Senate Banking Committee found that there were plaintiffs who had as much as 14 securities action lawsuits filed on their behalf.

These law firms justify the filing of these lawsuits by generally alleging that the drop in the stock price was caused by the corporation or its management acting fraudulently or recklessly. The lawsuits seek for the corporation to pay to its shareholders damages in the amount of the difference between the stock price before and after the stock's drop in value.

Even if the lawsuit is meritless, the corporation is forced to settle. Why? First, litigating a lawsuit is costly, even if your only goal is to get the lawsuit dismissed for failing to state a cause of action. This is because it is very difficult to dismiss such lawsuits, and defense expenses for complex securities class action lawsuits can total between $20,000 and $100,000 a month. Second, the depositions and extensive document review associated with these lawsuits are so time consuming that they disrupt the management of the business. On average, companies that are sued devote 1,000 management and employee hours per case.

The end result is that it is worthwhile for a business to settle a frivolous securities lawsuit, because there is rarely ever any cheap way of dismissing it.

Now, opponents to securities litigation reform are going to tell you that, notwithstanding all of the foregoing, investors still benefit from the current system of securities litigation. But I'd submit that this system actually harms investors.

The first problem, as stated by former SEC Commissioner Carter Beese, is that the current system encourages "counsel to settle for amounts that are too low or fees that are too high." The plaintiffs in a securities class action have a conflict of interest with their lawyers. The lawyers' incentive is for an uncomplicated settlement and an avoidance of trial. This is because the difficult and time-consuming work for the plaintiffs' lawyers comes at the trial phase; if it can be avoided by a settlement, the lawyers still get their percentage for relatively little effort. Thus, the lawyers-driven nature of these lawsuits tends to shortchange investors who have truly been defrauded and would benefit from litigating the lawsuit to conclusion.

The second problem is that in securities class action lawsuits, when a corporation makes a settlement payment to a class of shareholders, the shareholders who still own the corporation's stock are not really getting any tangible benefit in return. If the settlement amount is coming from the corporation's money, then it is no more than a quasi-dividend, with a law firm taking an average of 33-percent cut for giving the shareholder the privilege of having the quasi-dividend occur. This will generally cause the corporation's stock price to drip, which nullifies the benefit of the settlement. If the settlement amount comes from the corporation's directors' and officers' liability insurance, the corporation will be faced with partly paying it back through a staggeringly high premium the very next year. Either way, an investor who continues to own a share of stock in a sued corporation does not gain much from settlement of the lawsuit.

The third and final problem is that investors can no longer get useful forward-looking information about corporations. As former SEC Commissioner Carter Beese testified before the Securities Subcommittee of the Senate Banking Committee, "companies go out of their way to disclose every conceivable bit of innocuous information, but very little useful forward-looking information. At the same time, legion of lawyers scrub required filings to ensure that disclosures are as milquetoast as possible, so as to provide no grist for the litigation mill."

With all of the problems that we have with our current system of securities litigation, the moderate relief offered by the conference report is necessary to protect investors, in necessary to protect consumers, and is necessary to protect jobs. I urge all of my colleagues to support it.

I thank the Chair, and yield the floor.

Mr. BURNS. Mr. President, I rise today in support of the Private Securities Litigation Reform Act of 1995. The conference report is a big win for all America's investors, our Nation's businesses, and our overall economy.

The conference report offers a balanced bipartisan bill that restores fairness and integrity to our securities litigation system by protecting innocent companies as well as the rights of the legitimately defrauded investors. The filtering out of the abusive, frivolous class action lawsuits that harm investors and only benefit class action attorneys will restore integrity to securities lawsuits. We will protect investors and at the same time emerging companies will be able to grow and create jobs without the financial burden of abusive litigation.

The legislation we have before us today will go a long way toward curbing abuses in securities litigation. It will provide a filter at the earliest stage of a lawsuit to screen out those that have no factual basis. A complaint needs to outline the facts supporting the lawsuit and not just the simple conclusion that the defendant acted with the intent to defraud. If the complaint does not outline and present all the facts supporting each of the alleged misstatements or omissions, the lawsuit will be terminated.

Many times, securities class action suits are characterized by the "sue them all and let the judge sort it out" mentality. In order for a judge to sort it out, the defendants are required to spend numerous hours and expense to defend against a securities class action lawsuit. This bill corrects that problem by requiring plaintiffs to specify the statements alleged to have been misleading.

Securities laws are intended to help investors by ensuring a flow of accurate and pertinent information regarding public traded companies. However, the present system reduces the amount of information required and companies limit their public statements to avoid allegations of fraud. In fact, an American Stock Exchange survey found that 75 percent of corporate CEO's limit the information disclosed to investors out of fear that greater disclosure would lead to an abusive lawsuit. To encourage disclosure of information by companies, the conference report will create a safe harbor. It will provide a procedural mechanism for companies who make predictive statements to be protected from frivolous litigation if their prediction does not materialize.

Mr. President, we have heard a lot of speculation that this legislation would adversely impact small investors. Nothing could be further from the truth because this comprehensive measure will protect the rights of investors who have been legitimately defrauded, while providing new protections for the millions of Americans investors who have been harmed by the recent explosion of abusive and frivolous litigation. While there are many provisions in the measure to deter meritless suits, the bill also requires that the auditors inform the SEC of any suspicions of fraudulent activity and restores the authority of the SEC to bring aiding and abetting cases for knowing violations of securities laws. The measure includes a system of proportionate liability to reduce the pressure to settle frivolous claims and so that companies pay only their fair share of a settlement, while retaining full joint and several liability for small investors and for all defendants who knowingly participate in securities fraud.

In conclusion, Mr. President, this securities legislation reform is fair, balanced and passed with strong bipartisan support. I encourage my colleagues to support the conference report and I once again want to commend Senator DOMENICI and Senator DODD for their work on this bill.

Mr. BOND. Mr. President, the conference report to H.R. 1058 addresses an issue of great concern to many Americans—securities litigation reform. While this is a subject that I believe needs to be addressed and one I have some personal views and experiences in, I will not be participating in the debate or votes on the floor.

I have previously informed the Senate that I am engaged in securities litigation of the kind this legislation seeks to reform. Given the status of this suit and the pending legislation, I will again recuse myself from the proceedings on the matter.

I thank the President and fellow Senators for their understanding of my personal situation.

Mr. DOLE. Mr. President, I am pleased that we are able to consider the conference report to the Private Securities Litigation Reform Act today. I want to commend my colleagues, the chairman of the Banking Committee, Senator D'AMATO, and the chairman of the Budget Committee, Senator DOMENICI, for their leadership in working out the necessary compromise allowing us to bring this bill to the floor. I also want to commend my colleague from Connecticut, Senator DODD, whose involvement in this issue is proof that there is nothing partisan about securities litigation reform.

Our securities markets provide the fuel that drives our economy. When these markets run efficiently, allocating capital to established companies and to newer, emerging businesses, we all win with more economic growth, more jobs, and a stronger economy.

Unfortunately, a handful of lawyers today devote their professional lives to gaming the system by filing strike suits alleging violations of the Federal securities laws—all in the hope that the defendant will quickly settle in order to avoid the expense of prolonged litigation. The lawyers who file these suits often rely on professional plaintiffs, shareholders with only a small stake in the company, but who are nonetheless willing to stand on the sidelines ready to lend their names to the litigation.

Needless to say, these strike suits are often baseless. If a stock price falls, these lawyers will file a class action suit claiming that the company was too optimistic in their projections. If the stock price soars, these same lawyers will file suit saying that the company withheld information that caused shareholders to sell too early. In effect, the lawsuits act as a litigation tax that raises the cost of capital and chills disclosure of important corporate information to shareholders. High-tech, high-growth companies are particularly vulnerable to these baseless strike suits because of the volatility of their stock prices.

This bill will reduce the number of meritless securities fraud cases, while protecting investors, by proposing several commonsense reforms:

First, it diminishes the likelihood that these cases will be driven by lawyers, instead of real plaintiffs by allowing the most adequate plaintiff to be the party with the greatest financial interest.

Second, it clamps down on skyrocketing attorney's fees by requiring that fees be awarded as a percentage of the actual recovery based on the efforts of the attorney.

Third, it retains joint and several liability for those who knowingly commit fraud, but establishes a system of proportionate liability for other, less culpable defendants.

Fourth, it adopts the second circuit's pleading standard. This requires plaintiffs to point out specific statements that are supposed to be misleading, and removes the ''sue them all and let the judge sort it out'' mentality.

Fifth, it encourages companies to disclose information to their shareholders by granting limited protection to predictive statements made in good faith. Statements that are knowingly false, however, are not protected by this safe harbor.

Mr. President, with this bill the Republican-led Congress sends a clear message. We have fulfilled our responsibility to provide companies and investors protection from frivolous lawsuits, ensuring that America will be able to compete in the global marketplace.

President Clinton has not indicated whether or not he will support this bill. But the choice is clear. In my view, if he supports this bill, he supports creating jobs for Americans. If he opposes it, he only supports enriching the pockets of wealthy trial lawyers at the expense of consumers and investors.

In closing, I again commend Chairmen D'AMATO and DOMENICI, and Senator DODD for their work on this critical legislation and I urge my colleagues to support it.

Mr. KERRY. Mr. President, one of my priorities is to foster a competitive business environment in Massachusetts and throughout the Nation that will lead to the creation of skilled, family-wage jobs. A significant factor in creating a favorable business environment is the ability to generate capital. The conference report before us today addresses the question of the so-called securities strike suits that have had a chilling effect on both the business climate and the generation of capital for Massachusetts' vanguard technology industries.

This legislation has been the subject of intense debate. Some argue that in its attempt to end frivolous strike suits, it will deny investors the opportunity to recover losses from companies that engaged in fraudulent securities actions. This is a legitimate concern in view of some of the cases in Massachusetts in which companies repeatedly misrepresented sales, senior officers had to resign and some companies had to declare bankruptcy.

Others have countered that the legislation does not go far enough to prevent frivolous strike suits based solely on stock fluctuations or missed earnings projections and that the attorneys who bring such suits should face the threat of a loser pays provision.

As the Senate has considered various proposals to reform our Nation's securities laws in this area, I have been mindful of the fact that, indeed, there are investors on both sides of this issue. My principal goal—and the yardstick I have used to measure this legislation—is whether it achieves a balance between discouraging truly frivolous strike suits while ensuring companies and individuals are liable for actual fraud. Though not prefect, I do believe this legislation has struck a reasonable balance between protecting investors' rights and reducing the possibility that companies will be subject to frivolous strike suits.

One factor that was extremely important in helping me reach a decision on this legislation was the Securities and Exchange Commission's evaluation of the conference report. The SEC, throughout the legislative process, had withheld its endorsement of the legislation. I am pleased that the SEC stated in a letter of November 15, 1995, that: ''We believe the draft conference report responds to our principal concerns.''

Of particular importance to me is the safe harbor language that is the product of months of consultation with the Securities and Exchange Commission. In my view this provision is the crux of the entire matter. The safe harbor affects a potential investor's decision of whether to purchase securities and it affects a company's ability to paint a rosy scenario to attract investors. It also directly affects the value of the benefits packages of the company's officers and employees. The conference report codifies the judicial ''bespeaks caution'' doctrine and will not allow a company simply to use boilerplate cautionary language.

I am also pleased that the conference report adopts as title III legislation I sponsored originally with Representative WYDEN to require audits of public companies designed to detect illegal acts. It places on accountants and company auditors a clear responsibility for early detection and disclosure of illegal actions by management. This title requires auditors to inform immediately the management and/or the SEC of illegal acts having a material impact on the issuer's financial statements. I believe these procedures for early detection and disclosure of fraud by the accountants and auditors will serve the interests of both investors and businesses.

The conference report should lead to the creation of a more favorable climate for investors and businesses. Investors should gain better information about the marketplace, more control over securities strike suits and more leverage in recovering a larger share of their losses in strike suits. Businesses should gain the freedom to provide statements about the business outlook that investors and the SEC have encouraged and a more favorable climate for raising capital.

I especially want to commend Senator DODD, who has worked tirelessly on this tough issue, and Senator DOMENICI for their effort in achieving a reasonable and balanced bill.

Ms. MOSELEY-BRAUN. Mr. President, I support the conference report on H.R. 1058, the Securities Litigation Reform Act. It is a reasonable bill, one that deserves prompt enactment into law, and it provides the right kind of reform to help create jobs and the economic growth our country needs.

The need for reform is clear. The Russian roulette of securities strike suits adds a cost to job creation and a chilling effect on investment. Every single one of the top 10 Silicon Valley high-technology firms has been sued for securities fraud—every single one. And 27 of the top 40 high-technology firms have been sued. These firms, and many others like them, have to spend hundreds of thousands of dollars—and even more—to defend frivolous suits, an additional cost no startup company should have to bear. And, while it cannot be quantified, there is no doubt that a number of companies never get born in the first place because of the incalculable litigation threat.

There are 2,536 electronics companies in my own State of Illinois, companies that employ 112,000 people, and have an annual payroll of $4.9 billion, that are also among the beneficiaries. These companies provide 12 percent of the total manufacturing jobs in Illinois, and the value of their annual production is over $17 billion.

Of course, it is not just high-technology firms in Illinois and elsewhere that need this bill. I have concentrated on high-technology firms because they are so important to the future of our economy and because their stocks tend to be volatile, which makes them prime targets for these kinds of securities lawsuits. The fact that so many leading high-technology firms have been sued in an indication of the scope and extent of the frivolous litigation problem, a problem this bill will correct.

The fact is that investors need reform, too. The current system does not benefit them. The damages investors receive in a successful case amount to as little as 10 to 14 cents on the dollar of alleged losses. Clearly, the litigation explosion has not helped investors a whole lot.

Much more important than damages, however, is information. Most investors have not been part of any securities litigation class action lawsuit, at least not directly, but every investor that is active in our capital markets depends on information—and the more information an investor has, the better the information an investor has, the better off that investor is.

Enactment of this conference report will reverse the current trend of companies providing less and less information to investors. Instead, because of greater confidence that they will not be subject to frivolous suits, companies will be providing more information to the market. That, in part, is why small investors like the Beardstown Ladies, and the National Association of Investors Corp. an organization representing over 340,000 investors and investment clubs, supports this legislation.

Many investors also support this bill because it gives them, rather than the lawyers who are supposed to be working for them, control of any class action suits filed. It is the client, rather than the attorney, that is supposed to control a lawsuit, and part of the reason this bill is so necessary is that this simple principle has somehow gotten lost in recent years.

However, more is at stake than just the interests of companies and investors, as important as those interests are. The interests of our overall economy, and of our country at large, are also very much at issue. The interests of every person who works, or is looking for a job, is at stake.

The world economy is more and more competitive. Our future prosperity depends on our ability to meet and beat that international competition. That means we need a continuing supply of new ideas, new products, and new companies that can produce the jobs of tomorrow. And that also means that our capital markets must work efficiently to provide capital in the amounts needed to the companies that will provide the jobs and the economic growth that will make the future brighter and more prosperous for all of us.

These global concerns may seem a long way from the securities law issues that are the subject of the bill now before the Senate, but the connection is both strong and direct.

American corporations are all too often intensely focused on the short-term price of their stock, instead of the long-term growth and prosperity of the business. This short-term focus, which the current state of our securities laws helps foster, distracts senior management, makes too many of our businesses less creative, and undermines the ability of American businesses to make the investments that have the long-term payoff. By addressing the frivolous lawsuit problem, this conference report will free managers to focus on managing their businesses for the long term, rather than managing to minimize their short term legal exposure. It will give entrepreneurs more time to innovate, and to focus on the future, rather than concentrating on their legal defense. Companies will be able to concentrate on creating new products and new jobs, because they won't have to devote so much time and attention to lawsuits, and the threat of lawsuits.

Moreover, because frivolous lawsuits, and even the threat of frivolous lawsuits, are an impediment to the smooth functioning of our capital markets, removing that impediment will make our capital markets more efficient. And that will also help produce more economic growth and more new jobs.

I cosponsored S. 240, the original bill that passed the Senate in modified form last June, because that bill was based on a recognition of all of these facts. S. 240 was designed to maintain strong investor protection, while making it more difficult to file frivolous or abusive lawsuits. It was designed to help ensure that new businesses that create new jobs and new products have a better chance to get the capital they need, while ensuring that defrauded investors have the right to recover their damages. The bill attempted to reduce transaction costs, so that investors who are harmed see a smaller portion of their recoveries consumed by attorney's fees and other costs. And it was designed to help our capital markets create more jobs and greater long-term economic growth—something that is good for every American.

I am pleased that the conference report now before the Senate very strongly resembles the bill the Senate sent to conference, rather than the original unbalanced House bill that I do not and could not support. In one key issue area after another, the conference bill follows the Senate bill, rather than the House bill. For example, in the area of liability standards, the original House bill abolished liability for reckless conduct; the Senate bill did not, and the Senate position prevailed in conference.

The House bill abolished liability for fraud on the market. The Senate bill left that doctrine unchanged, and the conference bill adopts the Senate approach.

In the area of pleading, the House bill adopted a standard that was significantly higher than the second circuit standard, which was the standard adopted in the Senate bill. The Senate position prevailed at conference.

In the area of fee shifting, the original House bill included a pure English rule approach; the Senate bill adopted a rule 11-based approach, and the conference bill adopts the Senate position.

The House bill included a $10,000 named plaintiff provision; the Senate-passed bill did not, and the conference adopted the Senate position.

In the area of aiding and abetting, the original House bill did not reverse the Central Bank case; the Senate bill restored the ability of the Securities and Exchange Commission to institute enforcement actions against a person or persons who ''knowingly provides substantial assistance to another person in violation of this title.'' The conference bill includes the Senate provision.

I do not contend, Mr. President, that the bill before us is perfect. It is a compromise. If I had controlled the conference, there would be some issues that would have been resolved somewhat differently. It is clear, however, that the bill is a good faith attempt to protect the public interest, investors' interests, and companies' interests, and looking at the overall bill, I think it does a reasonable job of meeting the interests of all three.

It is worth keeping in mind what the bill does—and does not—do, and what this area of law is all about. What we are here talking about is ''private rights of action'' for fraud under Section 10(b) of the Securities Exchange Act and rule 10b–5 of the Securities and Exchange Commission. That statute did not expressly provide private parties with a right to sue corporations or other parties involved in the issuance and sale of securities; this right evolved out of a long series of judicial decisions, not Congressional actions.

Some argue that the conference report is somehow unbalanced because it does not fully overturn the Central Bank case involving aiding and abetting, or the Lampf case relating to the statute of limitations in private 10(b) cases. However, it is worth keeping in mind that defeating the bill would do absolutely nothing to overturn either of these cases, that it would in fact leave the SEC with less, rather than more, authority than the bill provides, and that it would leave investors and the public in a situation where the courts, rather than the Congress and the President, are making the law in this area.

The bill has also been controversial because, in some situations, some defendants are only proportionately liable, rather than jointly and severally liable. The conference report however, holds everyone who commits knowing securities fraud jointly and severally liable. Other defendants who are less culpable are proportionately liable, that is, they are responsible for the share of harm they cause. That ensures that parties who may be only 1 percent or 2 percent responsible for the fraud are added as defendants to cases simply because they have deep pockets.

Proportionate liability is far from a new concept. We have had it in the tort area in my own State of Illinois for a number of years. It is an important and necessary change. Without it, many people will not deal with the small, entrepreneurial, startup companies that are most likely to be sued, because the potential liability is so much greater than the profit they can earn from doing business with these companies. Many companies are increasingly unable to find accounting firms and law firms willing to do business with them, and are having increasing difficulty in attracting the best people to sit on their boards of directors. And the result of that is less information and less protection for investors, and greater hurdles for the new companies on which our economic future depends. And the result of that is less of the new, good, well-paying manufacturing jobs our economy and our country needs.

Of course, in some cases, the parties most responsible for the fraud are judgment proof; they have no assets that can be found. In that situation, the conference report provides additional protections for small investors. First, it says that defendants that are proportionately liable have their share of responsibility increased by up to 50 percent of their proportionate share, so that all investors are better compensated for the losses they suffered. Second, for small investors, those with a net worth of under $200,000 who suffer a loss of at least 10 percent of their net worth, every defendant is jointly and severally responsible for paying those damages.

Some object to the rule 11 provisions of the conference report. However, the conference report simply requires the judge to look at rule 11 of the Federal Rules of Civil Procedure—which calls for sanctions for frivolous lawsuits, to determine whether any party violated Rule 11 in the complaint, responsive pleadings, or dispositive motions relating to the case, and if so, to impose sanctions. That simply puts some teeth into the application of rule 11, and it is teeth that are needed, because frivolous suits filed with little thought as to their merit can cost the defending companies hundreds of thousands of dollars in legal fees, and in the time of the companies' executives. And even those fees are not a good investment for the company, even when they win, because they divert money that should be going into creating more jobs and growth.

Finally, the most controversial part of the bill involves the so-called safe harbor. This provision in the conference report has the support of the SEC and, in some ways, offers more protection for investors—and less for issuers of securities—than do some leading court decisions in this area. The heart of what is at issue here is what are known as forward looking statements: statements that describe future events or that estimate the likelihood of selected future events occurring. Rule 175 of the SEC, which currently partially governs this area, states that forward looking statements made with a reasonable basis and in good faith cannot be used for as a basis for a fraud action. However, as a practical matter, the safe harbor it provides turns out not to be very safe.

What added real protection was a third circuit case that recognized the ''bespeaks caution'' doctrine, a doctrine that is now law in at least five circuits. Under this doctrine, forward looking statements accompanied by meaningful cautionary statements—that is, statements that indicate the specific risks that the forward looking statements will not come true—are, as a matter of law, immaterial and therefore cannot be used as a basis for a fraud action.

The conference report essentially codifies the bespeaks caution doctrine. Moreover, in response to concerns raised by the distinguished ranking Democratic member of the Banking Committee, Senator SARBANES, the conference report does not provide protection for statements not covered under the bespeaks caution provisions made with the actual knowledge that they are false.

I am pleased to be able to say that the SEC supports the safe harbor language in the conference report. Chairman Levitt, in a November 15 letter, said that the provision ''represents a workable balance that we can support since it should encourage companies to provide valuable forward-looking information to investors while, at the same time, it limits the opportunity for abuse.''

The SEC, in endorsing this part of the conference report, demonstrated an understanding that action is necessary in the safe harbor area, and that the current state of the law results in companies providing less information to investors than they would like to. A recent report by the American Stock Exchange documented the Commission's concern. It found that 75 percent of corporate CEO's limit the information disclosed to investors out of fear that greater disclosure would make them more vulnerable to abusive securities lawsuits.

Mr. President, there is a lot more in this bill, and there is a lot more I could say about it. I will conclude, however, by simply repeating what I said at the outset of my remarks. This is a good bill. It does not fully satisfy me, and it probably does not fully satisfy any other Senator. But it does provide the kind of reforms that are badly needed and that are long overdue. And the bill accomplishes its reform objectives in a way that protects investor interests, including the interests of small investors like the Beardstown Ladies.

I want to congratulate the distinguished chairman of the Banking Committee, Senator D'AMATO; my good friend from Connecticut, Senator DODD; and the distinguished Senator from New Mexico, Senator DOMENICI—who has now rejoined the Banking Committee—for their leadership and for all of their hard work. This bill would not be possible without the contributions that each of them have made. I also want to commend the distinguished Senator from Maryland, Senator SARBANES, the ranking Democratic member of the Banking Committee, for improving the bill, even though he opposes it.

In my view, this legislation addresses a set of issues that need to be addressed. It is good for investors, companies, our capital markets, our economy, and for the American people generally. It will help generate additional economic growth and new jobs. I therefore urge my colleagues to join me in voting for the conference report on H.R 1058, the Securities Litigation Reform Act.

Mr. LAUTENBERG. Mr. President, I am going to vote against this conference report.

Mr. President, the legislation before us is described as a bill to protect investors and to maintain confidence in our capital markets. In my view, however, it does neither. Instead, the legislation would shield too many wrongdoers from being held accountable for their misdeeds, and it could ultimately reduce investor confidence in our markets.

When this bill was before the Senate, Mr. President, I expressed special concern about the so-called safe harbor provision of the bill. This provision has been improved in the conference report, but it is still problematic. For example, it eliminates any duty to update forward-looking statements. This means that if a business projects earnings of a certain amount and 1 month after making this statement, it becomes apparent that the projected earnings will be significantly less, or perhaps the company will even lose money, the company is not obligated to correct those statements. I do not understand why we would want to encourage this behavior.

As some of my colleagues know, prior to coming to the U.S. Senate, I worked in the private sector. I co-founded a company with two others that today employs over 20,000 people. After the company went public in 1961, I filed countless statements with the SEC as its CEO. As the CEO, I believe it was important for investors to have as much information as possible.

Each year, I made it a practice to project earnings for the following year. And if those projections needed modification due to a changed circumstances, I quickly went to the public to alert them to any revision. This process had significant rewards because investor confidence in my former company caused our stock, which is traded on the New York Stock Exchange, to sell at among the highest price-earnings ratios of all listed securities on any exchange.

Mr. President, I recognize that there are abuses in securities litigation, and I believe those abuses should be addressed. That is why I supported amendments to improve the legislation when it was before the Senate. Among other things, these amendments would have provided aiding and abetting liability in private implied actions; inserted a safety net to ensure that small investors are able to fully recover their losses; and extended the status of limitations period on these claims, thus making it more difficult for bad actors to hide their fraud.

In opposing these amendments, the sponsors of the bill cited some of the more egregious practices of professional plaintiffs and certain lawyers. What they do not mention is that this behavior would have been curbed by less controversial provisions contained in this bill, such as prohibitions against referral fees and attorney conflicts of interest; requirements that the share of the settlement awarded to the name plaintiffs be calculated in the same manner as the shares awarded to all other members of the class and that the name plaintiff certify that he did not purchase the security at the direction of his attorney; a prohibition against excessive attorney's fees; and an assurance that all members of the class have access to information held by counsel of the name plaintiff.

The sponsors of this legislation cite compelling anecdotal evidence of abuse by the so-called professional plaintiffs and their unscrupulous attorneys. I agree there are abusive securities class actions suits filed every year. I also agree that we need to protect companies, and even other shareholders, from these people. But in our zeal to tackle this problem, we should take care not to stifle legitimate claims and to harm our markets, which are the strongest they have ever been in our history.

Mr. President, I would like to support legislation to curb frivolous securities lawsuits because I believe there are problems. However, I cannot in good conscience vote for a bill that I believe will insulate fraudulent conduct, prevent investors injured by fraud from fully recovering damages, and chill meritorious litigation.

Ms. MIKULSKI. Mr. President, I rise today in support of the securities litigation reform legislation that has now returned from conference.

Legal reform is complex. We have to protect the interests and rights of consumers while ensuring the law does not allow frivolous lawsuits. I believe this conference report achieves that balance. I originally cosponsored the bill because I concluded there has been a problem in the area of securities law. In Maryland, my constituents have told me there is a race to the courthouse door to file a lawsuit. The victims of these practices include high-technology companies, their accountants and others.

We cannot afford this race to the courthouse because it ultimately means a loss of jobs, a loss of opportunity. Money spent on liability insurance premiums and expensive litigation is money that cannot be spent on investments and jobs.

While I want to end abuses in the system, I also want to keep the courthouse door open for the little guy, for the consumer. I am not interested in protecting crooks or swindlers. That is why I support this legislation. It protects both consumers and honest companies while allowing the law to go after fraud and abuse.

I am pleased that, with the enactment of this legislation, we will have safe harbor rules endorsed by the Securities and Exchange Commission. I commend the conference committee for working with the SEC on this matter. These rules will allow companies to provide valuable information about their future plans. I am pleased investors will have the information they need to make important financial decisions. At the same time, this provision does not cover company projections that defraud investors. Judges will be able to make sure that a company qualifies for safe harbor protection.

This debate is about the U.S. economy in the 21st century. Much of our economic future is in new and developing industries such as high technology and bio-technology. These emerging jobs are created only when companies generate capital to allow them to move into new fields. Without a balanced legal system these companies will spend too much on litigation costs, and not enough on investments to generate jobs.

I am pleased that this legislation has moved forward with bipartisan support. The bill that passed the Senate received overwhelming votes from both parties. In conference it would have been easy to steer this bill toward extremism, but the conferees worked toward a bill that we can all continue to support. I especially commend the efforts of long time supporters Senator DODD and Senator DOMENICI.

Mr. President, I hope any future legal reforms will meet the same test of balance and moderation that this reform does.

Mr. ABRAHAM. Mr. President, in June 1995, I addressed the Senate to offer my support for securities-litigation reform as embodied in H.R. 1058. Today, I am pleased to support the bill that the House-Senate conference committee has produced. Today's bill draws on the key provisions of S. 240 to make many important reforms to prevent abusive litigation connected with the issuance of securities. These changes will be made without in any way undermining protection for investors against genuine fraud or other misconduct by issuers. To the contrary, they will improve the investment climate in this country, which will make it easier to start businesses which create jobs.

Today I would like to focus on one set of reforms the bill will make. The bill will require courts to sanction attorneys who file frivolous pleadings. This reform will apply both to lawyers who file frivolous pleadings on behalf of plaintiffs and those who file frivolous pleadings on behalf of defendants. This is a sound proposal which should command strong support from both sides of the aisle.

Under current law, Federal Rule of Civil Procedure 11 requires all attorneys to have some factual and legal basis for filing any claim or defense. If attorneys violate this requirement, courts may impose sanctions against the violator. Right now, however, the courts do not have to consider sanctions.

Today's bill makes three changes.

First, it requires courts to find at the end of all securities actions whether any attorney violated rule 11 in filing any complaint, responsive pleading, or dispositive motion.

Second, the court would have to impose sanctions if it found such a violation.

Third, the presumption is that the district court will sanction attorneys violating rule 11 by requiring them to pay the other side's attorneys' fees. Under the bill, it will be a little harder for a district court to impose this sanction on those who file complaints than on those who file responsive pleadings or dispositive motions. Those who file responsive pleadings or dispositive motions will be subject to this sanction if the responsive pleading or dispositive motion fails to comply with rule 11(b). By contrast, those who file complaints will be subject to this sanction only for substantial failure to comply with rule 11(b).

Regardless of the party affected, the court may select another sanction if First, the presumptive sanction imposes an unreasonable burden on the sanctioned party, second, that sanction is unjust; and third, declining to impose such a sanction would not impose a greater burden on the party in whose favor sanctions would be imposed. In the alternative, the party against whom sanctions would be imposed may rebut the presumption of sanctions by demonstrating that the rule 11 violation was de minimis.

We should particularly note two important features of this reform. First, the district court will have to impose a sanction only on someone who filed a frivolous pleading—that is, a pleading wholly lacking a legal or factual basis. Thus, this reform will not deter legitimate litigation. Second, the sanction is paid by the person signing the frivolous pleading—that is to say, as a general matter, by the attorney responsible for it—not by the party the attorney is representing.

It was suggested, Mr. President, that S. 240's changes to rule 11 were really a back-door means of shifting fees. That was incorrect. It is equally incorrect as to the rule 11 provisions in the conference report. These are not loser-pays provisions. They will not sanction all those who come up short in court. They will sanction only those who violate the minimal requirement of having some factual and legal basis for arguments in complaints, responsive pleadings, and dispositive motions. Such frivolous behavior clogs our courts, drains economic resources from parties, kills current jobs, and hinders the creation of new ones.

Moreover, the substantive rule of attorney conduct in this provision is the one which exists under rule 11 now. The change from the current rule 11 is procedural, not substantive. Today's bill simply requires the district court to determine whether that rule, which already applies, has been violated, and to impose sanctions if it has.

The Supreme Court itself has observed that securities litigation has been especially prone to misuse as a tool to extort settlements. It is Congress's responsibility to do something to put an end to this abuse. The rule 11 provisions are one mechanism this legislation puts in place to do just that.

Some on the floor have expressed concern that the Federal judiciary may abuse its power to impose sanctions pursuant to this provision. I simply do not believe that is going to happen. From my position on the Judiciary Committee, I have the occasion to talk to many judges and judicial nominees. I have questioned judicial nominees on many topics, including their ability to exercise their powers impartially toward both plaintiffs and defendants. I firmly believe that the individuals this Senate is confirming, and those that have been confirmed in the past, will exercise this power wisely and prudently for the betterment of our legal system. Mr. President, the bill we are voting on today is an outstanding piece of legislation. Its sponsors, proponents, and the conferees deserve all of our thanks for producing something that will strengthen our economy and it will benefit all Americans. I offer my wholehearted support to the bill before this Senate and urge my colleagues to vote for it.

Mr. BENNETT. Mr. President, I understand the opponents of the bill are gathering their forces, and as we are waiting for that to happen, rather than spend the time in a quorum call, I would simply make an observation that I have made previously in response to the Senator from California which is, first, that none of the losses that occurred as a result of the Keating S&L circumstance to which she referred so often would be affected by this legislation. All of the remedies that were available to those people in the Keating circumstance would still stay in the law. The newspaper editorials which she quoted that implied to the contrary are incorrect. This has nothing to do with the Keating S&L circumstance.

The other point that I would make again is that when we are talking about protecting investors, we are talking about the owners of the company—that is what investors are—and anything that damages the company, or damages the investors. So it is unfair to try to pit companies against investors as has been implied in some of the articles which she quoted.

I say to my friend from Nevada that I am prepared to yield at any point that an opponent to the bill might arrive.

Mr. BRYAN. Mr. President, I appreciate, as always, the accommodation of my friend, the distinguished Senator from Utah. We have worked to accommodate leadership I think on both sides of the aisle by these time agreements that we previously entered into. I do not see anybody from our side.

If I might respond very briefly to the distinguished Senator's comment, there is in my view a fundamental disagreement here. The Keating case is highly relevant, relevant in the sense that its $262 million recovery was based upon a violation of the very act that we seek to amend here, which is the Securities Exchange Act of 1934.

I ask unanimous consent that a caption of the lawsuit filed in the U.S. District Court, District of Arizona, which is the Keating lawsuit, be printed in the RECORD. So that the recovery of some $262 million in the Keating case was based upon a securities violation.

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

[United States District Court, District of Arizona, In re American Continental Corporation/Lincoln Savings & Loan Securities Litigation, MDL Docket No. 834, This Document Relates To: Civ–90–0566 PHX RMB, Civ–90–0567 PHX RMB, Civ–90–0568 PHX RMB, Civ–90–0569 PHX RMB, Civ–90–0570 PHX RMB, Civ–90–0574 PHX RMB]

SARAH B. SHIELDS, ET AL., PLAINTIFFS, *vs.* CHARLES H. KEATING, JR., LINCOLN SAVINGS AND LOAN ASSOCIATION, FIRST . . .

[Caption continued on following page.]

Sixth consolidated amended class action complaint for violations of the Securities Exchange Act of 1934, the Securities Act of 1933, and the Racketeer Influenced and Corrupt Organizations Act.

Mr. BRYAN. Mr. President, very briefly by way of comment I say it is my view—and I think the view of those who have analyzed the bill—that of the $262 million that was recovered in the Keating case, $121 million was recovered against aiders and abettors; that is, accounting firms, law firms, and other professionals.

The conference report fails to restore that liability. So that at least for private causes of action—that is the thrust of the curtailments that this legislation imposes—there would be an inability for the 23,000 plaintiffs in the Keating case that recovered $121 million. That would not be possible under the status of the law today because this legislation does not restore the aider and abettor. It may very well be true that the SEC can move against aiders and abettors. But even that has been somewhat obfuscated. I believe that those who are far more expert than I would tell you that it is not clear even if the SEC would be able to seek recovery against the Keating situation of which there are aiders and abettors. But clearly those who bring private causes of action would not.

Again, we have this informal colloquy with my friend from Utah. He is, I think, suffering from the same disability as I. We have tried to protect time for those who wanted to speak. But they are not on the floor. I would certainly be delighted to engage him in a colloquy or discussion or let him continue to speak until someone returns to the floor.

Mr. BENNETT. Mr. President, as I look at the time allocated under the unanimous-consent agreement, the Senator from Nevada [Mr. BRYAN] has 10 minutes. If he wishes to take that 10 minutes now, that could get us at least that much farther down the road.

Mr. BRYAN. The suggestion of my friend from Utah is always compelling and intriguing and tempting. May I graciously decline his kind offer, which I know is offered in the spirit of trying to accommodate and move this process forward as is his want and intent in every case. But I think I will respectfully decline that. We are not going to be able to protect all of the 7 minutes we have for each of the speakers. We will have to make those adjustments because the time continues to run. I understand that we have more time on this side, those of us in opposition, than he does in support. That time is going to continue to run.

Mr. BENNETT. Under those circumstances, Mr. President, I would suggest the absence of a quorum, and ask unanimous consent that it be charged to the opponents—I withhold.

Mr. DODD. Mr. President, I realize the time is running with a vote at 4:45. I have time reserved. I know our colleague from Nevada, our other colleague, Senator HARRY REID, yielded whatever time he had remaining to me.

Let me underscore a point here, Mr. President, while we are waiting. I will yield the floor the minute I see a colleague arrive.

Let me get back to the bottom line, if I can. We are talking about a group of attorneys on one side who are vehemently opposed to this bill. They are doing everything to stop it. I point out categorically what we are looking at here for every dollar is 14 cents that goes to the investors and about 33 cents going to the attorneys in these matters. You do not need to know much more than that. It is a system that is out of control and out of whack. It needs to be brought back into line of the original intent.

That is really what this is all about. We have included provisions that require auditors to check for fraud and to report fraud; set up a system that protects small investors for proportionate liability matters.

The suggestion has been made—I say this with all due respect—that this is somehow a Keating matter. Nothing could be further from the truth; or trying to suggest that somehow Dillinger may have been involved. This is ridiculous. The Keating matter had little or nothing to do with securities. It was mostly to do with S&L's. And this bill will not change the outcome one iota because it was out-and-out fraud and lies. It was not about some future statements but about present facts. Mr. Keating was suggesting that the Federal Government was going to back all of the investments that were made by people. That, of course, was a complete falsehood. There is no comparison here.

That is really I would say sort of an effort to try to desperately convince people that somehow this legislation is harmful to the interests of investors. What it does is strengthen the hand of investors tremendously by giving them the right to choose the attorneys, giving them the right to decide what the settlement will be, if there is going to be any settlement, and giving them the right to determine what the attorney's fees would be. That is what we are trying to do here.

These investors have been taken to the cleaners by hired professionals. Plaintiffs who own one or two shares of stock in many cases are brought in and given big bonuses for the outcome and set up as the plaintiffs in these cases. This is really a scam. One lawyer said, "I have the best practice in the world when it comes to securities litigation. I have no clients." In fact, he was the attorney and the plaintiff in these matters.

That is what we trying to go correct here. We spent 4 years at it with a strong bipartisan approach that has drawn us to the point where we are about to adopt a conference report and send it to the President. I am hopeful he will sign it. I think it is right, it is balanced fairly, and it is moderate. It attempts to deal with a situation that most people today agree needs to be corrected, including even the opponents of the legislation.

As someone who has been involved in this for almost 5 years, when we first brought up the legislation we were told that there was no need for my bill at all.

At least the opponents are admitting there is a need. They just do not like all the provisions of the bill. So I am hopeful that our colleagues, the 69 who supported this legislation back several months ago—we have improved this bill. We improved the safe harbor provisions to such an extent that the SEC, which was reluctant to support the bill when it first came out of the Senate, today says those safe harbor provisions are provisions which do provide the kind of balance we are talking about. That is their analysis and not mine. There are enough editorial comments here that indicate that this bill makes sense.

So, again, given the strong vote in the House, which was a totally different bill, by the way—and Senator REID of Nevada is absolutely correct. The ads are running, paid for by these affluent lawyers frightened to death they may lose a little business. You are talking about a House bill. That bill is gone. This is now the Senate version that was basically adopted by the conference.

So I am hopeful at 4:45, less than an hour from now, the Senate will give us a good, strong, bipartisan vote reflecting the work that has been done—hundreds and hundreds of hours, 5,000 pages of testimony, almost 100 witnesses, 12 sets of hearings through three Congresses. That is the way a bill ought to be adopted here, where you bring people together, Democrats and Republicans, fashioning a good piece of legislation and endorsed by the major regulatory agency of the country that believes we have done a good job here.

I think on balance this is a piece of legislation which is going to improve the quality of life in this country, and particularly for those industries and businesses that have been the primary targets. One-half of all the firms in Silicone Valley have been subjected to securities fraud suits in the last 4 or 5 years. That just gives you an indication of what is going on here. These new startup, high-tech firms, they are the ones who are victimized by this. Those are the firms of the future.

Mr. President, I see our distinguished colleague from Florida has arrived here. We were trying to fill in a little time until someone arrived.

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

Mr. DODD. I will yield the floor.

If my friend from Florida is prepared to go——

Mr. GRAHAM. Would you like——

Mr. DODD. I am going to reserve a couple minutes at the end. I was just trying to fill in a little gap here while we waited for the opponents of the bill to come on over and express their views.

Mr. BRYAN. Mr. President, if I may, in the spirit of comity, accommodation, fairness, and respect, even though the distinguished Senator from Connecticut has exhausted his time, and if we were trying to adhere to the rules rigidly, he would not have an opportunity to comment further, I would yield from our side of the aisle 2 minutes of the time heretofore allocated to the distinguished senior Senator from Florida, Senator GRAHAM, to my friend, the senior Senator from Connecticut.

Mr. DODD. Well, I am always appreciative of my colleague.

The PRESIDING OFFICER. The Senator from Connecticut is recognized for 2 minutes.

Mr. DODD. Mr. President, no. I will reserve the 2 minutes. In the meantime, our colleague from Florida has arrived. I know the opponents want to be heard on this. I appreciate the gracious allocation, at the appropriate time, of 2 minutes. And I will make particular reference then of the fine job that the Senator from Nevada has done on this legislation.

Mr. BRYAN. In the interest of fair and full disclosure, the Senator has not 2 minutes to reserve. He has exhausted his. If he needs it, I will tender it to him.

I yield the full 7 minutes to the distinguished Senator from Florida. He can yield any part of that he feels he does not need.

Mr. GRAHAM. Mr. President, it is ironic that we are having this debate today. This debate coincides with the last month of the existence of the Resolution Trust Corporation. The Resolution Trust Corporation was a congressionally created corporation to deal with the second largest financial crisis in the history of the United States of America, second only to the Great Depression.

That crisis, of course, was the savings and loan debacle. That debacle was not an accident. It had very specific origins. It had identifiable causes. And, sad to say, Mr. President, many of those origins, many of those causes emanated from this Chamber.

It was this Chamber which in early 1980 passed ill-considered legislation that, among other things, dramatically increased the level of Federal guarantee of savings and loans accounts, without making appropriate adjustments to the premiums we paid to support those guarantees, and made other changes which facilitated the ability of those who wished to gain by plundering these institutions of trust the opportunity to do so.

As a consequence of those actions, which started here, we had one of the great financial crises and one of the most expensive financial crises in our Nation's history. As I say, Mr. President, it is ironic that we recognize this month, December 1995, as the last month of the Resolution Trust Corporation's efforts to try to extricate ourselves from that crisis, and in this month we now take up legislation which I believe has the potential of laying the groundwork for another great financial crisis in America.

Another irony, Mr. President, is that there has been no time in our Nation's history when our stockmarkets were more in public favor. Recently, for the first time in their history, the Dow Jones passed the 5000 mark and continues to grow beyond that. The reason for the strength of our stock market is fundamentally the confidence that the investing American has in our stockmarkets. That is an asset of our free enterprise system, Mr. President, that we need to guard zealously.

Mr. President, I am afraid that the action that we are being asked to take today moves away from that close guarding of the confidence of the American investor in the American stock market.

Let me just mention a few areas of particular concern to me. I am concerned about the provision that will make it easier, will almost provide immunization for oral and written statements of expectation as to corporate activity. The whole purpose of this legislation—and I think a legitimate purpose, Mr. President—was to eliminate frivolous lawsuits, to eliminate a practice in which firms were subjected to litigation, not with the expectation of a jury or other judicial verdict indicating that the company had behaved in an inappropriate way, but in order to be able to negotiate a settlement based on that settlement being less expensive than the cost of defense and the adverse effect which the litigation would have on the image of the corporation.

But this legislation goes far beyond what is required in order to sort out the frivolous from the serious. And one of the best examples of that is what has happened in this so-called safe harbor provision. When this left the Senate it contained some protections. It contained a protection that stated that statements which were knowingly made with the expectation, purpose, and actual intent of misleading investors would not secure the benefits of the safe harbor. As hard as it is to believe, Mr. President, that provision has been eliminated from the legislation as it now comes back from the conference committee.

Mr. President, there are other examples of where the conference committee has taken action that has made this bill less protective of investors without adding to the benefit of sorting out the frivolous from the serious litigation. I am concerned, Mr. President, about the fact that we have continued to have the unreasonably short statute of limitations of 3 years, a period of time in which for many of these real cases of fraud and abuse they would not even be known, much less be known in time to do the necessary investigation prior to the bringing of litigation.

Mr. President, we have made it extremely difficult, after an award is granted, after it has been determined that, in fact, there was fraudulent activity and a judgment is entered on behalf of the plaintiff, we made it very difficult for the plaintiff to be able to recover, particularly, as is frequently the case, when one or more of the major parties turns out to be insolvent.

So, Mr. President, in the spirit of attempting to achieve one very focused objective, we have engaged in broad-scale amputation of the ability of private litigants to maintain the integrity of our securities law. And we do this, Mr. President, at the same time we are about to take up a conference report which will freeze the budget of the Securities and Exchange Commission. So both of the arms which are used in order to contain fraudulent activities in the securities sector, private litigation and the Securities Exchange Commission, are about to be severely restrained.

So, Mr. President, for those reasons, I urge my colleagues to defeat this conference report in hopes that we will then focus on legislation that will accomplish this narrow objective.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. GRAHAM. Mr. President, I ask unanimous consent to have printed in the RECORD statements made by one of my constituents, Mr. F.K. Glasbrenner of Longwood, FL, a resolution by the Florida Association of Counties, and an editorial from the Miami Herald, all of which bemoan the inadequacies of this legislation to achieve the purpose stated.

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

LONGWOOD, FL,
October 23, 1995.

Senator BOB GRAHAM,
Hart Senate Office Bldg,
Washington, DC.

Senator CONNIE MACK,
Hart Senate Office Bldg,
Washington, DC.

Representative JOHN MICA,
Cannon Bldg,
Washington, DC.

Representative BILL MCCOLLUM,
Rayburn Bldg,
Washington, DC.

GENTLEMEN: The managing editor, Frank Lalli, of MONEY magazine has informed his readers, and I am one, that the securities litigation reform bills, H.R. 1058 and S. 240, are certainly not in the bests interests of the investor in the United States.

The original intention of the bills were to discourage frivolous securities suits but in the end they really did something different. In their present form they legalize securities fraud. The bills protect company executives who deliberately misrepresent their firm's prospects. If an invester sues to right a wrong and he loses, the judge can force him to pay the winners legal fees. In addition both bills failed to reinstate fundamental investor protections stripped away by recent Supreme Court decisions which were:

Defrauded investors can be longer sue hired guns who assist a dishonest company officer. This would include accountants, brokers, lawyers and bankers.

Investors cannot sue at all if they fail to file within three years after the fraud occurs, even when the crime is not discovered until after the deadline.

I implore all of you to have the House-Senate conference committee correct the final bill to vastly improve the United States investor's rights. Don't allow white collar crime to the legalized, there is too much of it already.

Sincerely,

F.K. GLASBRENNER.

FLORIDA ASSOCIATION OF COUNTIES,
Tallahassee, FL, October 24, 1995.

Re H.R. 1058/S. 240, Securities Litigation Reform Act.

Hon. BOB GRAHAM.
U.S. Senate, Washington, DC.

DEAR SENATOR GRAHAM: On Behalf of Florida's 67 counties, I would like to thank you for voting against final passage of H.R. 1058/S. 240, the Securities Litigation Reform Act. While the Florida Association of Counties favor efforts to deter frivolous securities lawsuits, I strongly believe that legislation to accomplish this worthy goal must also ensure rights of investors to seek recovery against those who engage in securities market fraud. H.R. 1058/S. 240 not only fails to protect investors' rights, but seriously limits investors' ability to seek recovery from those who help to commit fraud.

Since the provisions of the House bill, H.R. 1058, go even further than the Senate bill in undermining the ability of investors to seek recovery in securities fraud cases, it appears that there is virtually no chance for a final bill that protects the rights of investors and that it is likely the House & Senate conference report will be worse than the original Senate bill. I urge you, therefore, to vote against the conference report on H.R. 1058 when it comes before the Senate for a vote.

Respectfully,

JOHN WAYNE SMITH,
Governmental Liaison.

[From the Miami Herald, Nov. 14, 1995]

LIARS' BILL OF RIGHTS?

While most of the country is paying attention to the feud over the federal budget, a sinister piece of legislation is making its way through Congress unnoticed. This bill lets companies report false information to investors. That's right, it essentially licenses fraud. It has passed both houses in slightly different forms. A compromise bill will be written soon. If it passes, President Clinton ought to slay it in its tracks.

This bill is a story of good intentions. Some companies have been plagued by frivolous lawsuits from investors who aren't happy with the company's performance. The investors allege, in essence, that the company had forecast good results and then didn't deliver. That, say the plaintiffs, constitutes fraud.

Well, often it doesn't. Investing has risks, including market downturns. When investors sue over mere bad luck, they cost companies money, clog courts, and drain profits from other investors.

Trouble is, by trying to stop this abuse, Congress mistook a simple answer for the right answer. Its solution, in plain terms, was to declare virtually all promises by all companies to be safe from legal challenge. Under this ''remedy,'' company executives now can promise investors anything they like, with not so much as a nod to reality.

They can't legally lie, about the past, but if their claims are ''forward-looking,'' they can promise you the moon to get you to invest, and no one can sue them later for being misleading.

Well, almost no one. The bill would allow legal action in the case of egregious, deliberate fraud, but you'd have to prove that it was intentional. And you'd have just three years to discover the fraud and furnish your proof.

It's rare enough to prove outright intent under the best circumstances, but under this bill, if executives can stiffarm you for just 36 months (not a big challenge), they'd be home free. And then—in another hair-raising provision of the bill—you'd be stuck for the company's entire legal bill. Facing such a risk, no small investor, no matter how badly cheated, would ever dare sue.

This bill evidently struck many members of Congress as a simple answer to a nagging problem. It's nothing of the kind. The problem is real enough, but its solution isn't simple. And it certainly doesn't reside in a law authorizing phony statements to investors.

President Clinton should veto this blunder. Then, when the fight over the budget is over, Congress can take time to think up a more rational solution to the problem.

Mr. GRAHAM. Thank you.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from Nevada is recognized.

Mr. BRYAN. I thank the Chair.

Mr. President, I suspect not many opinions are going to be changed at this late hour in the debate, but let me make an observation about what this debate is not about.

It is not about frivolous lawsuits. If this legislation dealt only with frivolous lawsuits, we would be acting by voice vote, and this Senator's voice would be among the loudest of the chorus of votes in support. Indeed, the provisions in this legislation that deal with the frivolous lawsuit issue are essentially provisions that this Senator has previously offered in a piece of legislation, so I am fully supportive of that.

What this legislation does, in my opinion, is systematically and pervasively dismantles the system of investor protection against securities fraud and undermines the confidence in the world's safest securities market: the United States of America. It does so for several reasons. Everyone who is involved in the regulatory process, whether the SEC, the States securities administrators and others, all acknowledge that the statute of limitations is too short—too short. They have urged this Congress to change the current law from 1 year from point of discovery to a 3-year date of occurrence cutoff to 2 years and 5 years. The reason for that is, the SEC says, because of the complexity of securities investigations. It requires more than 2 years when they do it with all of the resources of the Federal Government available.

Aiders and abettors: Aiders and abettors are not, under the current interpretation of the Supreme Court's ruling in private causes of action, are not subject to liability for reckless misconduct—not subject to liability. We have urged our colleagues to make them subject to liability, and they have declined to do so. In point of fact, there is substantial question as to whether the SEC itself as the enforcer has the power to recover against aiders and abettors.

So by failing to take that action, we immunize an entire class of wrongdoers. The accountants, the lawyers, the people who aided and abetted some of the great securities frauds in America would not be liable under the current state of the law.

Unlike the earlier Senate version of this bill, we do great damage to the fairness of imposing upon attorneys, whether they be plaintiffs' lawyers or defense lawyers, the full sanction of rule 11. As this bill left the Senate, the sanctions applied equally to plaintiffs' lawyers and to defense lawyers.

Let the planets, let the stars, let everything in God's universe fall upon those who continue to pursue frivolous lawsuits. I am with my colleague from Utah on that. But in terms of revealing the bias that is reflected throughout this legislative process, those sanctions only apply now to the plaintiffs' lawyers, and the defendants' lawyers who are guilty of frivolous actions have a much lesser sanction.

The issue is frequently framed, are you with Silicon Valley or are you with the trial lawyers? That is a false premise. Let me just read some of the opinions that have been expressed on this.

The Akron Beacon Journal, December 1, 1995:

> The legislation would close virtually all avenues available to investors who reasonably seek to recover money lost in securities fraud cases. President Clinton can begin the effort to improve this bill by using his veto.

The San Francisco Chronicle, November 27 of this year:

> Despite the worthwhile aim, the provisions of a draft conference report—

The one that we are dealing with.

> go far beyond curbing trivial court action and instead would wipe out important protections against hustlers of fraudulent securities.

Mr. President, can I ask you to give me an indication when I have 4 minutes left of the time allocated to me?

I thank the Chair.

The Miami Herald, November 14 of this year:

> A sinister piece of legislation. It essentially licenses fraud. President Clinton should veto this blunder.

The Wisconsin State Journal:

> The bill allows deceitful corporate executives, securities brokers, accountants and lawyers out there to thumb their nose at the justice system.

The Chattanooga Times, October 30, the home State of the distinguished occupant of the chair:

> The bill would immunize most stock and bond fraud from civil liability. This fraudulent reform could not have come at a worse time. Securities fraud enforcement actions have increased 118 percent and criminal convictions for such fraud leaped 176 percent.

The Daily Times Call:

> Charles Keating could wish this were the law when he squandered millions of dollars from the savings and loan industry.

The St. Louis Post Dispatch:

> Those protected by this legislation would not only be companies free to make reckless predictions about their future, the accountants who detect fraud and keep quiet about it also would be helped.

I could read on and on and on.

I do want to say something about the editorial that appeared in Money magazine.

The PRESIDING OFFICER. The Senator has 4 minutes left.

Mr. BRYAN. I thank the Chair.

It has been suggested that Money magazine editorials were issued prior to the conference report. It is true for the first time in their history, in September, October, and November of this year, they editorialized strongly against it. Mr. President, they reaffirmed their opposition in December of this year after the conference report, indicating that this legislation, in their view, would do great harm to private investors.

Let me also point out that among the groups that oppose this are the Associations of Municipal Financial Officers, State Financial Officers, County Financial Officers, and others.

I want to read the excerpt of a letter that was sent to the Las Vegas Sun by the treasurer of Clark County, NV, which includes Las Vegas.

> As Clark County's treasurer, I am responsible for taxpayer funds collected and invested on behalf of three-quarters of Nevada's population.
>
> I am writing because legislation passed by Congress could effectively eliminate Clark County's ability to file private securities fraud lawsuits—the primary method for governments and individuals to recover losses from investment fraud.

He speaks for hundreds of county officials throughout America, irrespective of political party. That is why the National Association of Securities Administrators, and others, have strongly condemned this legislation as going far, far too far.

Mr. President, let me say that in 1982, the Congress ill-advisedly, in my judgment, passed Garn-St. Germain that opened up a wave of fraud that cost the American taxpayers, in terms of the savings and loan industry, $450 billion when those costs are amortized.

What Garn-St. Germain did for the savings and loan industry in 1982, it is my view this legislation will do for the securities industry. Those who support this legislation, if enacted and signed by the President, will rue the day. We have not seen the last of fraud. Indeed, the evidence is to the contrary that fraud is growing.

This legislation goes far beyond what is needed to address the legitimate issue of frivolous lawsuits, which I fully associate myself with those efforts. This legislation effectively emasculates the right of private investors to bring causes of action against those who perpetrate fraud that results in losses throughout the country.

In the Keating Five, and I know that people do not like the reference to the Keating case, but it was a securities action filed under the 1934 law. This is a classic case in which $171 million were recovered against aiders and abettors, those attorneys and brokers and advisers who were responsible.

Because of our failure to correct the current interpretation of the Court's opinion, we immunize and give those folks a clean bill of health, a pass to continue. For those who voted for the Senate version earlier, let me indicate that this piece of legislation emerging from the conference is far worse. It eliminates the provisions Senator SPECTER offered with respect to RICO. It heavily imbalances the sanctions that are imposed against lawyers who file frivolous lawsuits by making the burden whole and entire on plaintiffs but not so with defendants. It enhances the pleading requirements, which makes it much more difficult to bring. It fails to address the statute of limitations issue. It fails to correct the deficiency in the law which allows aiders and abettors to go home free. It reverses hundreds of years of judicial precedent in common law in limiting the right of recovery balance between an innocent investor and those whose conduct was reckless. It says under the proportionate liability that only the proportionate responsibility shall be made payable to that innocent investor, when the actual perpetrator is judgment proof or without money to respond.

Finally, let me say that the conference report even diminishes that ability to recover even further. I thank the Chair.

Mr. President, I am just informed that the distinguished Senator from Illinois wants to speak as in morning business for 2 minutes. I do not have any objection.

I ask unanimous consent that she may speak for 2 minutes as in morning business.

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

CONGRATULATIONS TO THE NORTHWESTERN UNIVERSITY FOOTBALL TEAM

Ms. MOSELEY-BRAUN. Mr. President, I wanted to take a moment to congratulate Northwestern University's football team, the Wildcats, who, in Senate resolution 197, offered by Senator SIMON and me, are being honored and congratulated for one of the greatest underdog-to-champion stories in the history of sports. The Northwestern team is now being called "the miracle on Central Street." What they have done here is to celebrate their first conference championship in some 60 years.

Coach Barnett has taken this team from really a very low profile in the conference to being a top contender, now in the Rose Bowl. They are going to go to Pasadena. He fulfilled his pledge to take the Purple to Pasadena. That rallying cry has taken this team to a 10–1 season, a No. 3 national ranking, and with defeats over Notre Dame, Penn State and Michigan, a feat which has, frankly, not been accomplished by any one team in over 30 years.

Northwestern really proved that it is possible to produce a football champion as well as Nobel Prize winners and Pulitzer Prize winners and academicians throughout the world. They have captured, by their actions, the hearts of fans all over the country. They have made all of us from Illinois very proud of them. If nothing else, the football team, in their perseverance, hard work, and dedication, have proved once again in this Christmas season that miracles do happen.

I thank my colleagues for their time.

Mr. BRYAN. Mr. President, I join in congratulating Northwestern. I was 11 the last time they went to Pasadena. So it is time for the Purple not only to go to Pasadena but to win in Pasadena.

PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I rise today to oppose, in the strongest terms possible, H.R. 1058—inappropriately titled the "Private Securities Litigation Reform Act of 1995." This bill has nothing to do with reform in the normal sense of the term. Rather, the bill is about protection from liability for fraud—pure and simple. The bill is the worst kind of special interest legislation that the American public is sick and tired of.

It will give corporations a license to lie to investors and will severely restrict the ability of defrauded investors to recover their hard-earned dollars from the unscrupulous and reckless individuals and corporations who swindled them.

Six months ago, I stood on the Senate floor and urged my colleagues to oppose this bill in its earlier incarnation because—put simply—it was a bad bill. Because it was a bad bill, every major consumer group, State attorneys general, State and county treasurers, mayors, finance officers, labor unions, the American Association of Retired Persons, the National League of Cities, educators, and hundreds of other nations, State, and local organizations, opposed the bill.

It is easy to understand why when you consider that a city like San Francisco has over $8 billion in pension funds and other investments and when more than 60 State and local governments nationwide have lost more than $3.6 billion in securities markets, partly due to derivative investments.

Despite the tremendous opposition to H.R. 1058, which was a bad bill in June, it is a worse bill now. Therefore, I strongly urge my colleagues to oppose it.

What is most disturbing about this bill is the impact that it will have on what are often the forgotten Americans—that is, average middle-class Americans.

At a time when job and wage insecurity are at all-time highs, and family budgets are straining at the seams, middle-class Americans have begun investing their hard-earned dollars in stocks in record numbers. In fact, as the Washington Post reported just a few days ago, securities have supplanted real estate as the No. 1 source of family nest eggs.

Middle-class Americans believe they must invest because there may not be a decent pension when they retire—either they will be let go too soon because of corporate down-sizing or their company, to which they have been loyal, will not be there 20 or 30, or even 10 years from now.

Middle-class Americans also want to invest for the future because they aren't sure that Social Security or Medicare will be there for them in their later years when they are most vulnerable.

Last, middle-class Americans believe they must invest to ensure that their children are able to receive an education that provides them with the essential skills to enable them to become productive and integral participants in what will be an extremely competitive and global work force in the 21st century.

Because middle-class Americans recognize the need to secure and protect their financial futures, they have entered to stock market directly—or through mutual funds—to such a degree that the most significant asset held by American families today is not their home, but their 401(k) plan. Today, assets in 401(k) plans total more than $500 billion. Assets in investment retirement accounts total more than $1 trillion. The majority of these funds are in stocks.

Under these circumstances, this Nation's two primary securities laws—the Securities Act of 1933 and the Securities and Exchange Act of 1934—have become even more, not less, important.

The principal philosophy governing these two laws—enacted more than 60 years ago after the stock market crash of 1929, caused largely by a crisis of confidence due to unregulated fraudulent stock promotion—is that investors and prospective investors should have access to all material information about corporations that offer securities so that the public can make informed investment decisions and that honest markets should be maintained by strong antifraud enforcement.

At a time when middle-class Americans are investing in record numbers because they believe they must, the U.S. Congress should be strengthening the most fundamental protections for investors in our securities laws, not gutting them. Yet, gutting these laws is exactly what this bill does.

This bill strikes a severe blow to the heart of the middle class. Let me tell you about just a few of the devastating provisions in this bill.

One of the most outrageous provisions in this bill is the safe harbor provision. This provision, by providing broad immunity from liability for fraudulent corporate predictions and projections, essentially gives corporations a license to lie. This provision is much worse than the safe harbor provision in the Senate bill.