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CIVIL JUSTICE REFORMS

House Republicans are moving quickly to pass a series of bills designed to reform the civil justice system. At least three separate measures are expected to go to the Senate before the weekend: a bill concerning the payment of attorneys' fees, another making changes in securities fraud law and a third setting new rules for the payment of punitive damages and changes in product liability law.

Not every bill deserves support in its present form. But there is no denying that the majority party has taken on a problem that has been festering for some time. In their favor, it should also be noted that some of the more defective provisions of the "Contract With America" on this subject have already been improved by compromise and will probably be further fixed by the Senate.

The "loser pays" provisions of the first bill, which was passed yesterday, would have required unsuccessful litigants to pay winners' lawyers fees. It was always a bad idea. Taking any case to court would have been extremely risky, especially for those of modest means. As originally drafted, the bill deserved to be defeated. But it has been modified so that a loser must pay only if he has rejected a settlement offer and after trial is awarded less than that offer. Better, but still not perfect. The Senate should consider an alternative offered by Sens. Mitch McConnell and Spencer Abraham that would provide an incentive to litigants to settle (immediate payment and hourly attorneys' fees) and a penalty (reduced contingency fees in some cases) to attorneys who don't. Both measures are designed to encourage early settlement of disputes, but the McConnell-Abraham bill is less Draconian.

Securities fraud provisions have also been softened to take into account some of the suggestions offered by the chairman of the Securities and Exchange Commission, Arthur Levitt. The problem here—frivolous class-action lawsuits against a company as soon as its stock drops—is a real one. As reported by the House Commerce Committee, this bill drew support from almost half the Democrats. But additional changes may be warranted to protect stockholders in meritorious cases.

The most hotly contested bill will be considered last. It would limit punitive damages in all civil cases to three times compensatory damages including pain and suffering, or \$250,000, whichever is more. It would also narrow the risk of manufacturers' and sellers' liability in certain cases involving defective products. Many of the latter provisions make sense. Why not limit damages if the user has altered or misused the product, or if the accident was caused by drug or alcohol abuse? As for punitive damages, reform is overdue. Guidelines and limits must be set, whether caps are \$250,000 or \$1 million or something higher. Juries are at sea and sometimes come in with awards that are neither reasonable nor justified.

Yes, the fear of high punitive damages may keep manufacturers on their toes. But so would the fear of large fines payable to the public treasury in case of egregious misconduct. The system of providing unpredictable multimillion-dollar awards to single plaintiffs in order to deter corporate misconduct is unfair and inefficient. A shift to fines would make sense. Barring that change, clear guidelines on punitive damages are needed.

Mr. MCCONNELL. Mr. President, our early offer provision, which builds upon a bill introduced by House Minority Leader GEPHARDT 10 years ago, will pay

victims all of their losses, while taking many cases out of the court system altogether.

Our Nation is suffering from, as one editorial cartoonist called it, lawsuitsitenitus. It is a contagious disease and it is raging at epidemic proportions. The cure is a strong dose of legal reform. The only ones who will not like the medicine are those who thrive on the disease and profit from the spread of lawsuitsitenitus by earning huge fees.

Mr. President, we will have a number of bills here in the Senate to consider—the McConnell-Abraham Lawsuit Reform Act; the McConnell-Lieberman-Kassebaum Health Care Liability Reform and Quality Assurance Act; the Product Liability Fairness Act will be introduced next week, and there will be other initiatives. I look forward to comprehensive hearings on these bills, in the Judiciary, Commerce, and Labor Committees.

I am genuinely excited about the possibility of something happening on this issue. I remember being here 10 years ago as chairman of the Courts Subcommittee of Judiciary in 1985 and 1986, and we had numerous hearings on the subject of tort reform. But I knew we had no chance. We have had no chance for years. One of the positive results of last year's election, Mr. President, is that civil justice reform is now on the front burner and that genuinely excites this Senator who has had a great interest in this issue for many, many years.

And, most importantly I am hopeful we will enact reforms which give the American people a legal system that is fair, equitable, and accessible for the resolution of their disputes.

Mr. President, I thank you for your time.

I yield the floor.

Mr. BREAUX addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

THE CONGRESS CAN BREAK THE TELECOMMUNICATIONS POLICY STALEMATE

Mr. BREAUX. Mr. President, for more than 10 years the Congress has deferred to Federal courts on making and shaping telecommunications policy. Antitrust law intended to remedy anticompetitive practices when AT&T dominated all facets of America's telecommunications services is the basis of court controlled communications policy. The resulting breakup of AT&T in 1983-84 under Judge Greene's modified final judgment is still the policy basis for keeping the brakes on the future development of this critical industry: Telecommunications is the engine of America's continuing race into the information age.

Technical complexities and the massive scale of economic returns for potential competitors in the industry have made it difficult to arrive at any industry-led agreement on fair and just

terms for bringing full competition to reality. Certainly such an agreement would simplify congressional efforts to unleash the industry from Federal court edicts so that the benefits of open competition will bring new and lower cost services, increased employment, and a continually improved telecommunications infrastructure.

Right now, Mr. President, between 50 and 65 percent of all U.S. jobs involve information processing, goods, or services; 90 percent of jobs created over the last 10 years were information related.

But there is more to come if we in the Congress can fashion reasonable legislation for evenhanded treatment of potential major competitors. Telecom giants are poised to spend billions over the coming 10 years to restructure their networks. One estimate of capital spending by the Bell companies alone on the information highway for equipment and infrastructure between 1994 and 1998 is \$25 to \$50 billion.

Mr. President, I believe that we can supercharge and sustain this potential growth if we fashion communications laws that will assure all telecommunications competitors that each of them will have a fair chance to thrive in fully competitive markets. We have a situation now in which each competitor is fearful of a law that will give an unfair advantage to equally powerful competitors.

As I see it, Mr. President, the key to establishing open competition in telecommunications is to deliver a fair process for freeing the grip that Bell operating companies now have on the local exchange system. Ideally, Mr. President, if any telecom carrier can have interference-free, open access to the local exchange to fully compete for the delivery of telecommunications, video, and information services to homes and businesses and at the same time allow for the regional Bells to have access to and the ability to provide long distance service for their customers, we would have created the stimulus for maximum growth in this industry.

But the Bell operating companies, Mr. President, are understandably reluctant about engaging in a process of enabling open access to the local exchange if it means tying their hands while equally strong competitors are raiding their customer bases. I am considering legislation that would require the Bells to provide to competitors interconnection to Bell company local exchange switches; provide access to network features on an itemized basis; provide technology that will allow consumers to move to a competitor and keep the same telephone number, and take other steps to assure State and Federal regulators that their systems are open to full competition.

The Bells are concerned, Mr. President, that this process of opening up the local loop under some legislative proposals will not be satisfied until

competitors: Long distance, cable television, electric utility companies with massive capital, and customer bases of their own will have permanently eroded Bell Co. customer bases. This is not a situation, Mr. President, of a world-dominant AT&T competition with and upstart, customer-poor MCI in the early 1980's. Major Bell company competitors are customer are customer rich, and they are capital rich. They are more than capable, Mr. President, of competing on a level playing field.

I have discussed these issues and my suggestions with the Long Distance Companies Coalition, with cable television representatives, and with Bell company executives, and they agree that my idea offers a possible compromise and is worth further discussion.

I believe that if we can assure each competitor, region by region, that none of them is to have a headstart or an unfair advantage in the race to acquire customers for new services, that we can reach an accommodation that will lead to the passage of important and far-reaching telecommunications legislation in 1995.

I believe that we can do this, and I believe it is urgent that the Congress direct our attention to this in this session. I urge my colleagues to help and join me in crafting a workable telecommunication fair competition amendment. I think my suggestion is one that can be ultimately agreed to by both the long distance carriers, the cable companies, as well as the regional Bells. It is an idea and a concept that needs further discussion, further debate, and further exploration by the various interests that are going to be affected by it. I think it does provide us an opening which I think is significant and one that hopefully the companies and people affected will take advantage of.

Mr. President, I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

EXTENSION OF MORNING BUSINESS

Mr. REID. I see the Senator who offered an amendment on the floor and a Senator who is going to speak.

The time for morning business is about to expire. I ask unanimous consent that I be allowed to speak as in morning business until 5 after the hour.

The PRESIDING OFFICER. Without objection, it is so ordered. Morning business is extended until 11:05.

HEALTH CARE

Mr. REID. Mr. President, as most know, I offered an amendment on Social Security that led ultimately to the defeat of the balanced budget amendment. I am glad that we had the debate on the balanced budget amendment. I think, No. 1, it indicated that we have

a problem with the deficit. No. 2, we need to do something about the deficit and No. 3, we should not use Social Security as a method of trying to mask the deficit.

Mr. President, while we are having all this talk about a balanced budget, one of the areas we have not talked about and that we should talk about is health care. Why should we talk about health care?

Mr. President, one of my colleagues on the other side of the aisle was quoted in the Washington Post on February 15 saying, "Health care is not very bright on anybody's radar screen, if it shows up at all."

Mr. President, it may not show up on the radar screen of some Senators in this body, but it shows up on the radar screen of the people of America. Health care is still brightly flashing in the minds of the American public.

The Gallup Poll taken before the end of this year, completed December 30, showed that almost 75 percent of the American people felt that reform of the country's health care system should be a top or a high priority for Congress within the first 100 days.

Mr. President, nobody is talking about health care. We should talk about health care. A CNN poll showed that approximately 60 percent of those surveyed say that if a major illness were to occur in their family, they could not handle the costs of that major illness at all. There is a problem with health care. If we are wondering why the deficit is being driven up, we need look no place else other than the high cost of health care. There are interesting phenomena occurring in the country. We have some managed care operations that are ongoing.

We find that doctors are not being paid as much, hospitals are not being paid as much, but the consumer, the patient, is being charged more. Where is that money going? Who is the great middleman that is making all this money? Who is that? And should we identify him? Health care costs are increasing and we should do something about it.

Mr. President, I received a letter from a friend of mine in Las Vegas who is a physician. He was complaining about a patient who was injured in a car accident in California, a Nevada resident. This patient was injured and spent 31 days in the hospital.

Now, how much would a hospital bill be for a day? Would it be \$1,000 a day, \$2,000 a day, \$3,000, \$4,000, \$5,000, \$6,000, \$7,000, \$8,000, \$9,000? Ten-thousand dollars a day is what it cost the patient before he was allowed to come back to Nevada; \$10,000 a day is what it cost that patient in the hospital.

I think, by any standards, that is steep, and I think certainly, Mr. President, we should be concerned about that.

If we are wondering why we are having trouble balancing the budget, let us look at health care. A man spends 31 days in the hospital and his bill is

\$278,000 for the hospital and \$33,000 for the physician.

Well, health care may not be on the screen of some Members of this body, but health care costs should be on the screen of every one of us. Health care costs are insurmountable for State and local governments and the Federal Government, even though we do not talk about it any more.

We brought a health care reform bill on the floor last year. We debated it at length. We lost the issue. Now I guess we are just not going to talk about it any more, even though health care cost is the No. 1 cost driving up deficits all over this country.

Uninsureds—I am not talking about uninsured, I am not talking about underinsureds—uninsureds, Mr. President, have increased in the last 2 years by 2 million people. Now it is up to 41 million Americans. Eighteen percent of the people in the State of Nevada have no health insurance.

We have introduced legislation through the minority leader, certainly not nearly as comprehensive as last year—and that is an understatement—but we have introduced legislation to address these problems. I direct this body's attention to S. 7, which deals with some of the big problems facing health care, including paperwork reduction, administrative simplification, to help in rural areas. I see my friend from Illinois on the floor. He has been a leader in trying to provide health care for rural Americans.

Specifically, S. 7 will provide portability, limit preexisting condition exclusions, prohibit companies from raising rates when consumers get sick, and require that all insurers offer at least one plan with the same benefits available to Members of Congress.

The bill will also provide assistance for families and small businesses through tax incentives and modest subsidy programs. Specifically, this bill will reinstate the self-employed tax deduction, a proposal supported by 50 Members of this body in a letter to the majority and minority leaders.

S. 7 will reduce paperwork and provide administrative simplification by implementing standard billing and claims forms. This legislation also provides privacy protection for an individual's health records, strengthens fraud and abuse efforts, and reforms our medical malpractice system.

Two other elements in the bill which I particularly support are measures to provide cost and quality information to consumers and the provisions to enhance rural health care delivery. By providing consumers with accurate cost and quality information on health plans we can put the buying power in the hands of the consumer.

S. 7 will help rural areas establish telemedicine networks and financially viable rural health plans. The Washington Post in its health section recently cited a University of North Carolina at Chapel Hill study which found that of the 50 million Americans living in