

and there was a noted problem with the landing gear, and they went by the airport and came away, and a helicopter owned by the Sun Oil Co. came by trying to observe, and there was a crash. The planes fell into a crowded school yard in suburban Philadelphia. There were terrible injuries. If we had made changes in joint liability in that case, the children, some of whom were killed, and some of whom were badly burned, would not be able to recover fully.

So when you have a case where there is joint liability and the issue is raised, why should a party who is only 50 percent liable pay the whole thing when the other party is insolvent, or under the current law has the full responsibility? The law has been established in that effect because joint liability is composed when there is substantial negligent conduct by the party which causes the injuries. If you have to balance the injustice of having one party only partially liable pay the full damages, where others are insolvent, it turns on who is going to bear the loss, the injured plaintiff, who is not at fault, as the children were not at fault in the air collision which took the life of Senator Heinz and others on the ground, and very serious burn injuries.

I filed an amendment at the desk which would seek to limit, to an extent, joint liability. You hear about the cases where somebody is liable only for 1 or 2 percent and the parties liable for 98 or 99 percent are insolvent and the party who is only peripherally involved has to pay the full verdict. It seems to me that perhaps something in the nature of 15 percent might be an appropriate cutoff. That joint liability would not attach if somebody were not liable beyond the extent of 15 percent.

Mr. President, I offer these observations about ways that product liability could be crafted so that we could get legislation out of the Senate, where we might have a different standard on punitive damages to accommodate different review by the appellate courts to eliminate the really outlandish, runaway, or arbitrary jury verdicts, or limit it to the percentage of the net worth of the company—10 percent as I have suggested—so that a company, especially a small company, is not, in effect, intimidated or blackmailed into a settlement, because they cannot get the whole company. Or ways where we might have a limitation on joint liability.

Mr. President, I have been in Congress, the Senate, since the 97th Congress, when we reported out a product liability bill from the Commerce Committee, Senator Kasten. It was a long time before the bill came to the floor after that.

Last year, as I say, I voted for cloture, thinking we might get a bill. I be-

lieve that we could get a bill which would take significant steps, most emphatically, on the issues of frivolous lawsuits. So that in opposing cloture—on a vote, we have only 46 Senators who voted for cloture, 53 against; on the second vote, 47 voted for cloture as against 52 against, a long way from the 60 votes.

I make these comments because I think that when we deal with the judicial system, it is not the plaintiff's trial bar which establishes these rules. These rules were established by the courts of the United States. As I say, I have been on both sides of the fence representing plaintiffs and defendants in personal injury cases.

I think where we have so many, many cases of outlandish conduct where big companies put products on the market on a calculation that they would rather pay for the deaths and the damages than to make the correction, if we take punitive damages away, it is not a wise thing for the Congress to do.

I do not think many of our colleagues understand that. After I talked about some of the cases, talked about the blood case with AIDS virus in it, being circulated by one of the big companies, and one of my colleagues said, "That is awful," and I made the comment about it. They had not heard. I do not think they really have reached all of our Members.

Usually, there is not more than one Senator present or two, one presiding, but the rule of this body is that these speeches are made and these presentations are made with not more than two or three or four Senators on the floor. Some are listening in their offices, but relatively few.

These are matters, I think, which yet have to be considered. It is my hope that we can craft legislation which will be curative on some of the issues, especially that of frivolous lawsuits, which I think is at the core of the problem in our courts today. I thank the Chair for staying late. I yield the floor.

RECESS UNTIL 10 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 10 a.m. Friday, May 5, 1995.

Thereupon, the Senate, at 6:13 p.m., recessed until Friday, May 5, 1995, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate May 4, 1995:

THE JUDICIARY

ANDRE M. DAVIS, OF MARYLAND, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND, VICE WALTER E. BLACK, JR., RETIRED.

CATHERINE C. BLAKE, OF MARYLAND, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND, VICE JOHN M. HARGROVE, RETIRED.

RESOLUTION TRUST CORPORATION

HERBERT F. COLLINS, OF MASSACHUSETTS, TO BE A MEMBER OF THE THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD FOR A TERM OF 3 YEARS, VICE PHILIP C. JACKSON, JR., TERM EXPIRED.

IN THE ARMY

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A) AND 3034:

VICE CHIEF OF STAFF OF THE ARMY

To be general

LT. GEN. RONALD H. GRIFFITH, 000-00-0000

THE FOLLOWING-NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be general

GEN. JOHN H. TILELLI, JR., 000-00-0000

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. GEORGE A. FISHER, JR., 000-00-0000

THE FOLLOWING U.S. ARMY NATIONAL GUARD OFFICERS FOR PROMOTION TO THE GRADES INDICATED IN THE RESERVE OF THE ARMY, UNDER THE PROVISIONS OF SECTIONS 3385, 3392, AND 12203(A), TITLE 10, UNITED STATES CODE:

To be major general

BRIG. GEN. WOODROW D. BOYCE, 000-00-0000
BRIG. GEN. ROBERT J. BRANDT, 000-00-0000
BRIG. GEN. JOSEPH H. LANGLEY, 000-00-0000
BRIG. GEN. JOHN B. RAMEY, 000-00-0000

To be brigadier general

COL. JOHN D. LARSON, 000-00-0000
COL. ROSETTA Y. BURKE, 000-00-0000
COL. BURNETT H. ENZOR, 000-00-0000
COL. FRANK P. BARAN, 000-00-0000
COL. ROBERT M. BENSON, 000-00-0000
COL. EDWARD L. CORREA, JR., 000-00-0000
COL. WILLIAM R. LABRIE, 000-00-0000
COL. NAMED X. BARNES, 000-00-0000
COL. RANDAL M. ROBINSON, 000-00-0000
COL. PAUL D. MONROE, JR., 000-00-0000
COL. LLOYD D. MCDANIEL, JR., 000-00-0000
COL. STANLEY R. THOMPSON, 000-00-0000
COL. HOLSEY A. MOORMAN, 000-00-0000
COL. BRADLEY D. GAMBILL, 000-00-0000
COL. HARVEY M. HAAKINSON, 000-00-0000
COL. DAVID T. HARTLEY, 000-00-0000
COL. DONALD F. HAWKINS, 000-00-0000
COL. EARL L. DOYLE, 000-00-0000
COL. DAVID M. WILSON, 000-00-0000
COL. JAMES T. CARPER, 000-00-0000
COL. WILLIAM T. THIELEMAN, 000-00-0000
COL. FREDERIC J. RAYMOND, 000-00-0000

THE FOLLOWING U.S. ARMY RESERVE OFFICERS FOR PROMOTION TO THE GRADES INDICATED IN THE RESERVE OF THE ARMY OF THE UNITED STATES, UNDER THE PROVISIONS OF SECTIONS 3371, 3384, AND 12203(A), TITLE 10, UNITED STATES CODE:

To be major general

BRIG. GEN. WILLIAM J. COLLINS, JR., 000-00-0000
BRIG. GEN. JOE M. ERNST, 000-00-0000
BRIG. GEN. STEVE L. REPICHOWSKI, 000-00-0000
BRIG. GEN. JOSEPH A. SCHEINKOENIG, 000-00-0000
BRIG. GEN. JAMES W. WARR, 000-00-0000

To be brigadier general

COL. STEPHEN D. LIVINGSTON, 000-00-0000
COL. JOSEPH L. THOMPSON III, 000-00-0000
COL. ROGER L. BRAUTIGAN, 000-00-0000
COL. JOHN G. TOWNSEND, 000-00-0000
COL. MICHAEL L. BOZEMAN, 000-00-0000
COL. WILLIAM B. RAINES, JR., 000-00-0000
COL. JAMIE S. BARKIN, 000-00-0000
COL. JOHN L. ANDERSON, 000-00-0000

THE FOLLOWING U.S. ARMY RESERVE OFFICER FOR PROMOTION TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY, UNDER TITLE 10, U.S.C., SECTIONS 3384 AND 12203(A):

To be brigadier general

COL. JAMES R. HELMMLY, 000-00-0000