

clear guidelines as to their amount. This agreement addresses both problems. It brings uniformity to the punishment and deterrence phase of product liability law by providing a meaningful standard for when punitive are to be imposed and at what level.

Under the conference agreement—except in cases against small businesses—punitive damages in a product liability case may be awarded up to two times compensatory damages or \$250,000, whichever is greater. An additur provision permits the judge to award punitive damages beyond this limit if certain factors are met, but the judge cannot exceed the amount of the jury's original award.

When the defendant is a small business—or similar entity—with less than 25 full-time employees, punitive damages may not exceed \$250,000 or two times compensatory damages, whichever is less. The additur provision does not apply to small businesses.

Finally, either party can request the trial be conducted in two phases, one dealing with compensatory damages and the other dealing with punitive damages. The same jury is used in both phases.

Joint and several liability. Joint liability is abolished for noneconomic damages—such as pain and suffering—in product liability cases. Joint liability is a concept allowing one defendant to be held liable for all damages even though others also were responsible for the damage caused. What are the consequences? Too often, it means one person is held responsible for the conduct of another. True wrongdoers are not held liable. Indeed, consumers ultimately pay these claims—either through higher prices, loss of service, or higher insurance premiums.

Therefore, as to noneconomic damages, under this bill defendants would be liable only in direct proportion to their responsibility for the claimant's harm—so-called several liability. This section goes a long way toward correcting one of the most often abused aspects of our current civil legal system. It would ensure defendants would be held liable based on their degree of fault or responsibility, not the depth of their pockets.

Mr. President, this is an issue on which I have worked for many years. In 1986, I fought to strengthen proposed product liability legislation, S. 2760, with an amendment regarding joint and several liability. My amendment—which passed the Commerce Committee—also abrogated joint and several liability for noneconomic damages in product liability cases. I am proud the spirit of my amendment of a decade ago lives on in this legislation.

Alcohol and drugs defense. Under this bill, the defendant in a product liability case has an absolute defense if the plaintiff was under the influence of intoxicating alcohol, illegal drugs, or misuse of a prescription drug and as a result of this influence was more than 50 percent responsible for his or her own injuries.

The philosophy behind such a provision is simple. A society working hard to discourage alcohol and drug abuse must not sanction such abuse by allowing individuals to collect damages when their disregard of a vital societal norm is the primary cause of an accident.

Misuse and alteration defense. Under this legislation, a defendant's liability in a product liability case is reduced to the extent a claimant's harm is due to the misuse or alternation of a product. Why should the manufacturer of a machine pay for injuries I sustain because I remove safety guards put on in the factory?

Statute of limitations. The statute of limitations for product liability claims is established as 2 years from when the claimant discovered or reasonably should have discovered both the harm and its cause. A plaintiff may not file suit after this time.

This is an excellent example of how this legislation would benefit victims. Under current law, some States establish the time of injury as the point at which the time for bringing a claim begins to run. Often this is not a problem. However, in cases in which the harm has a latency period or manifests itself only after repeated exposure to the product, the claimant may not know immediately if he or she has been harmed or the cause of the harm.

This bill thus would reduce the number of victims who, having otherwise meritorious claims, are denied justice solely on the basis of the statute of limitations in the State in which they file their claim.

Statute of repose. A statute of repose of 15 years is established for certain durable goods. A durable good is defined by the bill as one having either: a normal life expectancy of 3 or more years, or a normal life expectancy that can be depreciated under applicable IRS regulations; and is: first, used in trade or business; second, held for the production of income; or third, sold or donated to a governmental or private entity for the production of goods, training, demonstration or any similar purpose.

No product liability suit may be filed for injuries related to the use of a durable good 15 years after its delivery unless the defendant made an express warranty in writing as to the safety of the specified product involved, and the warranty was longer than 15 years. In such a case, the statute of repose does not apply until that warranty period is complete. The statute of repose section does not apply in cases involving toxic harm.

States would be free to impose shorter statutes of repose and to cover more than just durable goods. For instance, the House-passed version of this bill would have applied the statute of repose to all goods.

The need for a Federal statute of repose was presented well by a fellow South Dakotan, Art Kroetch, chairman of Scotchman Industries, Inc., a small

manufacturer of machine tools located in Philip, SD. Last year during hearings, Art told the Commerce Committee how vital product liability reform is to the ability of American manufacturers to compete in the global marketplace.

Art told me that under the current patchwork of liability laws, his company pays twice as much for product liability insurance as it does for research and development. Mr. President, the system is broken.

Workers compensation subrogation standards. This provision preserves an employer's right to recover workers compensation benefits from a manufacturer whose product harmed a worker—for instance, the manufacturer of a machine used in a business which injures an employee—unless the manufacturer can prove, by clear and convincing evidence, that the employer caused the injury—for example by maintaining an unsafe work environment or taking safety guards off the machine.

This section of the bill makes no changes to the amount of damages an injured worker can recover in such cases. It merely provides the insurer or employer will not be able to recover workers compensation benefits it paid to an injured employee if the employer or a coemployee is at fault.

Biomaterials Access assurance. In certain actions in which a plaintiff alleges harm from a medical implant, title II of the legislation allows biomaterial suppliers to be dismissed from the action without extensive discovery or other legal costs. The term "biomaterial" refers to the raw materials—such as plastic tubing or copper wiring—used as part of an implantable medical device.

The legislation does not affect the ability of plaintiffs to sue manufacturers or sellers of medical implants. However, it releases biomaterials suppliers from lawsuits if the generic raw material used in the medical device met contract specifications, and if the biomaterials supplier cannot be classified as either a manufacturer or seller of the medical implant.

During our hearings last year, the Commerce Committee heard compelling testimony that without such changes in the law, the millions of Americans who depend upon a variety of implantable medical devices will be at grave risk. Suppliers of biomaterials have found the risks and costs of responding to litigation related to medical implants far exceeds potential revenues from the sale of the components they manufacture.

Indeed, several major suppliers of raw materials used in the manufacture of implantable medical devices have announced they will limit—or altogether cease—shipments of crucial raw materials to device manufacturers. Each of the suppliers indicated these were rational and necessary business decisions given the current legal framework.