

bill would discourage the return of a healthy private marketplace.

One of our most important objectives is to encourage the return to the marketplace of insurers and reinsurers. The problem with the House bill's financial assistance and payback approach is that it mutualizes the losses within the program itself, reducing incentives for private innovation in the development of pooling and reinsurance mechanisms. If we're going to sunset this program, we can't provide for mutualization of losses throughout its duration and then expect that there will be a healthy reinsurance market to the day after it terminates.

Even if we did not adopt the other body's first dollar mutualization concept, our objective of building a healthy marketplace, real work practicality considerations, and public policy all argue for not requiring industry payback.

First, a payback requirement would be contrary to our objective of developing a healthy marketplace. A payback requirement would, from day one, raise the specter that in the event of substantial terrorism losses, insurers would not only have to pay their share of the losses but would also have to go to their regulators for substantial rate increases to repay the government—with no guarantees that such rate increases would be allowed. That is not the way to facilitate a healthy marketplace.

Second, from a practical standpoint, let's also recognize that under our bill any government payments would not really go to insurers, that any repayments would not really come from insurers, and that it is the public in either event that will bear the cost of this program.

The government payments are all keyed to amounts paid to claimants, and any repayments would or at least should be funded by policyholders, either indirectly through subsequent rate increases or directly through policyholder surcharges.

Therefore, as long as an insurer's rates for terrorism coverage are based only on its deductible and quota share, government payments would not give a windfall to the insurers. That is of course how rates should be determined, since the state insurance commissioners will have the authority to disapprove excessive or unfairly discriminatory rates.

It is of course the public that will also bear the cost of this program whether or not we require insurers to pay back the government. The costs of any such repayments would ultimately be paid by commercial businesses, which would in turn pass the costs back to the customers, employees, and shareholders, which is to say back to the public.

Finally, from a public policy standpoint, I would refer you to the very simple fact that it is losses caused by terrorist attacks on our country that we are talking about here. It is the re-

sponsibility of the government to protect the people against attacks from without and within, and to the extent that terrorists succeed in causing losses that exceed our bill's insurance industry retentions, it is because the government has failed in this most fundamental responsibility. Of all the various programs through which the government and the insurance partner together to provide coverage for risks thought to be uninsurable, this one stands out as presenting the best case for a taxpayer role.

In terms of price, we know that every cent of any funds the Federal government contributes to pay claims will go to the insured, not to the insurance companies.

There is no Federal payment to any insurance company that does not go through to the victims.

This makes it very hard to understand the arguments some have made in the other body about the insurance companies repaying the amounts that the Federal government might contribute.

If the government contributions are passed through to the victims, what is the benefit to the insurance companies that needs to be paid?

Do the companies then increase their rates to cover the cost of the repayment?

If repayment is required, it would have to come, directly or indirectly, from the victims, not the insurance companies.

There are some who would seek to add provisions to the legislation focused on "cherry-picking," that is seeking to reduce the risk of the portfolio of clients and load it with lower risk clients.

Insurance, like other financial services, is a very competitive business—and there are a variety of opportunities for large and small businesses to get coverage, with hundreds of insurers operating in any given market.

For the largest businesses, which are probably most at risk due to the staggering workers' compensation exposures they present, in addition to traditional insurers, there are sophisticated offshore, excess and non-admitted markets they can tap into, as well as other risk-spreading devices.

For the smaller companies, if coverage isn't available from standard private market insurers, most states have legislatively mandated market plans to provide workers' compensation and property insurance.

The insurance industry also has a long history of working together to form pools and reinsurance arrangements so risks that are too difficult for one company can be handled as they've done for aircraft, including those that were hijacked on September 11.

They can do this if we pass this bill to provide them the financial backstop they need.

The fact is that we do not have the expertise to step into this complex arena and set the controls to determine

how coverage should be provided and to whom.

Since insurance regulation began, it's been the states that have done the job, and until such time as we're ready to change that and enact a federal regulatory scheme, we should be very careful about our involvement.

At the state level, insurance departments in each state are much closer to their markets, and they have the expertise and the leverage to assess the availability of insurance and to take appropriate steps if there are problems.

I am very disappointed in the failure to enact this legislation. I have supported my Connecticut colleague, Senator DODD, and will continue to work with him to enact this legislation as soon as possible in January. That we have failed to act in this session and may well see unfortunate consequences.

NEXTWAVE SETTLEMENT

Mr. HATCH. Mr. President, I rise to address the issue of wireless spectrum and the importance of its availability and utilization in a struggling economy. On November 28, 2001, the Administration forwarded proposed legislation to Congress to codify a proposed settlement in the NextWave wireless spectrum bankruptcy litigation. We needed to pass this legislation before December 31st in order to avoid nullifying the agreement. Unfortunately, it appears we will not be able to address this settlement before the end of the year because members of this body have expressed their intention to block its consideration on the floor. It is not certain that a similar settlement can be arranged next year—which leaves a significant financial return to the U.S. Treasury in doubt and denies viable industry actors access to essential wireless spectrum which could be a vital tool in jumpstarting the economy.

This is not the first time I have voiced my concerns about the NextWave spectrum controversy. In a letter to then Chairman Kennard of the Federal Communications Commission in October of 2000, I warned him that a premature re-auction of the NextWave licenses would be imprudent while litigation was still pending in the D.C. Circuit. The legal questions went directly to the possessory interests of the spectrum and the validity of the FCC's action to automatically cancel NextWave's licenses upon filing for bankruptcy. The FCC ignored my warning and, in so doing, created untold practical problems and a myriad of legal liability issues.

On June 22 of this year, the D.C. Circuit ruled in favor of NextWave, holding that the FCC violated Section 525 of the Bankruptcy Code. This order essentially nullified Auction 35 in which the FCC preemptively re-auctioned the spectrum licensed to NextWave. Presently, both sides have filed for certiorari with the Supreme Court to ask for

the final disposition of this case. However, there is no certainty that the Supreme Court will agree to review the case, or if it does, when or to whom it will ultimately award the licensing rights to the spectrum. In fact, given the D.C. Circuit's opinion and legal reasoning, there is a substantial likelihood that the FCC will not prevail, which may be why they were able to reach the settlement of this issue.

After extensive negotiations, the interested parties, including the Office of Management and Budget, the U.S. Department of Justice, and the FCC, reached a comprehensive Settlement Agreement to govern the disposition of the licenses in question and provide for their release into the marketplace and financial return to the Treasury.

This proposal is a chance to bring closure to litigation that has dragged on, and which, in all likelihood, could result in a net loss to the government if it were to continue. We have an opportunity to finalize this settlement, return money to the Treasury and release valuable spectrum for commercial use—something that is essential to help this struggling economy.

The current litigation has been prolonged unnecessarily. To continue it now, in my view would be a mistake, and the American taxpayer could be the loser. I certainly hope that the American taxpayer ultimately is not the victim of Congressional inaction.

FARM BILL

Mr. BAUCUS. Mr. President, I rise today to share my disappointment about the farm bill with you. It is vital that we get a strong bill passed before we adjourn this year and, unfortunately, that isn't going to happen. To put it simply: Our farmers and ranchers deserve more from their representatives.

As long as I have been in the Senate, I have never seen the agricultural community more united than they were yesterday in invoking cloture and getting the Senate farm bill passed the floor this year.

The farm bill we passed out of committee is a good bill. It is not a great bill. But it's a good step in the right direction. We had the opportunity to work together to make this bill as comprehensive, full of common sense, and strong as possible. My sleeves were rolled up and I was dedicated to passing the farm bill this year. And I'm still dedicated to passing a bill when we get back next month.

We need to support our Nation's agricultural producers. Now. We can't wait until the current bill expires. We rely on our producers for a safe and affordable food supply. Now they are relying on us for survival.

Our agricultural producers are suffering. Years of low prices and drought have made it nearly impossible for farmers and ranchers to break even.

Low prices and drought have been disastrous not only to agricultural pro-

ducers, but also to the surrounding rural communities. When producers are hurting, they can't invest in our economy. Agriculture is the backbone of Montana's economy. And the backbone of rural America's economy. The ripple effect is being felt throughout the country.

To help with the ongoing drought, it is important that we provide our farmers and ranchers with natural disaster assistance. I included more than \$2 billion towards disaster assistance in my economic stimulus bill, but that bill has fallen to the same fate as the farm bill—it's at a stalemate this year. I'm dedicated to including disaster assistance in the farm bill, in another economic stimulus bill, or any other vehicle I see available. The assistance isn't something our ag community can wait for and I'll keep working to see that they don't have to.

The Senate's failure to pass a farm bill this year not only hurts our producers, it hurts our lenders and our rural businesses as well. The bill that we passed by the Senate Agriculture Committee includes a Rural Development Title that would have provided rural economies with much needed support. It's long overdue that we provide stability for our agricultural producers and our rural economies.

Lenders in Montana and across the country are getting nervous as the lean years of production are starting to add up. Their nervousness is compounded now that we failed to act this year.

The time has come. We can no longer wait to repair the current farm bill. The health and stability of our producers, of our rural communities, and of America is up to us. Our Nation depends upon our agricultural producers for a safe, affordable, and abundant food supply. Now our producers are depending on us to provide them with a safety net they can rely upon. The time is now. We must all dedicate ourselves to getting back to work on the farm bill in January. We must work together to pass a strong, stable, and comprehensive farm bill quickly.

Mr. VOINOVICH. Mr. President, over the past 2 weeks, the Senate has engaged in what is probably a first in the history of this body: it has worked to complete a task before a deadline. Even as appropriations bills remained unfinished 3 months into the fiscal year, we have, for the past couple of weeks, debated a farm bill a full 9 months before the current authorization lapses.

As admirable as it is to work ahead of schedule, this has been an unnecessary exercise. There is no reason that the Senate has had to debate the farm bill when these programs don't expire until the end of the fiscal year.

I joined in the successful effort here in the Senate to postpone debate on the farm bill until next year. It is my hope that we will do a better job at writing a bill that will address the needs of our farmers in a fiscally responsible way, rather than rushing a

bill through Congress for the sake of passing a bill.

The only reason we have debated this bill a year ahead of schedule is because some fear that the fiscal year 2003 budget resolution won't have enough room in it to load up whatever farm bill the Senate considers with all the spending the majority desires.

Indeed, according to an article in the December 8th edition of *Congressional Quarterly*, "lobbyists fear that if Congress waits until 2002, when the current authorization bill expires, then the \$73.5 billion in new spending for agriculture programs over the next 10 years that was set aside by this year's budget resolution might vanish."

Senator KENT CONRAD, the Chairman of the Senate Budget Committee, who clearly must understand our country's financial condition, has said, "the money is in the budget now. If we do not use the money . . . it is very likely not going to be available next year."

That does not sound like "need" to me, it sounds like opportunism, and opportunism is not sufficient reason for the majority to rush through a bill this important and this expensive.

I agree with the analysis of Senator LUGAR, the Agriculture Committee's Ranking Member, who correctly stated on the Senate floor last Tuesday, December 11, that, "Proponents of the bill, S. 1731, fastening on to a budget resolution adopted earlier this year, said we have pinned down \$172 billion over 10 years, \$73.5 billion over baseline, over the normal expenditures that have been occurring year by year in the agriculture bills . . . I and others have pointed out that [the money] really is not there."

Now, I take a back seat to no one in terms of my concern for the American farmer. When I was governor of Ohio, agribusiness was my number one economic development initiative.

Many people, even Ohioans, don't realize that food and agribusiness means more than \$73 billion to Ohio's economy each year. In fact, one in six Ohioans is employed in one aspect of agriculture or another.

I gave agriculture more attention and priority than any governor in memory, and I continue my close relationship with Ohio's agribusiness community.

Nevertheless, I could not support the majority's farm bill as written, and honestly, I am disappointed at the apparent lack of respect some of my colleagues seem to have for the American farmer.

Every farmer worth his salt knows that if he or she wants to stay in business, they have to be fiscally responsible and make tough choices. They know that the United States has to do so as well. They understand that the majority's farm bill did not focus on proper planning and making the right choices, but rather "getting while the getting is good."

Some here in Washington think that viewpoint epitomizes the American