now to Africa. But let's see that we contain that industry in America's economic self-interest.

I yield the floor and thank the distinguished Chair.

Mr. DEWINE ADDRESSED THE CHAIR.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. Thirteen minutes.

Mr. DEWINE. I ask the Chair to notify me after I have used 6 minutes.

PRIVILEGE OF THE FLOOR

Mr. DEWINE. Mr. President, I ask unanimous consent that a member of my staff, Jason Small, be granted floor privileges for the day.

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

Mr. DEWINE. Mr. President, let me first join my colleagues, Senator LUGAR and Senator GRAMM, in support of the African Trade Group and Opportunities Act, and the reasons they have stated this is the right thing to do. It is in our national self-interest. It will do a lot of good.

(The remarks of Mr. DEWINE pertaining to the introduction of S. 2283 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. DEWINE. Mr. President, I thank the Chair and yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

PRODUCT LIABILITY REFORM ACT

Mr. GORTON. Mr. President, we are about to vote on cloture on a product liability bill, a product liability bill worked out with great care over the course of the last year and a half by the distinguished Senator from West Virginia, Mr. ROCKEFELLER, and myself, and the White House, to meet all of the objections contained in the President's veto message on the bill passed on the same subject about 2 years ago. Nevertheless, the demand to party loyalty on the part of the minority leader will almost certainly defeat this vote for cloture. That is highly regrettable as the arguments against it are entirely devoid of merit.

Just a few minutes ago you heard the junior Senator from New Jersey protest about the fact that cloture would prohibit the bringing of lawsuits based on gun violence. That is entirely specious for two reasons. The first is the amendment on that subject that is at the desk will be germane after cloture and can be debated and voted on. Secondly, and more importantly, the lawsuits by various States against gun manufacturers based on the tobacco litigation are not product liability lawsuits. Tobacco litigation was not a product liability lawsuit at all, and neither are these lawsuits. They simply are not affected by this legislation.

The real protest was outlined a couple of nights ago by the minority leader who said, ''I hope that we have a good debate about how good or bad this legislation is. I hope we have an opportunity to propose amendments to this litigation.''

Yesterday, about an hour before the time ran out for the filing of amendments, the majority leader came to the floor when only two or so amendments had been filed to ask unanimous consent for further time to put in amendments. The minority leader's representative objected to adding to that time. Nevertheless, there are 38 amendments on the desk on this bill, 28 of them by Democrats, 10 by Republicans. Many of those amendments, including several by the Senator from South Carolina, are germane and can be debated on and voted on after cloture.

Yesterday afternoon the majority leader offered to extend the time for this vote so that there could be debates on amendments before cloture took place. The minority leader turned down that informal request. In other words, there is no desire on the part of the opponents of this bill to debate amendments to the bill, amendments further restricting it or amendments on any other element of the subject. None whatsoever. It is a simple smokescreen to persuade Members who would otherwise be willing to vote for cloture and vote for the bill not to do so.

Night before last, other Members on that side of the aisle complained bitterly about their inability to debate totally irrelevant matters to product liability. They mentioned campaign finance laws. We had 2 weeks of debate on that subject. They mentioned tobacco legislation. We debated that subject for 4 weeks. They mentioned education reform. We debated that subject for 2 weeks and passed a bill which has now gone to the President of the United States. And they spoke of health care reform on which they have already rejected offers for debate but will probably accept some next week.

No, the claim that there has not been an opportunity to debate this legislation is based on one fact and one fact only—the desire to persuade Members who would otherwise vote for this bill to vote against the cloture motion and therefore to kill the bill. They will probably succeed in doing so, and it is a paradox that a bill that is much more narrow than the one passed by a significant majority of Members of this body 2 years ago and vetoed by the President, which now meets all of the requirements of the President, will be opposed by some Members among those who voted for the bill 2 years ago. It is, I regret to say, pure politics and has very little to do with the merits of the bill itself.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, the Senator notes it is after 10 o'clock. I ask unanimous consent to speak for 3 minutes.

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

Mr. ROCKEFELLER. I thank the Chair.

I had very much hoped that the argument of politics would not be used in discussing this. I agree with much of what my distinguished colleague over these many years has said. But I think, frankly, that on the question of product liability tort reform there has been enough, sort of acting and sort of wanderlust faith on both sides of the aisle that we don't need to point fingers at each other.

My view towards this is that I would like to see, as the Senator from Washington indicated, a very modest bill which would be signed by the President to go forward. And I, after 11 years of working on this, am not willing to give up. I am not willing to say that I am going to put product liability to death. I am not going to be a part of that.

I will, therefore, vote no on this cloture vote because I still think that, arguments about politics to the contrary, neither side having totally clean hands on all of this, the controlling factor ought to be the substance of the bill, which I think is good, and that the controlling factor on a vote ought to be how one feels about whether or not one can continue to debate product liability and hope that the leadership will come together in some kind of an arrangement, as, indeed, in this sort of Kabuki dance there has been.

The majority leader last night vitiated cloture for today. The minority leader objected. The majority leader yesterday said there would be a period for filing of votes. A Democrat objected. On the other hand, there have been many problems on the other side.

So what I am trying to do is to promote product liability in a very modest form which will be signed by the President. And, therefore, I hope my colleagues will vote no on the pending cloture motion so we might have a chance to continue this discussion and hopefully work out something on this modest but helpful bill.

I thank the Presiding Officer.

PRODUCT LIABILITY REFORM

Mr. McCAIN. Mr. President, this nation needs legal reform. This bill before us—if passed into law—will deliver exactly that. While this legislation is not perfect, it does a great deal for small businesses across this nation. And for that reason, it should be supported and I hope it will become law.

Before I discuss this matter further, I want to thank Senator GORTON for his tireless pursuit of legal reform in the area of product liability. Senator GORTON has worked hard on this important legislation for many years. I also want to thank Senator ROCKEFELLER for all his efforts.

Mr. President, I do have concerns regarding this bill. My primary concern with this measure is the narrow nature of the reforms it would institute. I had

hoped we could pass a broader bill that would do more. But again, I want to repeat, the proposal has important features that would improve some imperfections in our legal landscape.

I am especially encouraged that the bill before the Senate includes, as Title II, legislation that I introduced with Senator LIEBERMAN to ensure the continued access to biomaterials. Biomaterials are used to produce implantable medical devices that both enhance and extend the lives of so many Americans.

I am also pleased with other provisions taken from the bill as reported by the Commerce Committee. Those provisions include valuable revisions to the liability rules applicable to product sellers, renters, and lessors; a limitation on the amount of punitive damages that may be awarded against small businesses; and a provision to provide for the reduction of damages when a product has been misused or altered.

My concern is not so much with what is in this compromise but in what it does not contain. The bill reported by the Commerce Committee has been significantly narrowed to appease the Administration. For example, the compromise would not provide a statute of repose applicable to all products, it would not reform joint and several liability, and it would not limit the amount of punitive damages that may be awarded certain sized business enterprise.

The compromise proposal would provide limited reforms in the area of product liability. Those reforms, although limited, may be valuable and worth doing but they do not constitute comprehensive reform of product liability.

I know that comprehensive product liability reform is not politically possible in this Congress due to the Administration's opposition. That, however, does not change the fact that comprehensive product liability reform is essential for America's consumers and for our businesses both large and small. Comprehensive product liability reform would make a larger array of products available to consumers at a lower price. Comprehensive product liability reform would create more jobs for American workers and make American businesses more competitive in international markets.

General aviation is the best example of the benefits of legal reform. The general aviation industry was nearly dead in the United States. Production of new airplanes was declining steeply, and new technology was not being incorporated into the planes that were being built. As a result jobs were lost and consumers were deprived of better and safer airplanes. The General Aviation Revitalization Act rescued this industry by instituting a very narrow statute of repose. Due to this reform, thousands of new jobs have been created and more advanced airplanes are now available to the flying public.

To best bring the advantages of legal reform to all consumers and industries, the country desperately needs product liability reform. Comprehensive reform would include common sense revisions to joint and several liability, limitations on punitive damages, and a statute of repose applicable to all products. All of these reforms were contained in the bill as reported by the Senate Commerce Committee.

My deepest concern about the compromise proposal that Senator GORTON has negotiated is a fear that once Congress has acted on this compromise, the public will assume it is comprehensive legislation and the drive for additional necessary reforms will be hampered. I fear that a narrow product liability bill that makes incremental improvements will be used by the powerful interests that oppose any legal reform to claim that the narrow bill was supposed to solve all the problems and thereby condemn any further reform.

But that fact withstanding, I still strongly support the bill before us. Obviously, a narrow bill cannot solve all of the numerous problems in our current system. I believe a narrow bill can make significant headway on some of those problems. As I began, this bill will help reform the legal system and will greatly benefit small business. I hope that its passage of this bill is the first step in a process of reform, not the beginning of the end. This measure deserves our support and I hope we will act quickly to pass it and send the bill to the President for his signature.

Mr. LEAHY. Mr. President, I rise today in opposition to the Product Liability Reform Act of 1998. I understand the concerns raised by a few well-publicized cases of outsized punitive damages awards in product liability cases. In seeking to address those concerns, however, this bill simply goes too far. It overly restricts an injured person's right to seek legal redress from the makers and sellers of dangerous products, and tramples on states' rights in the process.

In fact, this legislation could leave consumers with a more dangerous marketplace. The bill caps punitive damages at the lesser of $250,000 or twice an individual's loss for smaller businesses. This cap will allow a company to calculate with a much greater degree of certainty the economic cost of placing a dangerous product into the market. If that cost is less than the cost of the design or manufacturing changes necessary to make the product safe, companies may choose to sell the dangerous product and rely on the damages cap in this legislation to limit their losses when people are hurt and file claims.

I am at a loss to understand the need for such drastic reform. The Senate just concluded debate on a tobacco bill that would not have occurred but for an individual's ability in the current civil justice system to recover punitive damages against the maker, in this case, of a killer product. Individual states have recovered billions of dollars in damages from the tobacco industry in the same system. Despite all of the high-minded rhetoric of the tobacco industry, the threat of punitive damages was a key factor in bringing the companies to the table.

Mr. President, the civil justice system works. The threat of punitive damages should be preserved as a powerful deterrent to manufacturing dangerous products. Damage awards should not be a calculable, fixed business expense to be coldly measured against the consumer's welfare.

If the concern is frivolous lawsuits, we do not need federal legislation. Federal and state court judges already have the power to dismiss such actions under Rules 12 and 56 of the Federal Rules of Civil Procedure and similar state procedural rules. The Supreme Court's Daubert decision has established rigorous standards for the admissibility of expert testimony in product liability cases.

In addition, many states already have enacted comprehensive tort reform laws of their own that include product liability provisions. If the Vermont State Legislature wants to enact restrictions on product liability lawsuits or caps on punitive damages, then they are free to do so. And the Vermont State Legislature is free to not change Vermont's civil justice system.

And that's as it should be. The law of torts has always been the province of the states. This bill, though, would inject a federal standard into every state's negligence law and into every state's punitive damages proof threshold. The federal government should not dictate state tort law standards in any event, and particularly in this case, as states already have taken many steps to reform their own product liability laws.

Why do we now want to pass a Federal law to override these State laws that have addressed product liability reforms? Do we in the United States Senate now know better than our state legislatures? What happened to state's rights?

I do not believe the false threat of frivolous lawsuits justifies this bill. Instead, this bill is a solution in search of a problem. There is no product liability litigation crisis in Vermont or the rest of the country. In fact, less than one percent of new case filings in state courts are brought by injured consumers in products liability lawsuits.

And while the bill restricts consumers' rights and imposes tort standards on states, the legislation will not apply to lawsuits involving commercial interests—what hypocrisy! While consumers may have their hands tied, businesses will be free to pursue their claims without any limitations. Because almost half of all civil litigation is commercial in nature, almost half of all civil litigation will be completely unaffected by this bill. If the problems in product liability litigation truly are

serious enough to warrant handcuffing consumers and dictating tort law to the states, then businesses should be bound by this bill's restrictions as well.

In what appears to be the height of corporate welfare, a new paragraph has been slipped into this bill that grants immunity from products liability lawsuits for a Mississippi medical products company, Baxter International, Inc. This new paragraph would exempt from products liability lawsuits any manufacturers who make the raw materials used in intravenous bags, which just happens to benefit Baxter International, Inc.

Mr. President, the civil justice system is not perfect, but it works. This legislation would not improve the system. Rather, it will make it more difficult for consumers to fight against unsafe or dangerous products, and may result in a more dangerous marketplace overall. I urge my colleagues to reject this bill.

Mr. FAIRCLOTH. Mr. President, I am appalled that the special interests and their Senate retainers triumphed again in their efforts to extend the ''trial lawyer tax'' imposed on the American people. The ultimate Washington special interest—the trial lawyers—will continue to line their pockets at the expense of American consumers and small businesses.

As you know, I continue to advocate broad civil justice reform, and this was just a start. I want to recount a recent case that underscores the need for greater reform than the bill that we considered earlier today. A group of trial lawyers filed a class action lawsuit against the Bank of Boston over credits for mortgage escrow balances. This case, however, exposes the outrageous greed that motivates these trial lawyers eager to don the cloaks of the ''consumer advocate.'' The 715,000 depositors each received $2.19 in back interest from the lawsuit, but the current mortgage holders footed the bill for the lawyers to the tune of $91.33 each. That's right, Mr. President, they received $2.19 but their accounts were debited $91.33 for lawyers fees.

I also read a 1995 gasoline price-fixing case in which 19 lawyers who won a $1 judgment were actually awarded more than $2 million in lawyers' fees in an Alabama federal court. This is outrageous!

Therefore, Mr. President, I remain committed to broad and comprehensive civil justice reform. This was a modest bill, too modest in my opinion, but it was a first step. However, as the Majority Leader said, the trial lawyers control the modern Democratic Party. There is no other explanation for the stalwart liberal opposition to the most modest reforms to help American consumers and small businesses. The trial lawyers are the most powerful and feared special interest in Washington.

Can you imagine Senators voting against this bill for any other reason? This was the essence of modest reform.

This bill would have prevented litigation against retailers and wholesalers unless they altered products. It would have barred damage awards if the product was misused or altered by the consumer or if the user was influenced by drugs or alcohol. It would have limited punitive damages, but its limits on punitive damages would apply only to small businesses, which it defined as companies with fewer than 25 employees or with annual revenues of less than $5 million. It would have allowed punitive damages only where there was evidence of ''conscious, flagrant disregard'' for safety by the manufacturer and set limits at $250,000 or twice the actual damages a person suffered.

Not exactly radical legislation, Mr. President, just common sense reform of a system run amok.

We need to repeal, not just cut, the ''trial lawyer tax.'' The tort system that costs American consumers more than $132 billion per year. This is a 125% increase over the past 10 years. In fact, between 1930 and 1994, tort costs grew four times faster than the growth rate of the economy.

Mr. President, this tort tax costs the average American consumer $616 per year, and it establishes the trial lawyers as tax collectors. These trial lawyers often sue under a contingent fee arrangement, an arrangement that remains illegal in England due to its dubious ethical basis, so the trial lawyers are bounty hunters.

I am just increduous that we are unable to relieve the ''trial lawyer tax'' and to let the American people keep more of what they earn, because it is their money, not the trial lawyers' money! The trial lawyers are the most powerful special interest in Washington and I, for one, will continue to fight for the American people. I stand with the average American, Mr. President, not the well-heeled trial lawyer lobbyists and their big campaign checks.

Mr. LIEBERMAN. Mr. President, I rise today to offer my strong support for the pending amendment and for the substitute Product Liability Reform Act of 1998, S. 2236. This is a good bill, and I am proud to be one of its original co-sponsors. It is the product of incredibly hard work and tremendous dedication by Senator ROCKEFELLER and Senator GORTON, and I want to congratulate—and thank—them and their staffs for what they have been able to achieve. I also want to thank the President for his willingness to work with us to come up with a package that now has his full support.

I, frankly, would have liked a stronger bill, like the one we passed last Congress, but the President vetoed that bill. That is something that I think all those of us who support reform have to keep in mind as we move forward with this bill. Because even if it doesn't incorporate everything we wanted, this bill does offer much—together with the promise of the President's signature.

The President's promise is important not just to those of us who have long supported legal reform. It also should be important to my colleagues who have not. I hope it prompts them to take a serious look at this bill—to put aside preconceived notions they may have of product liability reform, and to take a fresh look at what we have done. Many of the provisions they have complained about in the past are gone—the bill does nothing to limit joint and several liability, for example, and it does not impose any caps on punitive damages for any but the smallest of businesses.

PROBLEMS WITH THE LEGAL SYSTEM

But it does, Mr. President, offer some small, incremental steps towards legal reform—towards fixing a tort system that is not working as it should be. That system is supposed to be a place where people involved in accidents can go to get a fair and impartial judgment as to who should, in the words of a great lawyer and judge from Connecticut, bear the cost of accidents. The tort system is supposed to act fairly—to make sure that companies or individuals at fault who wrongly cause an injury bear the responsibility for the harm they have done, but also to make sure that no one—whether it be an individual or a company —be held accountable or forced to pay for something that was not their fault.

Unfortunately, a system that is intended to fairly determine fault and to efficiently provide for those deserving of compensation has, in many cases, been converted into something quite different. Instead of reflecting that bedrock American value of fair and neutral justice, we now have a system that too often arbitrarily imposes costs on innocent individuals and businesses, just because they may have deep pockets with some money in them.

Whenever someone is injured, it seems, a lawsuit gets filed against everyone in sight, without regard to whether there really is justification for that suit. And, unfortunately, the tort rules in place in many cases make it so costly for many to defend against those suits that many companies just choose to pay costly settlements to get rid of a case. Other times, otherwise legitimate suits yield damages awards—particularly punitive damage awards—that are far greater than necessary to compensate the plaintiff and that are wildly out of proportion to any wrong done by the defendant.

This has costs for us all. By imposing high insurance costs and legal fees on businesses, it drives up their costs, which means that all of us pay more for the products we buy. It stifles innovation by making companies unwilling to bring new products to the market, which means we don't have products we should have. And by diminishing the value our nation places on taking responsibility for our own actions and not seeking to profit unfairly at the expense of others, it has a demeaning and degrading effect on the moral fiber of our society.

These are points that my constituents continually drive home to me as I

travel around my home state of Connecticut. Small businesspeople—the bedrock of the American economy—tell me about the constant fear they have of lawsuits, and the truly harmful effects those fears have—in stifling innovation, in increasing a company's cost of doing business, in increasing the cost of products.

Mr. President, this bill is a balanced and fair response to those problems. It offers meaningful and fair reform of our legal system to redress these abuses while at the same time protecting consumers' rights. It makes sure that those deserving of compensation get it, but it also makes some changes—small changes—aimed at bringing fairness back into the system. My colleagues Senators GORTON and ROCKEFELLER already have gone over the bill's main provisions, but let me touch on a couple of its highlights.

PUNITIVE DAMAGES

One of the most important provisions offers a uniform standard for awarding punitive damages, requiring anyone trying to get punitive damages in a product liability lawsuit to prove by clear and convincing evidence that the defendant acted with a conscious, flagrant indifference to the rights or safety of others. That provision applies to all defendants. The bill also limits punitive damages against small businesses—those with annual revenues of less than $5 million and fewer than 25 employees.

Now, I have heard some say that this is unfair—that these provisions limit the ability of plaintiffs to be made whole. But, Mr. President, punitive damages have nothing to do with making plaintiffs whole—that is what we have compensatory damages for, and this bill allows full recovery of those damages. What punitive damages are for is to punish—to say that a particular defendant's conduct is so wrong, so outrageous and beyond acceptability that the defendant not only should have to compensate a plaintiff, but should also be punished as well.

Unfortunately, Mr. President, in many places, punitive damages no longer are reserved for that purpose. Instead, plaintiffs claim them willy-nilly, knowing that putting a claim for punitive damages in a complaint—offering the threat of an enormous punitive verdict that could put a company out of business—is enough to force companies into settlements regardless of whether those settlements—or the amounts of them—are deserved. By making clear that punitive damages should be assessed only when a defendant truly has acted in a manner deserving of punishment, this bill will make sure that punitive damages are awarded only when they should be. At the same time, it also makes sure that the threat of punitive damages remains available to deter companies from engaging in behavior deserving of punishment.

BIOMATERIALS

The bill also contains the provisions of the Biomaterials Access Assurance Act—a bill that I am proud to co-sponsor with Senator MCCAIN. The Biomaterials bill is the response to a crisis affecting more than 7 million Americans annually who rely on implantable life-saving or life-enhancing medical devices—things like pacemakers, heart valves, artificial blood vessels, hydrocephalic shunts, and hip and knee joints. They are at risk of losing access to the devices because many companies that supply the raw materials and component parts that go into the devices are refusing to sell them to device manufacturers. Why? Because suppliers no longer want to risk having to pay enormous legal fees to defend against product liability suits when those legal fees far exceed any profit they make from supplying the raw materials for use in implantable devices.

Let me emphasize that I am speaking here about—and the bill addresses—the suppliers of raw materials and component parts—not about the companies that make the medical devices themselves. The materials these suppliers sell—things like resins and yarns—are basically generic materials that they sell for a variety of uses in many, many different products. Their sales to device manufacturers usually make up only a very small part of their markets—often less than one percent. As a result—and because of the small amount of the materials that go into the implants—these suppliers make very little money from supplying implant manufacturers. Just as importantly, these suppliers generally have nothing to do with the design, manufacture or sale of the product.

But despite the fact that they generally have nothing to do with making the product, because of the common practice of suing everyone involved in any way with a product when something goes wrong, these suppliers often get brought into lawsuits claiming problems with the implants. One company, for example, was hauled into to 651 lawsuits involving 1,605 implant recipients based on a total of 5 cents worth of that company's product in each implant. In other words, in exchange for selling less than $100 of its product, this supplier received a bill for perhaps millions of dollars of legal fees it spent in its ultimately successful effort to defend against these lawsuits.

The results from such experiences should not surprise anyone. Even though not a single biomaterials supplier has ultimately been held liable so far—let me say that again: Not a single biomaterials supplier has ultimately been held liable so far—the message nevertheless is clear for any rational business. Why would any business stay in a market that yields them little profit, but exposes them to huge legal costs? An April 1997 study of this issue found that 75 percent of suppliers surveyed were not willing to sell their raw materials to implant manufacturers under current conditions. That study predicts that unless this trend is reversed, patients whose lives depend on implantable devices may no longer have access to them.

What's at stake here, let me be clear, is not protecting suppliers from liability and not even just making raw materials available to the manufacturers of medical devices. Those things in and of themselves might not be enough to bring me here. What's at stake is the health and lives of millions of Americans who depend on medical devices for their every day survival. What's at stake are the lives of children with hydrocephalus who rely on brain shunts to keep fluid from accumulating around their brains. What's at stake are the lives of adults whose hearts would stop beating without implanted automatic defibrillators. What's at stake are the lives of seniors who need pacemakers because their hearts no longer generate enough of an electrical pulse to get their heart to beat. Without implants, none of these individuals could survive.

We must do something soon to deal with this problem. We simply cannot allow the current situation to continue to put at risk the millions of Americans who owe their health to medical devices.

Senator MCCAIN and I have crafted what we think is a reasonable response to this problem. The Biomaterials provisions of this bill would do two things. First, with an important exception I'll talk about in a minute, the bill would immunize suppliers of raw materials and component parts from product liability suits, unless the supplier falls into one of three categories: (1) the supplier also manufactured the implant alleged to have caused harm; (2) the supplier sold the implant alleged to have caused harm; or (3) the supplier furnished raw materials or component parts that failed to meet applicable contractual requirements or specifications.

Second, the bill would provide suppliers with a mechanism for making that immunity meaningful by obtaining early dismissal from lawsuits. By guaranteeing suppliers in advance that they will not face needless litigation costs, this bill should spur suppliers to remain in or come back to the biomaterial market, and so ensure that people who need implantable medical devices will still have access to them.

Now, it is important to emphasize that in granting suppliers immunity, we would not be depriving anyone injured by a defective implantable medical device of the right to compensation for their injuries. Injured parties will still have their full rights against anyone involved in the design, manufacture or sale of an implant, and they can sue implant manufacturers, or any other allegedly responsible party, and collect for their injuries from them if that party is at fault.

We also have added a new provision to this version of the bill, one that resulted from lengthy negotiations with representatives of the implant manufacturers, the American Trial Lawyers

Association—ATLA—the White House and others. This provision responds to concerns that the previous version of the bill would have left injured implant recipients without a means of seeking compensation if the manufacturer or other responsible party is bankrupt or otherwise judgment-proof. As now drafted, the bill provides that in such cases, a plaintiff may bring the raw materials supplier back into a lawsuit after judgment if a court concludes that evidence exists to warrant holding the supplier liable.

Finally, let me add that the bill does not cover lawsuits involving silicone gel breast implants.

In short, Mr. President, the Biomaterials provisions of this bill are—and I am not engaging in hyperbole when I say this—potentially a matter of life and death for the millions of Americans who rely on implantable medical devices to survive. This bill would make sure that implant manufacturers still have access to the raw materials they need for their products, while at the same time ensuring that those injured by implants are able to get compensation for injuries caused by defective implants.

In closing, let me once again congratulate Senator ROCKEFELLER, Senator GORTON and the President for their success in forging this compromise bill. I urge my colleagues to support it.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

PRODUCT LIABILITY REFORM ACT OF 1997

CLOTURE MOTION

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the pending amendment to Calendar No. 90, S. 648, the Product Liability Reform Act of 1997:

Trent Lott, Don Nickles, Slade Gorton, Phil Gramm, John McCain, Spencer Abraham, Dan Coats, Dick Lugar, Lauch Faircloth, John Chafee, Sam Brownback, Ted Stevens, Jon Kyl, Jeff Sessions, Mike Enzi, and Judd Gregg.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the amendment No. 3064 to S. 648, the Product Liability Reform Act, shall be brought to a close?

The yeas and nays are required. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Texas (Mrs. HUTCHISON) and the Senator from Arizona (Mr. KYL) are necessarily absent.

I further announce that if present and voting, the Senator from Arizona (Mr. KYL) would vote ''yes.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The yeas and nays resulted—yeas 51, nays 47, as follows:

[Rollcall Vote No. 188 Leg.]

YEAS—51

Abraham	Enzi	Mack
Allard	Faircloth	McCain
Ashcroft	Frist	McConnell
Bennett	Gorton	Murkowski
Bond	Gramm	Nickles
Brownback	Grams	Roberts
Burns	Grassley	Santorum
Campbell	Gregg	Sessions
Chafee	Hagel	Smith (NH)
Coats	Hatch	Smith (OR)
Cochran	Helms	Snowe
Collins	Hutchinson	Specter
Coverdell	Inhofe	Stevens
Craig	Jeffords	Thomas
D'Amato	Kempthorne	Thompson
DeWine	Lott	Thurmond
Domenici	Lugar	Warner

NAYS—47

Akaka	Feinstein	Lieberman
Baucus	Ford	Mikulski
Biden	Glenn	Moseley-Braun
Bingaman	Graham	Moynihan
Boxer	Harkin	Murray
Breaux	Hollings	Reed
Bryan	Inouye	Reid
Bumpers	Johnson	Robb
Byrd	Kennedy	Rockefeller
Cleland	Kerrey	Roth
Conrad	Kerry	Sarbanes
Daschle	Kohl	Shelby
Dodd	Landrieu	Torricelli
Dorgan	Lautenberg	Wellstone
Durbin	Leahy	Wyden
Feingold	Levin	

NOT VOTING—2

Hutchison	Kyl

The PRESIDING OFFICER. On this vote the yeas are 51, the nays are 47. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will now vote on the adoption of the conference report to accompany H.R. 2676, which the clerk will report.

The legislative clerk read as follows:

Conference report to accompany H.R. 2676, an act to amend the Internal Revenue Code of 1986, to restructure and reform the Internal Revenue Service, and for other purposes.

The Senate resumed consideration of the conference report.

Mr. DASCHLE. Mr. President, I would like to express my gratitude to all of our colleagues, Democratic and Republican, who have worked so hard for so long on the Internal Revenue Service Restructuring Act of 1998. This bipartisan legislation builds on the recommendations of the year-long National Commission on Restructuring of the IRS and addresses many of the concerns raised during Congressional hearings. These reforms have been a long time coming, and I am pleased to support them today on the last leg of their journey through the legislative process.

We would not be here today, poised to enact the most sweeping restructuring of the Internal Revenue Service in living memory, if it were not for the vision, diligence, and persistence of the senior Senator from Nebraska, BOB KERREY. Today's vote represents nearly three years of concerted effort on the part of Senator KERREY. He developed the legislation to create the commission in 1995, co-chaired its proceedings to a successful conclusion in 1997, and has worked assiduously since then with Members of Congress and the Administration to shepherd the legislation to today's final vote. On behalf of the Senate and taxpayers across the country, I thank Senator KERREY for his inspired public service.

This legislation has two essential goals: to make the IRS more accountable to private citizens and to transform its culture into one that resembles the customer service orientation of a well-run business.

Too often lately, South Dakota business owners, farmers and others have told me stories that make IRS tax collectors sound a lot more like a team of overzealous special prosecutors. With this agreement, we send a strong message that the abuse, intimidation, harassment, quota systems, and patterns of targeting middle and lower-income people—or any segment of the public—will no longer be tolerated. IRS reform will ensure that taxpayers receive the fair and equal treatment they deserve. It will also pave the way for restoring the public's confidence in our Nation's tax collector.

I support this conference report because it will make the IRS more accountable to, and respectful of, taxpayers.

The extensive public hearings held by the Commission and Congressional committees have highlighted management problems within the IRS as well as individual cases of abuse and harassment by some IRS employees. The new IRS Commissioner, Charles Rossotti, has begun to implement significant changes to the structure and culture of the agency. By approving the conference report, the Senate can at last give him the tools he needs to expedite these necessary changes.

The bill establishes a new series of taxpayer rights, including one that places the burden of proof on the IRS in disputes before the tax court. It also permits a taxpayer to sue for civil damages if any IRS employee, in connection with any collection activity, negligently disregards the law. I am also pleased that the legislation provides a number of specific protections for taxpayers subject to audit or collection activities and establishes a private board of directors to oversee the IRS.