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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable MARK DAYTON, a Senator from the State of Minnesota.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, You give us what we need and not always what we want. You have programmed us for greatness. You will not flatter those who want flattery, but seek to show us that lasting joy is being servant leaders. Lead us out of the quagmire of self-aggrandizement and show us the path of self-sacrifice. Free us of demanding love on our terms and help us to do what love demands. May our quest for recognition be replaced by a quiet recognition that You are pleased. Help us to play our lives to an audience of One: You, dear Lord.

May the demands of public service become a delight and not a duty. Help us not to miss the joy that today holds, waiting to be unwrapped. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MARK DAYTON led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 18, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK DAYTON, a Senator from the State of Minnesota, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. DAYTON thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

TERRORISM RISK INSURANCE ACT OF 2002

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 2600, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2600) to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.

Pending:

Brownback amendment No. 3843, to prohibit the patentability of human organisms.

Ensign amendment No. 3844 (to amendment No. 3843), to prohibit the patentability of human organisms.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 9:45 a.m. shall be equally divided between the two managers.

The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that the vote occur at 9:50 a.m. rather than 9:45 a.m., and that the time be equally divided.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Connecticut.

Mr. DODD. Mr. President, I yield 2 minutes to my colleague from Nevada.

Mr. REID. Mr. President, this is a banking bill. This is a bill that came from the Banking Committee. It deals with a very important issue to the business community of this country. The Chamber of Commerce, for example, is going to score this. Their 3 million members believe this is important, as do the members of the Business Roundtable.

We have the support of organizations that are as diverse as the Taxicab, Limousine & Paratransit Association to the American Banking Association. This legislation is important to the financial well-being of this country. We have construction projects that are being stopped. We have construction projects that can't start.

I say to my friends, no matter how strongly their beliefs may be relating to cloning and therapeutic stem cell research, whatever we want to term it, it has nothing to do with this legislation. If the amendment becomes part of this legislation, the bill will be gone by the time it hits that backdoor. It has nothing to do with the underlying legislation, terrorism insurance, which is so badly needed.

I express my appreciation to those who have worked so hard to get to this point. Senator DODD has made statements on the floor time and time again indicating how important this legislation is. When he speaks, he speaks for the business community. Remember, the business community employs working men and women. This is important to the country. It is some of the most important legislation that has come before the Senate all year. We should invoke cloture, and we should do it when the vote starts at 9:50 today.

Mr. DODD. Mr. President, I suggest the absence of a quorum.

Mr. REID. Mr. President, I ask unanimous consent that the time run equally against both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DODD. Mr. President, let me thank my colleague from Nevada, the distinguished majority whip, for his assistance and support on this matter, the terrorism insurance legislation.

In a few minutes we will be voting on cloture on this bill. I can't speak for the leadership, obviously, but I do know that as of last Friday at least, my sense was there was a consensus between the two leaders, based on the comments made on the floor, that even though the distinguished minority leader might under other circumstances be somewhat reluctant to support a cloture motion, I certainly interpreted his remarks to indicate that he understood why the majority leader was filing a cloture motion and asking for such a vote.

Last week we started debating the terrorism insurance bill on Thursday morning. By Friday, we had dealt with two amendments dealing with the substance of the bill. I was dealing with every other issue but terrorism insurance.

Now we have a cloning proposal before us. I have tried all weekend to draw some nexus between cloning and terrorism insurance, and my imagination fails me here. I don't see the linkage at all. My hope is, while there are certainly a lot of strong views on cloning, the issue of terrorism insurance requires the attention of this body, it requires this body to respond to this particular need and vote up or down on the matter. If they want to vote against it, vote against it.

My fear is, if we don't invoke cloture, we will then move to the Department of Defense authorization bill. After all the work that has been put into this effort over the last months, we may see the last of the terrorism insurance proposal.

For those out there who believe this issue deserves to be considered and resolved one way or the other, I strongly urge them to vote to invoke cloture.

I ask unanimous consent that an article in this morning's Washington Post, ''Firms Warned on Terrorism Insurance,'' be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, June 18, 2002]

FIRMS WARNED ON TERRORISM INSURANCE

(By Jackie Spinner)

GMAC Commercial Mortgage Corp., one of the nation's largest lenders, is notifying its borrowers that they must have terrorism insurance or risk defaulting on their loans, the latest example of how a shortage of such coverage is hurting commercial real estate financing.

David E. Creamer, chairman and chief executive of GMAC Commercial Holding Corp., the mortgage company's corporate parent, said 85 percent to 90 percent of the loan agreements the company has reviewed this year are not in compliance because the property owners are not insured against terrorism when they renew their policies, putting the agreements in technical default.

''Almost every policy coming in doesn't have terrorism coverage,'' Creamer said. He declined to specify how many of GMAC's 40,000 mortgages have been reviewed so far as part of a routine check of their insurance policies.

Creamer said GMAC does not plan to foreclose on the properties that lack the coverage. But he said the company will work with the borrowers to get terrorism insurance, a course that some borrowers have avoided because of the high price and difficulty of obtaining the coverage after the Sept. 11 terrorist attacks.

In March, Simon Property Group Inc. sued GMAC for trying to force the mall owner to obtain terrorism coverage for its portfolio of shopping centers, including the Mall of America near Minneapolis. The suit was settled after Simon purchased two policies with $100 million limits.

According to the Bond Market Association, $7 billion worth of commercial real estate loan activity has been suspended or canceled because of a shortage of coverage.

Creamer said GMAC has turned down requests for more than $1 billion in new loans this year because the projects were not insured against terrorism.

''The real problem is not your bread-and-butter properties,'' Creamer said. ''It's your trophy properties in metropolitan U.S.A.''

The difficulty in obtaining insurance has prompted a call for federal action from insurers and business interests.

The Senate resumed debate yesterday on a bill that would create a one-year federal backup to help pay the insurance costs of a future terrorist attack. Under the terms of the bill, insurance companies would have to pay a portion of claims resulting from a terrorist attack. The amount would vary according to each insurer's market share. The government would then pay 80 percent of the remaining claims if the attack cost less than $10 billion and 90 percent if claims totaled more than $10 billion.

Senate Majority Leader Thomas A. Daschle (D-S.D.) plans to force a vote today on a procedural issue that would end debate on the bill. If he gets 60 votes, a final vote on the bill could come later in the day or tomorrow.

The House passed a competing measure last year that would require insurers to cover the first $1 billion in losses arising from a terrorist attack. The government would pay 90 percent of additional claims. The insurers and policyholders eventually would have to repay the money.

''There's a lot of lifting to be done yet,'' said Julie Rochman, senior vice president for the American Insurance Association, a trade group that supports a federal backup.

In the meantime, a growing number of lenders such as GMAC are trying to assess their risks in lending money to uninsured properties.

''I'd be surprised if there was a lender in this country that wasn't doing this,'' said Darrell Wheeler, a commercial mortgage backed securities analyst at Salomon Smith Barney Inc.

As lenders, ''it is their responsibility to make sure their borrowers are in compliance with their loan documents,'' Wheeler said. ''At the same time, if I'm a borrower, I'm facing very expensive insurance premiums. Most borrowers are trying to avoid that additional expense.''

Mr. DODD. This article makes the case that GMAC, the commercial mortgage corporation, one of the largest lenders, is notifying borrowers that they must have terrorism insurance or risk defaulting on their loans; again, making the point we made over and over that this issue of terrorism insurance is real.

I have talked about the problems occurring in the commercial mortgage-backed securities. We have had comments from the President, Governors from across the country, and others who are involved in this issue. There is a list in the newspaper this morning of organizations as wide ranging as real estate and chambers of commerce to labor groups calling on this body to vote this bill out and get to conference so we can resolve the differences with the other body.

There is a list this morning: Vote for S. 2600, Terrorism Risk Insurance Act of 2000. I will not bother at this point to read the names, but there is a long list of groups and organizations that represent thousands and thousands of workers who, if we do not deal with this bill, run the risk of losing their jobs.

The Chamber of Commerce has said that ''it is vital to pass this important legislation expeditiously,'' talking about the cloture vote.

From insurance agents and brokers:

Support cloture and oppose Gramm amendment to remove per company retentions.

From the Real Estate Roundtable:

We are writing to urge you to vote affirmatively on cloture and for final passage of the Terrorism Risk Insurance Act of 2002. These two votes will be scored as key votes for our organization.

The American Insurance Association: The same message.

The National Association of Realtors. This is a ''key'' vote for cloture on S. 2600.

Mr. President, we made the case over and over for many months as we have gone back and forth on this bill that each day that goes by, the case grows more serious and demands our attention.

I have had letters from 30 of our colleagues, from 18 Governors across the country, repeated letters and comments from the President of the United States and the Secretary of the Treasury, and others who urge us to step to the plate and bring up amendments, which we were willing to do last week without cloture. Now we have no other choice because we have received proposals, with all due respect to our colleague from Kansas and others, to bring up matters that the Senate may or may not grapple with in this Congress. To hurl these matters at this bill as we are trying to wrap up business we think is a huge mistake.

This is probably the last chance. For those who think there is going to be another day in this Congress on terrorism insurance, I fear there will not be. This is it. So in about 10 minutes, my colleagues will have a chance to decide whether we give final consideration to this bill or move on to other matters.

For those who vote against cloture, understand if things do happen, then the finger of culpability clearly gets pointed in the direction of those who

denied us an opportunity to vote on this bill.

I urge support of the cloture motion, and I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time? The Senator from Texas.

Mr. GRAMM. Mr. President, I intend to vote against cloture. I urge my colleagues to also vote against cloture.

This boils down now to two issues, and they are very real issues. No. 1, the President has said he will not sign a bill that will make victims of terrorism subject to attacks by plaintiff's attorneys and subject to punitive damages. We think it is vitally important that we have an opportunity to deal with this issue and to have at least one more vote on it.

Secondly, we are in a situation now where this bill has evolved to the point that the taxpayer is virtually the payor of first resort, not last resort. When this bill was initially put together in a bipartisan compromise, supported by the administration, we had in a terrorist attack $10 billion of costs that the insurance industry had to bear before the Federal Government came in to pick up the tab.

This was critical for two reasons. No. 1, it provided incentives for insurance companies to syndicate, so no one insurance company insures the Empire State Building. There may be a lead company and then they syndicate to other companies to spread the risk.

No. 2, it was vitally important in terms of protecting the taxpayer. What has happened now, by going to a retention level by individual companies, is that we have reached a point where the taxpayer is put at exposure very early in the process. I think it circumvents what we are trying to do.

My biggest concern is, if we adopt this bill in its current form, that we are setting up sort of a hot-house plant that cannot exist and grow and work without permanent Government involvement.

I remind my colleagues, our objective was to have a 2- or 3-year program to bridge this gap to create a situation where the reinsurance market would emerge, where syndication would become the norm in high profile projects so that the Federal Government could get out of this industry and so that the cost of terrorism in terms of risk would be built into the term structure of interest rates.

The problem with this bill—and this bill made sense in December when we had 3 weeks before 80 percent of the insurance premiums in America were going to be due and the existing policies were going to expire, but today much of that insurance has been written, premiums have been collected, and to adopt a bill with retention rates as low as we have in this bill is to create economic windfalls and to destroy the incentive of the industry to do the things that need to be done to get the Government out of this business.

I remind my colleagues that I have been among the earliest and strongest supporters of having a bill, but what has happened now is the nature of this bill does not fit the reality of the world in which we live, in the world at the end of June when policies have been sold, premiums have been collected based on no Government backup, and now we are coming in with retention levels that are so low that in some cases the Federal Government is going to begin to pay when losses are in the tens of millions.

When we initially contemplated this bill, when the administration signed off on a compromise, there was a $10 billion retention. Mr. President, $10 billion was made by the people who collected the premiums before the taxpayer paid. That has now been dramatically changed with retention levels set on a company-by-company basis. I think this encourages companies to take on full projects, I think it moves us in exactly the wrong direction, and I think we have an opportunity to fix this. I believe it will be fixed if we deny cloture, and I urge my colleagues to vote against cloture and give us an opportunity to deal with punitive damages being imposed on victims of terrorism and give us an opportunity to have retention levels that protect the taxpayer, that do not create windfall gains and retention levels that encourage the development of reinsurance and syndication, something that is absolutely essential to get the Federal Government out of this business within 2 or 3 years. I yield the floor.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. DASCHLE. Mr. President, I wanted to come to the floor for a moment to express the hope that we can get cloture, that both Republican and Democratic Members can vote for cloture this morning and move on. I remind all of my colleagues that there will be 30 hours of debate at least potentially available to Senators with germane amendments. So there is absolutely no reason to vote against cloture.

I might just say for the record, prior to the time we take this vote, we began negotiations on this matter months and months ago. We have offered virtually every conceivable proposal I can think of to be able to bring this bill to the floor under unanimous consent. We asked unanimous consent on many occasions and were unable to get that consent. We even offered to bring up the House bill with a limit of five relevant amendments on either side, and that was not successful.

I am at a loss for how we will proceed under these circumstances if we are not able to get cloture today. My intention would be to put the bill back on the calendar and move directly to the Defense authorization bill if we fail to get cloture today. Only after we would have in writing the number of Senators required to bring the bill back would I be able to reschedule this legislation. So this is our chance. This is our window. This is our opportunity. Colleagues on both sides of the aisle have made it very clear it is important we take up the Defense authorization bill. So we are not going to extend the debate on this legislation. We will either get cloture, deal with germane amendments, and move on or we won't get cloture, and we will move on in any case.

So that is our option this morning, and I am very hopeful we can achieve that. I hope colleagues will understand we have been tolerant, we have been patient, we have been innovative, and we have been imaginative. I can't think of anything else we can be in an effort to get this job done.

I know there is a great deal of interest in it. But the time has come for us to bring this to closure if, indeed, Senators want a terrorism insurance bill this work period.

So I urge my colleagues to vote for cloture, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Republican leader.

Mr. LOTT. Mr. President, I yield myself time under leader time. I know it is time for us to vote, but I will be brief.

First of all, I believe we are close to finishing this bill. I understand there are very few remaining issues we would actually have to dispose of even though there were some 41 amendments filed on this legislation: 14 on the Republican side of the aisle, 27 on the Democratic side. I am not sure how many of them are germane or how many would actually have to be offered. I know the manager of the legislation filed 21 of them, and perhaps some of them have been accepted. I don't know how many of those have been worked through. But clearly there were some problems with this legislation that needed to be addressed.

It is my hope we can complete this important legislation and get it to conference and then get a bill that we can accept and the President can sign.

There is a little bit of revisionist history that has been going on here. You remember last year in December very good work was done by members of the committee on both sides of the aisle, a bill that could probably have whizzed right through here. But over a period of time, the limits on liabilities were taken out, which is a concern of a number of Members on this side, and also the per-company limits were changed, or they were put into place in the legislation at a very low level where Federal funding would actually get to kick in.

Those are two of the major problems that still exist. That could have been worked out if we had gone to the bill that was originally offered in committee or over these many months we have been trying to get an agreement of how to proceed.

We have been unable to debate this measure at much length, although I said last week that I understood why Senator DASCHLE filed cloture.

We have other issues we need to go on to, but I think in this case cloture may actually delay it a day. If we get cloture, it could take us sometime into tomorrow. It looks to me as if there is only four, maybe five amendments that actually would have to be debated and considered and voted on.

I think we could probably get an agreement on the number of amendments and get a time limit and actually get votes on those amendments, perhaps not. But they are certainly relevant even though I am not sure whether they would be germane postcloture. I know Senator MCCONNELL has two or three, Senator GRAMM has one, Senator BROWNBACK one; there may be two or three on that side. But I believe we could work this out and actually get the legislation completed today.

I continue to hope that would be the result, and if cloture is not invoked, I will try to get a consent that we just take up these three or four amendments and move to conclusion. So, obviously, we would like to get this work done, but it still has some problems and some amendments that really do need to be considered.

With that, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. GRAMM. I have 2 remaining minutes, I believe; is that right?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. GRAMM. I yield those 2 minutes to Senator MCCONNELL.

The ACTING PRESIDENT pro tempore. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, we are very close to completing this bill. By invoking cloture we are going to be shut out of an opportunity to offer a few more amendments, just a handful as the Republican leader has indicated, that need to be considered. On the liability question, we have a clear letter from the administration indicating that if we don't deal with that properly, this bill will not become law. I do not think any of us believe, at this already late stage of the session, we ought to be clogging up legislative days with exercises in futility. So there are a couple more amendments on the liability issue that need to be voted upon.

I strongly urge our colleagues to vote against cloture and then let the Republican leader and the Democratic leader talk about how we can wrap this bill up in short order.

The ACTING PRESIDENT pro tempore. Does the Senator yield back his time?

Mr. GRAMM. How much more time do we have?

The ACTING PRESIDENT pro tempore. One minute.

Mr. GRAMM. Let me address for that 1 minute the whole issue about retention. When we started this debate, the Federal Government was going to be the backup insurer. We were going to have substantial retention by the private companies that have sold policies and collected premiums. They were going to pay up front, and in big losses the taxpayer was going to pay. When we got into December and 80 percent of the insurance policies were expiring, there was a movement toward individual company retentions to dramatically reduce the amount companies had to pay before the Government paid.

Now we are at the end of June. Companies have sold insurance policies. They have collected premiums. To come in now with retention levels in the tens of millions instead of tens of billions is to create an unintended, and I believe unwise and unfair wealth transfer but, more importantly, it discourages the kind of risk sharing that we need to ultimately get the Government out of this business.

I believe if the bill became law as it is now written, we would end up with the Government permanently in the terrorism insurance business. I think that would be a bad thing.

I urge my colleagues to vote no.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. DASCHLE. I yield 2 minutes of my leader time to the Senator from Connecticut.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Mr. President, very briefly, this is a 2-year bill. In fact, it is only a 1-year bill with the possibility of an extension of another 12 months. We are going to have a chance to debate the Gramm amendment if we get to cloture. If we don't have cloture, then, as the leader has indicated, we are going to move on to the Department of Defense authorization bill. So if you want to have a debate about what my colleague from Texas is proposing or my colleague from Kentucky, the only way to do this is to invoke cloture.

We have been at this since last fall trying to resolve these matters. My hope is we can. If we don't invoke cloture, then it is very difficult to get to these matters. We have the cloning issue and others that have been added to this debate, and it makes it very difficult to deal with the underlying issue.

I have indicated earlier that from the AFL–CIO to major groups in the country that are dealing with commercial lending they tell you this is an important piece of legislation. Every day we waste is jobs lost and more economic difficulty. So my hope is we can invoke cloture, debate the Gramm amendment, debate the amendment of my friend from Kentucky and others, and resolve this matter. Either vote for this bill or vote against it, but let's get it completed.

I yield back my time.

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Under the previous order, the clerk will report the motion to invoke cloture.

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, do hereby move to bring to a close debate on Calendar No. 410, S. 2600, the terrorism insurance bill:

Harry Reid, Hillary Rodham Clinton, Jean Carnahan, Charles Schumer, Kent Conrad, Tom Daschle, Richard Durbin, Jack Reed, Byron L. Dorgan, Christopher J. Dodd, Debbie Stabenow, Jay Rockefeller, Maria Cantwell, Jeff Bingaman, Daniel K. Akaka, Evan Bayh, Joseph Lieberman.

The ACTING PRESIDENT pro tempore. By unanimous consent the mandatory quorum call under the rule is waived.

The question is, Is it the sense of the Senate that debate on S. 2600, a bill to insure the continued financial capacity of insurers to provide coverage for risks from terrorism shall be brought to a close?

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

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from California (Mrs. BOXER) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Texas (Mrs. HUTCHISON) are necessarily absent.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 65, nays 31, as follows:

[Rollcall Vote No. 156 Leg.]

YEAS—65

Akaka	Dodd	Lincoln
Allen	Domenici	Lugar
Baucus	Dorgan	McCain
Bayh	Durbin	Mikulski
Bennett	Edwards	Miller
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (NE)
Breaux	Fitzgerald	Reed
Byrd	Graham	Reid
Cantwell	Harkin	Rockefeller
Carnahan	Hatch	Sarbanes
Carper	Hollings	Schumer
Chafee	Inhofe	Smith (OR)
Cleland	Inouye	Snowe
Clinton	Jeffords	Specter
Cochran	Johnson	Stabenow
Collins	Kennedy	Stevens
Conrad	Kohl	Torricelli
Corzine	Landrieu	Warner
Crapo	Leahy	Wellstone
Daschle	Levin	Wyden
Dayton	Lieberman	

NAYS—31

Allard	Gramm	Roberts
Bond	Grassley	Santorum
Brownback	Gregg	Sessions
Bunning	Hagel	Shelby
Burns	Hutchinson	Smith (NH)
Campbell	Kyl	Thomas
Craig	Lott	Thompson
DeWine	McConnell	Thurmond
Ensign	Murkowski	Voinovich
Enzi	Nelson (FL)	
Frist	Nickles	

NOT VOTING—4

Boxer	Hutchison
Helms	Kerry

The PRESIDING OFFICER (Mr. NELSON of Nebraska). On this vote, the yeas are 65, the nays are 31. Three-fifths of the Senators duly chosen and

sworn having voted in the affirmative, the motion is agreed to.

Mr. DODD. Mr. President, I ask unanimous consent that our two colleagues from Michigan be recognized to speak as if in morning business for a period not to exceed 10 minutes on a very important matter to the State of Michigan.

Mr. REID. Mr. President, reserving the right to object, I ask the Senator from Connecticut to modify his request so that this time will count against postcloture time.

Mr. DODD. I so modify the request.

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

The Senator from Michigan is recognized.

Mr. LEVIN. I thank the Chair.

(The remarks of Mr. LEVIN and Ms. STABENOW pertaining to the submission of S. Res. 287 are located in today's RECORD under ''Submission of Concurrent and Senate Resolutions.'')

Ms. STABENOW. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRAMM. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. GRAMM. Mr. President, I have a markup with the members of the Banking Committee coming up. Given that last vote, it is not my intention to try to offer an amendment. The amendment I wanted to offer, which was a 3-year program, would not be germane postcloture because of the third year.

I want to sum up what I believe to be the chronology of this debate and express my concerns.

Senator MCCONNELL and I will offer amendments if the House bill is brought up in an effort to substitute this bill for it, and potentially on the naming of conferees. But I think, in terms of today and this bill, it is clear where the votes are.

Let me remind my colleagues that in the wake of 9–11, there was great skepticism in Congress about the need for terrorism insurance. I think any checking of the RECORD will show that I was one of the early supporters of an effort to have terrorism insurance. I believed then and I believe now that we need a bridge from our current situation where terrorism insurance is hard to get for high-profile projects, where it is expensive as we go through this process of rational investors determining what the real risks are.

I thought it was important we have a bridge program to give a Federal backup for a fairly short period of time until the market could adjust to this new reality and the threat of terrorism could be built into the structure of insurance premiums. I have to say, in the entire debate over the bill, the role of the Federal Government has been a role of a backup, where the Federal Government paid only in cataclysmic kinds of circumstances.

In the fall of last year, we reached a bipartisan compromise that was worked out among the leaders of the Banking Committee, the committee with jurisdiction. That bill had a $10 billion retention the first year for the insurance companies, $10 billion the second year, and then, if the Secretary of the Treasury decided a third year was needed, we had a $20 billion retention.

What ''retention'' means is that the insurance companies would pay the first $10 billion, and then the Federal Government would pay 90 percent of the $90 billion that might follow.

The argument that was made, from the very beginning really, boiled down to two points: One, that the people who were collecting the insurance premiums should have first liability and the Federal Government should be in a backup role.

The second argument was—and I think it was the more dominant argument; the more important argument, in my opinion—that our objective here is not simply to insert the Federal Government permanently into the insurance industry.

I note to my colleagues that, unlike World War II, where, when the Japanese bombed Pearl Harbor, we knew that war would end someday, and we knew we would prevail, and we knew there would be a formal ceremony ending that war—and, in fact, there was on the deck of the *Missouri*—this war, when it ends, will end with the dying gasp of some terrorist somewhere, and we will not be sure that he is the last one, and there will not be any formal agreement ending the hostilities.

So our objective here is to build a bridge to private coverage. That bill was agreed to in the fall by the Secretary of the Treasury on behalf of the President and by the leadership of the Banking Committee.

We agreed in that to ban punitive damages against the victims of terrorism. We had a press conference. It looked as if we had come up with a bipartisan consensus. Then there was objection to the ban on punitive damages against the victims of terrorism, and the bill did not go forward.

Then in December, in a last ditch effort, in which I am proud to say I participated, we tried to write a bill that would deal with a situation where, we were already halfway through December; 80 percent of the insurance policies in America—at least we were told at the time—were expiring on January 1, and so there would not be time for reinsurance to develop. There would not be time for extensive syndication, a basic procedure whereby an insurance company would insure the Empire State Building but then perhaps would lay off the risk to 20 other companies.

In December, a bill was worked on that had individual company retentions. For the largest companies in the industry, that retention is pretty substantial, over $1 billion. For small companies, that retention is quite small, in the tens of millions of dollars.

There are two problems with the bill before us which is based on the December draft. The first problem is, the situation is very different today than it was in December. Those policies did expire, and many were renegotiated at substantially higher premiums. It is now 7 months later. Insurance has been sold. Premiums have been collected. Those premiums are based on substantially higher risk with no government backup. Now we are being asked to pass a bill that maintains those retention levels that might have made sense in December, when 80 percent of the policies in the country were expiring and there was no time for reinsurance or syndication.

But in my opinion, to adopt this bill 7 months later when substantial numbers of policies have been sold at substantially higher prices, and those higher prices are part of the solution—I am not complaining about them because risks are higher—the point is, we are dramatically changing risk by having the Government pay 90 percent of the claim above these retention levels.

I have offered a compromise which would split the difference, which would have individual company retention the first year, for the first 12 months after the bill is signed into law. Then it would go to a $10 billion industry retention; and then if the President extended the program 1 more year, it would have a $20 billion retention.

Why is that important? It is important for two reasons. One is equity. These retention levels put the taxpayer at an unjustified risk. These low retention levels we have in this bill create a situation where policies were sold; premiums were collected; expectations were that there would not be a Federal backup. And now the Federal backup is coming in at individual company retention levels which are substantially lower than the level we looked at in October of last year.

This creates an unintended transfer of risk from the insurance companies to the taxpayer, where the insurance companies have collected premiums based on bearing that risk themselves.

That is an equity problem. We are putting the taxpayer at a level of exposure which is unjustified.

The second problem is of greater importance. If we simply are passing a bill that transfers wealth from the taxpayer to insurance companies, it is inequitable, in my opinion, at the level we are doing it. But it is not the end of the world, nor is it the first or last time we would have ever done any such thing. The problem is, the way the bill is now written, for the next 2 years, the incentive that insurance companies have to develop reinsurance—and reinsurance is a system whereby I sell a policy on a building, but then I share that risk through a reinsurance system which is developed. I share the profits, but I share the risk. That way the risks

end up being dispersed not just among all the insurance companies in America but literally all the insurance companies in the world.

As that market develops, there is another alternative called syndication whereby companies insure an asset but then they syndicate by having other companies take a piece of it. They in essence become the reinsurer.

Why is all this important? Why would anybody care about all these things? Why I care about it is because if we don't have substantial industry retention, we are dramatically reducing the incentive for the reinsurance market to develop. If we don't have substantial industry retention, we are creating an incentive for companies to take a larger share of risk because they are not having to bear the risk.

They have their industry retention, which for smaller companies can be in the tens of millions of dollars, and then the Federal Government comes in and pays 90 percent of the cost.

If we don't develop reinsurance, if we don't develop syndication as the norm, then we simply continue a system where the bulk of the risk is borne by the taxpayer. Two years from now, if we don't change this bill, we are going to be back here, and the same people who are saying today we have to have this bill are going to say: You have to extend this bill for another 2 years, another 10 years, forever.

The problem with the structure of the bill is that it acts as a disincentive to do the things the industry has to do in order to get the Federal Government out of the insurance business.

I am not yelling; I am not complaining about the insurance companies. I am not trying to put them in a position where I am vilifying them. I would say when we came out with our bill last October, there was great joy and celebration in that the insurance industry was going to have to bare a $10 billion retention, but the Federal Government was going to pay 90 percent of anything above that.

It was my perception, in talking to people, listening to people, that people thought that could be made to work. Granted, there were people who wanted the Government to bear more of the risk. The point is, there was a perception that this was something that could be made to work.

Now we have a situation where the retention level has been reduced dramatically. If I were running an insurance company, I would want the retention level to be zero. If I were running an insurance company, I would want to sell the insurance, collect the premium, and I would want the Government to pay the claims. So I never expect people to do what is not in their interest. If you do that, you are going to be disappointed.

But what has literally happened here is that we wrote a bill in December for an emergency situation where it was going to go into effect in less than 3 weeks. There was no time for reinsurance pools to develop; 80 percent of the policies in the country were going to expire on January 1. So in order to try to accommodate that short timeframe, we agreed, or at least many were willing to agree—the body never agreed—to retention levels that were dramatically lower.

I know nobody knows what ''retention'' means. It means the Government pays sooner and more.

That may have made sense in January, but it does not make any sense at the end of June when insurance policies have been sold and premiums have been collected based on no Government backup. So the whole reason for the lower retention levels in December has now passed.

What happened was, quite frankly, the industry saw these lower retention levels in December and said: That is what we want; we do not want those higher retention levels we agreed to in October; we want the lower retention levels.

The problem is they only made sense in January. They do not make sense in June. My lament—and that is all it is at this point because it is clear from the last vote that we are going to pass this bill—is that we are going to put the taxpayer at a much greater risk than is justified.

It is amazing to me that in October, the very people who thought the retention level at $10 billion was too low now are supporting retention levels that are a small fraction of the $10 billion retention we had agreed to in October. This creates tremendous inequity for the taxpayer. It creates an unintended wealth transfer. I think it is a problem, and I believe it should be fixed.

The second problem is much greater, however, and that is we are reducing, not eliminating, the incentive of the industry to syndicate and to develop reinsurance, and in the process, I believe we are taking a step toward having Government permanently in the insurance industry.

I am not going to convince anyone else—I think I have convinced about 35 Members of that, and I think that is probably the high water mark. I am not going to try to offer an amendment. I am ready to let this bill pass. But I will say that I still believe we are making a mistake. I still believe we need to find something—we should go back to the October retentions, but at the least we need something between the two.

We will have an opportunity, if the House bill is brought up to amend it with this bill, to vote on punitive damages. The President has said he will not sign a bill unless we deal with punitive damages. We will have an opportunity at some point to address these issues again. But to continue to debate it today uses up Senate time.

We should get on with the Defense authorization bill. I have a markup in 5 minutes on another issue of equal importance. As a result, I do not intend to try to use up the Senate's time. The Senate spoke on the cloture motion, and I am ready to pass the bill and address these issues some other day as we proceed in the process that ultimately leads toward a bill.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, the Senator from Texas and I, despite our disagreement at this particular moment, are very good friends. We both serve on the Banking Committee, and there is, as he points out, a very important markup occurring.

So I might get an understanding of where we are, are there amendments that will be offered to this bill, or can we go to third reading?

Mr. GRAMM. I am ready to go to third reading on the bill. I do not think we are going to achieve anything by offering amendments. I cannot offer the amendment I would like to because it brings in the third year, and it would not be germane. At this point to offer an amendment would be to simply delay something rather than to seek a constructive change. The thing to do is to go to third reading and pass the bill. I would be willing to do it on a voice vote. Then we will take it from there.

Mr. DODD. Mr. President, I will take some time to respond to the comments of my colleague from Texas, and he raises not illegitimate concerns.

I say to my colleague from Texas, we have always known we were sailing in uncharted waters. We have never done anything like this. I would be the last one to stand before my colleagues and say with absolute certainty what we proposed is going to work as perfectly as we would like it to work.

My colleague from Texas raises some legitimate questions, questions I really cannot answer because we do not absolutely know what is likely to occur over the next 12 months or 24 months if the bill is extended. I am not at this moment going to challenge it, in fact, even on these assertions he has made. At some point, I will respond to it in a way that raises some concerns if we do not have retention caps, and it is a complicated matter for most Members to understand what happens in light of smaller companies that cannot necessarily withstand the kind of hits that could come with a major terrorist attack. There is an argument on the other side of retaining what we have in the bill.

I also make the point to my colleague, which I have made repeatedly, we are going to go to conference with the House. They have a different bill. These are matters, clearly, that need to be brought up and thought about more, and we need to bring in people who spend their lives working in this area who can share with us responses to these kinds of questions. Senators deal on a matter such as this for a few hours, and we do not really understand—at least I do not, despite the fact I represent a State with a large insurance industry. These are very complicated and arcane insurance matters.

The Presiding Officer was an insurance commissioner in his State. He knows the matter, but even he has to say these are complicated matters in light of what has happened.

I appreciate the spirit in which my friend from Texas has made the suggestion we get past this bill and go to conference, but he has my commitment, Mr. President, and my word that I do not consider this to be the final word; that we have work to do before we come back. My colleague has made the point, and I have made the point that I do not want to see this go on. I do not want the Federal Government to be in the insurance business. I want to make sure we get off this as fast as we can.

I, like him, am concerned that 2 years may be unrealistic, but I also understand the tolerance level of my colleagues. That number was chosen as much for political reasons about how much our institution would be willing to bear politically as it was over the realities of what the marketplace is like in trying to cost this kind of a product.

Getting to conference is helpful. We will work on these matters and hopefully bring back a bill that is even improved from what we have before us today.

With that, I am going to yield to the distinguished majority whip and the leadership to determine what they want to do. My colleague from New York is here as well and may want to make comments, and then we can figure out whether to have a recorded vote or take a voice vote on the bill.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I first ask a question of my friend from Texas without losing my right to the floor, and that is, the Senator from Texas would not in any way object to the appointment of conferees?

Mr. GRAMM. We are not ready, Mr. President, to name conferees. I have to sit down with our people who have been involved in this debate and talk about how we want to go about it. I would be willing to step aside today and let the bill be passed, but in terms of bringing up a House bill or substituting this bill for it or naming conferees, we are going to have to have some meetings.

Part of our problem this morning—and I understand in trying to run the railroad that you have to set a time schedule—we did not get an opportunity to meet this morning—we being Republicans—before we had this vote. It is just going to be essential that I have an opportunity to sit down with our people.

My suggestion is we go ahead and pass the bill, and then we will have an opportunity to go to the Defense authorization bill, and then we will have an opportunity to sit down and my colleagues on the other side of the aisle will have an opportunity to sit down and maybe something can be worked out.

Mr. REID. Mr. President, there are some amendments, technical in nature, that the Senator from Connecticut will take a little time to do. I hope during the next few minutes we can work out a unanimous consent agreement to have a vote on this bill sometime this afternoon, perhaps allowing the Senator from Connecticut to do the housekeeping chores he has and to make sure there are no other amendments people wish to offer.

AMENDMENT NO. 3844

Mr. REID. Mr. President, what is the pending business on this bill?

The PRESIDING OFFICER. The pending business is the Ensign second-degree amendment to the Brownback first-degree amendment.

Mr. REID. Mr. President, I make a point of order that the Brownback amendment No. 3843 is not germane.

The PRESIDING OFFICER. The point of order is sustained. The amendment falls.

Mr. REID. And with it falls the Ensign amendment?

The PRESIDING OFFICER. That is correct.

Mr. DODD. Mr. President, I yield whatever time my colleague from New York may consume.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. I thank the Chair.

Mr. President, I first thank the Senator from Texas for at least at this point—one never knows—seeing the handwriting on the wall. Sometimes that handwriting seems to become an invisible ink, but at least at this point we have seen that.

I wish to make a couple of points.

The Senator from Texas sees the bill one way, and I respect that, and that is the balance between private industry and Government. Obviously, he has built a whole career on minimizing the Federal Government role in every walk of life. It is a philosophy he espouses with a great deal of integrity, intelligence, and fervor, and he has been mighty successful at it, a little too successful over the last 20 years.

However, there is another way to look at this bill, and that is in our post 9–11 world. We are so uncertain of what will be happening next: will there be other terrorist incidents? How will they affect us? How many lives will be lost? What should we do to protect ourselves now that we are in a totally brave new world?

The bottom line is a simple one, I say to my colleagues, and that is, our No. 1 one goal should be keeping the economy on track during this brave new world. If that means altering the balance between Government involvement and private involvement, so be it.

I do not want to see the insurance industry make unnecessary or excessive profit; no question about it. Under the present situation, their profits are quite large, and how much of that is due to terrorism insurance and how much of that is due to just the natural ebb and flow with the investments they make going down, so their rates go up—the opposite happened in the late nineties—we do not know.

The bottom line for me is this: That under the present situation, billions of dollars of projects are not going forward, particularly in large economic concentrations, particularly in large cities, none suffering more than my own.

The bottom line is this: Further billions of dollars of refinancing is not occurring, all because the uncertainty means that for an insured to offer a policy at all, they err on the side of caution and charge such high rates that there is a huge crimp on economic policy.

If this happened because of some market phenomena, so be it; that is the market. This is happening because of an untold, if you will, geopolitical phenomenon: This new world of terrorism in which we live. Therefore, to look simply from the prism of how much Government involvement there ought to be, without looking at the larger effects on the economy that our problems since 9–11 have caused the insurance industry—and it has ricocheted to the economy as a whole. The fact is that the insurance industry was not clamoring for this bill at all. They were sort of happy to let the present situation continue for a while.

It was really the banking industry and, above all, the real estate industry which saw so many new projects go by the wayside that put pressure to make this bill happen. The insurance industry, wisely, is going along with this, but they were not the impetus post-January 1 when they learned that they could continue to be viable in terms of their responsibilities to their shareholders but perhaps not be viable in terms of the broader responsibility to keep our economy going and not give the terrorists a victory.

Therefore, yes, there is the age-old conflict between government and the private sector. But something transcends that. That is the fear, the uncertainty, that we all have. Those are the classic times when Federal Government involvement is more called for. In wartime, naturally, the Federal Government has more say over our economy. No one has ever fought that notion. We are in wartime, whether we have declared war or not. We all know it. Every time we hear a loud explosion, even a car backfiring, people turn around and ask, What is this? We are in a different world. That happens economically speaking, as well.

I say to my friend from Texas, this is not simply the question, Should it be the Government at 10 percent and private sector at 90 percent? Certainly under these circumstances, the less Government involvement, the better, does not apply because there are external ramifications that go far beyond the insurance industry itself. My friend from Texas said we knew World War II was over and that is why the Government would step in. They did not know a week after Pearl Harbor was bombed that World War II would be over in 1945—the Japanese were overrunning

the Pacific, and the Germans controlled the European continent. All they knew was, for this country to survive in a war setting, the Government would have to be fully involved.

I urge my colleagues to look at this on the merits, to not let a predisposition of an ideological notion blur the view of what we have to do. I hope we will move this bill quickly.

I thank my colleague from Texas, again, for understanding this bill should move forward, even if he vehemently disagrees with it. I thank all of my colleagues, including the Senator from Connecticut, who has worked long and hard, along with the chairman of our committee, Senator CORZINE, as well as my 17 Republican colleagues who made it clear they were going to put the prosperity of our economy above any ideological notion or notion of party.

We are finally beginning to see the light at the end of the tunnel. We have a way to go. The Senator from Texas is one of the most skilled parliamentarians around, and I guess he will have a few other tricks up his sleeve. For the moment, I hope the bipartisan coalition we put together which says if we do not do something and, frankly, if we do not increase the Federal role, not only will the insurance industry falter—it may not; it is doing well—but, more importantly, our economy will stumble. That is something we cannot afford. That will be a victory for the terrorists themselves.

I look forward to moving this bill, to come to a conference where we can solve this problem, not just looking at the balance between Government and the insurance industry but, rather, the broader effects on the whole wide economy, and get something on the President's desk to help those who lost their jobs in the construction industry, those in the projects that are not going forward, with all the uncertainty in the economy. Money is being sucked out because insurance rates are going through the roof. So many in my city and other cities need this bill quickly.

Yes, the Senate has spoken. I hope it will be allowed to speak by helping move legislation into law quickly. For our economic viability, we need it.

I yield the floor.

The PRESIDING OFFICER (Mr. NELSON of Florida). The Senator from Connecticut.

Mr. DODD. Before my colleague from New York leaves—and we are heading in the same direction to the Banking Committee to deal with accounting reform which is being marked up today—I express my gratitude to him and to Senator CORZINE, as well.

Obviously, the Senator from New York speaks about this issue of terrorism insurance with a voice that adds a bit more clarity, if I may say so, than other Members. I am from a neighboring State. We lost people in Connecticut, as were lost in the Pentagon and the airline that went down in Pennsylvania, but particularly for the people of New York and particularly the people of New York City, the events of September 11 have a poignancy that the rest of the country understands.

We deal with this issue of terrorism insurance, and there is a tendency to get lost in the trees, be arguing about whether the Government will be an insurance company and how this will work. Those are not insignificant questions. I know my colleagues believe those are important issues. Sometimes we lose sight of the fact that there is an economic slowdown occurring and people have a heightened sense of anxiety because of the events of September that we did not have before.

We may talk about the failure of the intelligence community and the like, that may or may not be true, but certainly what was true was a failure almost of imagination that something such as this could happen on our own shores. What we are trying to do with this bill, and why the Senator from New York was so critically important in helping to put this together, is to see if we can get back on our feet to offer our constituents a sense of confidence that, despite the events of September 11, we are coming back and trying to do that in so many different areas.

One critical area is the economy because, in addition to what this may cost—God forbid our country is attacked again—in terms of lives lost and hardship suffered, is the cost in terms of the price of premiums on insurance policies. Our Presiding Officer has raised legitimate concerns about that. We know that in the absence of this bill, the prices are apt to go much higher. In fact, I am confident they would.

One of the goals of this bill is to try to dampen down that demand for the increased price of these premiums so our consumers, the owners of these buildings, the people who rent, the people who work in these buildings, the people who rent to open up shops and the like, are going to have less of a cost than they might have otherwise.

We have tried to fashion this in a way that will make it possible to occur without just setting a premium cost that would be outrageous. And so I am grateful to the Senator from New York and others who have made at least getting the bill out of the Senate possible, and I second his concerns about whether or not we can actually finish this up and get a bill to the President that will allow us to complete this work.

As he has said, and I repeat, this is about a 1-year bill, maybe a 2-year bill. It is conceivable someone may argue we need a third year, 36 months, and I would not argue too strenuously against that for all the obvious reasons.

This is a very limited proposal to try to jump-start this critically important element in our economy. The longer we delay, the harder it is to do that. So my hope is the Senator from Texas and others would allow us to go forward, get a conference done, get a bill to the President, and see if we can't make a difference for this bottleneck that has occurred in our economy that makes it possible for the flow of commerce to occur as easily as it should as we try to get back on our feet as a nation.

So, again, I will respond more directly at another time to the concerns raised by the Senator from Texas about the retention rates and the fear I would have that, if we didn't have some individual company retention rate caps, what that could do to the ability of smaller companies to actually be in the marketplace. This could end up being just a bill that is good for four or five insurance companies, and there are many out there that are not big but would like to be in this market, need to be in this market that could not afford to be in this market without having some realistic caps on an individual company-wide basis. So there is a strong argument for that approach that should not be lost on our colleagues when that debate occurs.

When that does occur, we will make the case and hopefully finish this bill. Again, I thank my colleague from New York.

Mr. SCHUMER. If my colleague will briefly yield, again, I thank him, as I have before, for his leadership, for his steadfastness. This is not an easy issue. This is not one where you can go home and make a stem-winder of a speech. It is not a crowd pleaser, but it is necessary. His leadership on this has been top of the line, and I thank him for it and hopefully we can work together and get a law.

Mr. DODD. Mr. President, as I understand it, just to inform the Presiding Officer, there will be a vote on this bill sometime a little later today. I know there are some technical amendments that are being worked on right now to resolve those if we can. And then the leadership will set the time and the circumstances when that vote would occur. But my guess is it will be a little later in the day. In the meantime, I know there is some consideration about laying this bill aside temporarily and moving to another matter, possibly the Department of Defense authorization bill. But I leave it for the distinguished majority whip and the majority leader to make the announcements as to how we will proceed. But at this point I would assume that debate on this bill, at least for the present, is over and we will have a recorded vote on the underlying Senate bill sometime later this afternoon.

With that, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. CARNAHAN). Without objection, it is so ordered.