

York who was shot by police, only to recover a \$4 million verdict against the police department.

But those cases are just symptoms of the illness. The heart of the problem is that our civil justice system does not effectively weed out specious claims that lack merit.

Our judicial system has built in rules that are meant to do that, but they simply do not work well. The summary judgment mechanism is one and rule 11 of the Federal Rules of Civil Procedure is another. Unfortunately, if you ask most defense lawyers, they will tell you that summary judgments are rarely granted, and rule-11 sanctions are almost never imposed.

As a result, almost any case that is filed today stands a good chance of getting to the jury. And, Mr. President, given the unpredictable nature of juries, not to mention the staggering cost of defense, businesses and insurance companies simply make the decision to settle the case rather than play Russian roulette with the jury. Day after day in this country, insurance companies and businesses pay \$25,000, \$50,000, \$75,000, or more, to plaintiffs who have filed cases which lack merit, either factually or legally.

So who pays for all this? The American people do. Insurance companies simply pass the costs along in higher premiums and businesses pass the higher premiums along in higher product costs. We spend five times more of our economy on tort claims than our Japanese or German competitors. This makes our American products more expensive, and eventually it chases American products from the marketplace.

One example that I am personally familiar with is a device called the left ventricular assist device, essentially a type of artificial heart. The product is housed in a clear polyurethane cover. Without it, many patients would die as they waited for a transplant.

The device allows them to live for weeks and sometimes months as they await a donor heart. Unfortunately, because of the rash of recent lawsuits involving medical devices which contain polyurethane component parts, the polyurethane manufacturers are simply threatening to pull their product from the marketplace saying they cannot afford to produce the product anymore. That means it will not be used in a broad range of devices.

Mr. President, if that happens, who will the makers of this device turn to for that polyurethane housing? And if they are unable to find a supplier, the device simply cannot be made and, I can tell you, based on firsthand experience, that patients will die because they will not have that bridge to transplantation available. I have transplanted these patients before. Without it, they would not be alive today.

Mr. President, to those who say that litigation costs are not the cause of products vanishing from the marketplace, just ask Cessna Aircraft Corp.

They quit making small planes 9 years ago because of liability concerns. But thanks to last year's legal reform that limited an aircraft manufacturer's liability for planes over 18 years old, they announced on March 15 of this year that they would, once again, start making planes.

Mr. President, tort reform will make a difference. The real problem is that our juries are taking the place of our legislatures in determining which products offer enough utility that they should remain in the marketplace, despite their risk. We now trust juries to redesign airplane engines, to rewrite product warnings, to second-guess medical diagnoses, and even to place values on the price of a human life.

It is because of runaway jury verdicts that you no longer see many American manufacturers of football helmets, or diving boards at pools of motels, and you can no longer get a money-back guarantee if your pizza is not delivered within a specified time. And maybe—just maybe—those things are good. But the point is that they should not be decided by juries. They should be decided by people through their elected representatives, not by those juries in courtrooms where the rules of evidence are confining and, in so many instances, the real story is never told.

So who stands in the way of legal reform? Who will attack us over the next several weeks as this is introduced? Unfortunately, that great triumvirate of federalism—the plaintiffs' bar, the consumer groups led by Ralph Nader, and President Clinton. In a recent article in the Washington Times, Judge Robert Bork pointed out the fallacy of this newfound federalism argument that has been floated by the plaintiffs' lawyers. Our Framers valued local decisionmaking, and they wanted to avoid a centralized government that would control every aspect of our lives, but they also recognized that Federal regulation can be important.

One important factor that the Framers considered in drafting the Constitution was the need to have centralized control over commerce and trade. Alexander Hamilton, in Federalist No. 11, wrote about his concern that diverse and conflicting State regulations would be an impediment to American merchants. But today, we have a similar threat: Our unrestrained and unpredictable civil justice system.

Today, placing an article manufactured in Tennessee into the stream of commerce will be enough to subject a Tennessee merchant to suits in all 50 States. Aside from the obvious inconvenience, the laws of each of these States may, and in all likelihood will, be different from those laws in Tennessee—laws with which the merchant is familiar and which he may have used as a guideline in manufacturing and selling his product.

If we are going to allow the merchant to be hauled into court in any of the 50 jurisdictions in which this product may eventually be purchased, should we not

try to provide some predictability, some centralized manner over the methods by which the dispute will be resolved? Should we not bring some predictability and some common sense to the issue? I think we should, and I think the federalism argument, in this case, is, at best, a red herring.

I fully anticipate that the President of the United States will oppose our legal reform efforts at every turn. But it will not be because he believes the effort is wrong or because he has suddenly found the 10th amendment. Instead, it will likely be because of his cozy relationship with the plaintiffs' trial bar. The American Trial Lawyers Association said in 1992 in a fundraising letter that President Clinton would, and I quote, "never fail to do the right thing where we trial lawyers are concerned." And so far, they have been right, but it is time to change that.

The real victims of our failing justice system are the would-be plaintiffs, the victims themselves. The legislation which has been passed in the House and which will soon be discussed in this body will not prevent a plaintiff with a meritorious claim from suing and recovering. In fact, it will improve his or her chances. The courts will be clogged with fewer spurious lawsuits, and cases that now lag for 2, 3, or 4 years will move more quickly. Plaintiffs' lawyers will no longer be able to disregard reasonable settlement proposals and let cases sit for years. They will be required to evaluate the case in a timely manner and act in a manner that is in the best interest of their client. They will be less likely to simply roll the dice, hoping for the big hit.

The family which has suffered and which has medical expenses and lost wages and which really needs help is at the mercy of plaintiffs' lawyers who have plenty of cases and can afford to gamble. If they lose and they take nothing, they move on to the next case. But their clients have only 1 day in court.

Mr. President, legal reform will not hurt anyone, except perhaps the plaintiffs' trial lawyers, but they have had their way for too long. Simply put, it is time that we stop letting the tail wag the dog.

I look forward to these legal reform hearings, and I truly hope that we will enact meaningful reforms which will make our civil justice system more responsible, more accessible, more predictable and, most importantly, more equitable.

Thank you, Mr. President. I yield the floor.

REGISTRATION OF MASS MAILINGS

The filing date for 1995 first quarter mass mailings is April 25, 1995. If your office did no mass mailings during this period, please submit a form that states "none."

Mass mailing registrations, or negative reports, should be submitted to the Senate Office of Public Records, 232 Hart Building, Washington, DC 20510-7116.

The Public Records Office will be open from 8 a.m. to 6 p.m. on the filing date to accept these filings. For further information, please contact the Public Records Office on (202) 224-0322.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. DEWINE). Morning business is closed.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 1158, which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 1158) making emergency supplemental appropriations for additional disaster assistance and making rescissions for the fiscal year ending September 30, 1995, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Hatfield amendment No. 420, in the nature of a substitute.

D'Amato amendment No. 427 (to amendment No. 420) to require congressional approval of aggregate annual assistance to any foreign entity using the exchange stabilization fund established under section 5302 of title 31, United States Code, in an amount that exceeds \$5 billion.

The PRESIDING OFFICER. Under the previous order, the D'Amato amendment is temporarily laid aside in order to consider an amendment to be offered by the minority leader.

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

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

AMENDMENT NO. 445

(Purpose: To propose a substitute)

Mr. DASCHLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE], for himself, Mr. KENNEDY, Mr. DORGAN, Mr. HARKIN, Mr. CAMPBELL, and Mr. KOHL, proposes an amendment numbered 445.

Mr. DASCHLE. Mr. President, I ask unanimous consent that further reading be dispensed with.

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

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. DASCHLE. Mr. President, we have had a good debate now for the last couple of days on the issue of rescissions and the need to provide supplemental funding for the Federal Emergency Management Administration, FEMA.

What we have not had a good debate about, however, is about priorities, and about values, what it is we ought to do with the resources, as limited as they are, that we have available.

It is our view we ought to have a debate of that kind, and we ought to consider where it is we want to put resources, how it is we want to direct those resources to affect the greatest number of people and do the most good.

That is what this amendment intends to do. This amendment recognizes that there really is a twofold purpose in what it is we are trying to do with this bill.

We are obviously trying to ensure that FEMA has the adequate resources necessary to continue the extraordinary job that they do in providing emergency assistance to communities all over the country. But we are also very sensitive to the need to continue to move ahead with meaningful deficit reduction.

This session of Congress has been devoted in large measure to procedural questions about how it is we bring down the debt. I am very disappointed by the fact that, frankly, our best procedural effort to do that in a meaningful way, a budget resolution, which is required from the Budget Committee tomorrow, will not occur at the time required by law.

While we talked about procedure, the majority has been unwilling so far to use the procedure we already have to do exactly what we say we need to do.

Therefore, Mr. President, I am disappointed that we have failed to produce the budget resolution necessary to accomplish what we say we really need here.

Mr. President, the issue of priorities, as we consider deficit reduction, brings Members to the floor on many occasions. Again, it does this morning. We recognize while we need to reduce the deficit, we also recognize that the long-term deficit is going to be determined in part by the needs of Americans who may depend upon the Federal Government, and by the ability they have to go out and become meaningful, productive, taxpaying citizens.

The only way we can ensure working families have the capacity to be productive, taxpaying citizens, is that we invest in their future with what limited resources we have.

The amendment that I am proposing this morning—and supported, I would say, by the overwhelming majority if not all of our colleagues on the Democratic side—is an amendment that simply says "Whatever else we do to reduce the deficit, the one thing we ought to do is to be cognizant of how important it is that we protect our children and the investment that we need to make in children."

This amendment would simply allow Members to tell 1 million children across the country that it is our intention to help them, that it is our commitment to them and to deficit reduction, both, that we hope to articulate in this amendment.

Our legislation would provide protection for 5,000 children when it comes to child care. We want to tell working families that we want them to go out there and do the best they can to generate the income that their talents will allow, and we will try to assist where it can be provided with the child care needs they have, in order to be a productive and an involved working citizen.

Child care is the first installment of a multiple array of tools that can help working families do their job better. The same in Head Start. We want to protect 9,000 children in the Head Start Program who otherwise will be cut off, who otherwise will not have the opportunity to begin their early childhood development in a meaningful way, and to ensure that when the time comes they can become good students, good working people and good family members. That is what Head Start does. And we are hoping to protect the 9,000 people who otherwise will be cut out, without the advantages of this amendment.

We are also telling those young adults, those young Americans who want very much to be able to go to college and at the same time help their country, that we remember them as we change our deficit priorities. We want to tell 36,000 young people that it is important to go out through national service and develop the capacity they need, to go to college, to learn skills, to do the things necessary to become important and taxpaying citizens in this country.

No one denies the incredible impact that the Women, Infants, and Children Program has. We will tell 70,000 mothers and children that we will help them as well, not by increasing the deficit.

I emphasize here that this amendment is completely paid for by shifting priorities to allow Congress to reduce the deficit but protect women, infants, and children in the program that has demonstrated a remarkable capacity to assist young families as they begin to meet the challenges of life.

We also recognize that school is critical. If we are going to invest properly in families, in working families, we have to ensure that our investment in education is adequately provided.

Aid to schools, impact aid, is of critical importance. And under the pending bill, \$16 million overall will be lost. In my State of South Dakota, over one-half million dollars would be lost. The impact that will have on schools that rely upon this funding, as I indicated