harm to the claimant was caused by the fault of the employer of the claimant or any coemployee of the claimant, the issue of that fault shall be submitted to the trier of fact, but only after the manufacturer or product seller has provided timely written notice to the insurer.

(B) RIGHTS OF INSURER.—

(i) IN GENERAL.—Notwithstanding any other provision of law, with respect to an issue of fault submitted to a trier of fact pursuant to subparagraph (A), an insurer shall, in the same manner as any party in the action (even if the insurer is not a named party in the action), have the right to—

(I) appear;

(II) be represented;

(III) introduce evidence;

(IV) cross-examine adverse witnesses; and

(V) present arguments to the trier of fact.

(ii) LAST ISSUE.—The issue of harm resulting from an action of an employer or coemployee shall be the last issue that is submitted to the trier of fact.

(C) REDUCTION OF DAMAGES.—If the trier of fact finds by clear and convincing evidence that the harm to the claimant that is the subject of the product liability action was caused by the fault of the employer or a coemployee of the claimant—

(i) the court shall reduce by the amount of the claimant's benefits—

(I) the damages awarded against the manufacturer or product seller; and

(II) any corresponding insurer's subrogation lien; and

(ii) the manufacturer or product seller shall have no further right by way of contribution or otherwise against the employer.

(D) CERTAIN RIGHTS OF SUBROGATION NOT AFFECTED.—Notwithstanding a finding by the trier of fact described in subparagraph (C), the insurer shall not lose any right of subrogation related to any—

(i) intentional tort committed against the claimant by a coemployee; or

(ii) act committed by a coemployee outside the scope of normal work practices.

(b) ATTORNEY'S FEES.—If, in a product liability action that is subject to this section, the court finds that harm to a claimant was not caused by the fault of the employer or a coemployee of the claimant, the manufacturer or product seller shall reimburse the insurer for reasonable attorney's fees and court costs incurred by the insurer in the action, as determined by the court.

TITLE II—BIOMATERIALS ACCESS ASSURANCE

TITLE III—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE

SEC. 301. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction pursuant to this Act based on section 1331 or 1337 of title 28, United States Code.

SEC. 302. EFFECTIVE DATE.

This Act shall apply with respect to any action commenced on or after the date of enactment of this Act without regard to whether the harm that is the subject of the action or the conduct that caused the harm occurred before that date of enactment.

ADDITIONAL STATEMENTS

THE NOMINATION OF PETER SCHER TO BE SPECIAL TRADE AMBASSADOR FOR AGRICULTURE

• Mr. FEINGOLD. Mr. President, I want to make a few brief comments regarding the nomination of Mr. Peter Scher to be the Special Trade Ambassador for Agriculture which the Senate approved yesterday. I am pleased to report that the Senate Foreign Relations Committee, on which I serve, considered the nomination of Mr. Scher and favorably reported his nomination last month.

I met with Mr. Scher following his confirmation hearing before the Senate Foreign Relations Committee to discuss with him the problems Wisconsin's agricultural sector has had with our existing trade agreements such as the Uruguay Round of GATT and the North American Free Trade Agreement. I urged Mr. Scher, in his new position, to work diligently to ensure that our trading partners are complying with their agricultural trade obligations established by these agreements.

Specifically, I asked Mr. Scher and the USTR to accept a Section 301 petition filed by the dairy industry asking USTR to challenge the Canadian export pricing scheme before the World Trade Organization. Canada's dairy export subsidies violate the export subsidy reduction commitments under the Uruguay Round. These subsidies disadvantage the U.S. dairy industry in its efforts to compete in world markets. I also pointed out that Canada also has effectively prohibited our dairy industry from exporting products to lucrative Canadian markets. Not only must USTR aggressively pursue WTO dispute settlement proceedings against Canadian export subsidies, but it must also seek greater access for U.S. dairy products to Canadian markets, among others, in any upcoming trade negotiations.

I am pleased that late last month U.S. Trade Representative Barshefsky agreed to pursue formal WTO dispute resolution proceedings challenging the Canadian dairy export subsidy scheme as well as European Union violations of the dairy provisions of the Uruguay Round. I appreciate the cooperation of Mr. Scher and Ambassador Barshefsky on this important matter.

I also raised with Mr. Scher the problems the U.S. potato industry has had with respect to access to both Canadian and Mexican markets. I urged him to pursue negotiations with the Canadians to allow greater access of U.S. potatoes to their domestic markets and to aggressively seek accelerated reduction in Mexican tariffs for U.S. potatoes, a commitment made to potato growers when NAFTA was approved. Mr. Scher assured me that potatoes would be among the commodities to be considered in upcoming negotiations with Mexico.

I believe Mr. Scher has a fundamental understanding of both the importance of trade to agriculture generally and of the complex trade problems the U.S dairy industry faces regarding compliance with existing trade agreements. For that reason, I have supported the approval of his nomination. But I expect USTR, with Mr. Scher acting as Ambassador, to aggressively pursue the resolution of the critical issues facing our domestic dairy and potato sectors. I will continue to work with USTR to resolve these issues and will hold Mr. Scher to his commitment that USTR will use all existing tools to ensure compliance with existing trade agreements and to pursue greater access for agriculture to international markets.

I continue to have serious reservations about U.S. efforts to begin new trade negotiations until the problems with our current bilateral and multilateral agreements are successfully resolved. Wisconsin is home to 24,000 dairy farmers, 140 cheese processing plants and many other businesses associated with milk production and processing. Dairy contributes some $4 billion in income to Wisconsin's economy and provides 130,000 jobs. Wisconsin is also the fifth largest potato producing state with a large chip and french fry processing sector. Overall, Wisconsin ranks tenth in the nation in farm numbers and ninth nationally with respect to market value of agricultural products sold.

Wisconsin's farmers and food processing industry could greatly benefit by gaining a greater share of international markets. However, for that to happen, our trade agreements must not only be fair, they must be enforceable. To date, our trade agreements have not only failed to provide significant benefits for many agricultural sectors, including dairy, they have placed some sectors at a distinct disadvantage. I will look at all future trade agreement proposals with an eye to these issues and make decisions on those proposals based, in part, on how they treat Wisconsin farmers.•

TRIBUTE TO LEE H. CLARK

• Mr. ABRAHAM. Mr. President, I rise today to pay homage to a man of great character, commitment, and integrity.

Lee H. Clark has dedicated his life to public service. Beginning at the tender age of eighteen, Lee entered the United States Navy in 1943 where he served honorably for three years. After his commitment to the Navy, Lee entered college where he threw himself into academics, gaining a Master's degree in business from the University of Michigan. Following his education, Lee returned home and started his own business. Soon after, with his company flourishing, Lee's interest in the political process was sparked after serving as a precinct delegate in 1956. Lee entered into the political realm with the same determination and vigor that he displayed throughout his entire life and four years later ran for Congress. Although his bid for office was unsuccessful, Lee's desire for public service was unabated and he began a long, meritorious career in service to the State of Michigan.

Michigan has been greatly affected by Lee's energetic guidance and leadership. In the intervening years between 1956 and the present, Lee has been a driving force for the Republican Party. From community elections to those elections national in scope, Lee always offered great wisdom and foresight. Throughout his life, Lee has shown tremendous concern for his fellow citizens and was always a willing volunteer for any task. I am proud to have had the chance to work beside him.

Mr. President, I am extremely honored to have this opportunity to thank him for his many years of service and friendship. He is a very dear friend and my thoughts and prayers go out to him, his wife Nancy, and the rest of his family.●

TRIBUTE TO WESTERN COVENTRY SCHOOL, 1997 U.S. DEPARTMENT OF EDUCATION BLUE RIBBON SCHOOL

● Mr. REED. Mr. President, I rise today to recognize the achievement of Western Coventry School of Coventry, Rhode Island, which was honored earlier this year as a U.S. Department of Education Blue Ribbon School.

It is a highly regarded distinction to be named a Blue Ribbon School. Through an intensive selection process beginning at the state level and continuing through a federal Review Panel of 100 top educators, many of the very best public and private schools in the nation are identified as deserving of this honor. These schools are particularly effective in meeting local, state, and national goals. However, this honor signifies not just who is best, but what works in educating today's children.

Now, more than ever, it is important that we make every effort to reach out to students, that we truly engage and challenge them, and that we make their education come alive. At the Western Coventry School, a kindergarten through sixth grade school, parent-teacher cooperation, through an award winning Parent Teacher Association (PTA), has helped to improve the quality of education. The school has instituted a mentoring program for at-risk youth and has made concerted efforts to ensure that students with special needs receive the assistance they require. In addition, teachers have taken an aggressive role in developing new approaches to teaching reading and math.

Mr. President, Western Coventry School is dedicated to the highest standards. It is a school committed to a process of continuous improvement with a focus on high student achievement. Most importantly, Western Coventry recognizes the value of the larger community and seeks its support and involvement. This school and community are making a huge difference in the lives of its students.

Mr. President, the Blue Ribbon School initiative shows us the very best we can do for students and the techniques that can be replicated in every school to help all students succeed. I am proud to say that in Rhode Island we can look to a school like the Western Coventry School. Under the leadership of its principal, Barry Ricci, its capable faculty, and its involved parents, Western Coventry School will continue to be a shining example for years to come.●

HOW NOT TO BUILD CONFIDENCE IN GOVERNMENT STATISTICS

● Mr. MOYNIHAN. Mr. President, on October 16, following the release of monthly price data by the Bureau of Labor Statistics [BLS], the Social Security Administration announced a 2.1-percent cost of living adjustment [COLA] for Social Security and other Government programs. Yet a week earlier, the Social Security Administration circulated a table which indicated that the benefit increase would be 2.7 percent.

How could this happen? Simple. The Administration, as I have noted on numerous occasions, insisted on using an outdated economic forecast so as to obscure the fact that the budget was approaching balance in fiscal year 1997 in the absence of a budget agreement. While that budget legislation was pending in Congress last summer, it was feared that if the economic outlook was too favorable, pressure for the budget bills would decrease and agreement would not be reached. And so the Social Security Actuaries had no recourse other than to use the official forecast when presenting data on the actuarial status of the trust funds.

Here is why the numbers were, to put it mildly, misleading. The Administration notes that its midsession budget review—released almost 2 months late on September 5—is based on economic projections finalized in early June. But even by then it should have been clear what was happening to prices. By early June 1997, data for 8 months of the benefit computation period, August 1996–April 1997, indicated that, on an annual basis, CPI–W had increased by 2.4 percent. To increase by 2.7 percent for the full year would require, on an annual basis, a 3.2-percent increase in CPI–W for the remaining 4 months, April 1997–August 1997, of the computation period. Put another way the Administration was predicting a one-third increase in the inflation rate. Yet, on an annual basis, CPI–W increased by only 1.5 percent during these 4 months. That is, the inflation rate actually declined by almost 40 percent.

In short, by the spring it should have been clear that the benefit increase would be less than 2.7 percent. And by late summer it was virtually certain that the increase would be 2.0 to 2.2 percent, but nowhere near 2.7 percent.

What does this mean to the average beneficiary now receiving a monthly benefit of $749? Instead of a $20 monthly benefit increase—2.7 percent of $749—the benefit increase will be about $16. Fortunately, few if any Members of Congress rushed out in early October and announced to constituents, based on the Administration's estimates, that they would receive an expected 2.7-percent benefit increase.

The Advisory Commission to Study the Consumer Price Index—the Boskin Commission—concluded that the Consumer Price Index [CPI] overstates changes in the cost of living by about 1.1 percentage points. And many other researchers concur with the findings of the Boskin Commission. The American Association of Retired Persons [AARP], and others, have argued that the only way to keep politics out of the process is to let the BLS do it. Such critics should be mindful that accurate statistics include timely and accurate projections. By late September or early October of each year Social Security beneficiaries should be able to rely on their Government to provide reliable projections of upcoming benefit increases.

Mr. President, I ask that a table prepared by the Social Security Administration, Office of the Actuary, on October 7, 1997, be printed in the RECORD.

The table follows:

TABLE 1.—ECONOMIC ASSUMPTIONS UNDERLYING THE MID-SESSION REVIEW OF THE PRESIDENT'S FISCAL YEAR 1998 BUDGET

[In percent]

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Change in real GDP	2.4	3.5	2.0	2.0	2.1	2.4	2.4	2.4	2.4	2.4	2.4	2.4
Civilian unemployment rate	5.4	5.0	5.2	5.4	5.5	5.5	5.5	5.5	5.5	5.5	5.5	5.5
Change in average annual CPI	2.9	2.7	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
Change in average covered wage	4.3	4.6	3.2	3.8	3.9	3.7	3.6	3.8	3.8	3.8	3.9	3.9
Real wage differential	1.4	2.0	0.7	1.2	1.4	1.2	1.1	1.3	1.3	1.3	1.4	1.4
Benefit increase	2.9	2.7	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
Average annual interest rate	6.6	6.7	6.1	5.7	5.6	5.4	5.4	5.4	5.4	5.4	5.4	5.4

Note: Social Security Administration, Office of the Chief Actuary, October 7, 1997.●