

But let me just give you one—this is a chance now to kind of start laying the groundwork for future questions. The great desire for people in Congress is for me to negotiate with myself. You notice I said the great desire for Members of Congress, not members of the press. And therefore, I will continue to articulate principles that I think are important and reach out to members of both parties to fashion a plan that solves the problem.

**Prime Minister Berlusconi.** The problem of Social Security is common to all of the Western world. And this is, luckily, due to the fact that we live longer because of the better standard of living and because of the discoveries made by medicine. In Europe, all governments are dealing with reforming Social Security systems, but one thing is for sure, that it needs to be done. That is, we have to extend the working life of the people.

I'm one of the strongest believers in that, because at my age, I'm convinced that one—at my age, you can keep on working pretty well. [Laughter] And you can tap on the experience you've kind of piled up over your working life.

**President Bush.** You look like a baby boomer. [Laughter]

**Prime Minister Berlusconi.** I thank you very much. It's medicine as well. Also credit medicine. [Laughter]

**President Bush.** Final question. Do you want to call on somebody?

**Prime Minister Berlusconi.** I want to say something. We have already reformed our Social Security system in Italy. And this is one of the 24 reforms through which we are modernizing our country. And I've just said to President Bush that at the end of its term, my Government will have completed many more reforms than all of the previous governments in the Italian Republic.

**President Bush.** Very good.

A final question from the Italian press?

#### **Proposed Joint Italian-U.S. Helicopter Production**

**Q.** Did you debate the possibility that the President of the United States will soon fly on Italian helicopters? [Laughter]

**President Bush.** No, I appreciate that—

**Prime Minister Berlusconi.** The Italian helicopters almost completely made, manufactured, in the United States.

**President Bush.** With U.S. parts. I've got the message, yes. [Laughter]

**Prime Minister Berlusconi.** I can only say that I've been flying these helicopters for 30 years, and I'm still here.

**President Bush.** And you never crashed. [Laughter] That's a good start. [Laughter]

The Prime Minister brought up the issue. I'm very familiar with it. As you know, we delayed a decision until later on in the spring. I'm very aware of the joint venture. I understand the nature of U.S. jobs that will be created in this venture, and I assured him the venture will be treated fairly.

Thank you for coming. Happy holidays. Happy holidays.

NOTE: The President spoke at 11:57 a.m. in the Oval Office at the White House. A reporter referred to Defense Minister Hazim Qutran al-Khuzai al-Shalan of the Iraqi Interim Government; and senior Al Qaida associate Abu Musab Al Zaraqawi. Prime Minister Berlusconi spoke in Italian, and his remarks were translated by an interpreter.

#### **Remarks in a Panel Discussion on the High Cost of Lawsuit Abuse at the White House Conference on the Economy**

*December 15, 2004*

**The President.** Listen, thank you all for coming. I've just come off a campaign—[laughter]—and spent a great deal of time talking with the American people about how to make sure America is the best place in the world to do business. And there was a lot of discussion in the course of the last couple of months about what's the best philosophy to make sure that jobs are created here, that the entrepreneurial environment is strong, that small businesses can flourish but, most importantly, that people find jobs close to home.

And one of the things that I talked about was making sure that the environment for risking capital was conducive for job creation. And I tried to say that as plainly as I could. And one issue that I talked about, to make

sure that costs were reasonable and that the cost of capital was reasonable, was legal reform, that the cost of frivolous lawsuits, in some cases, make it prohibitively expensive for a small business to stay in business or for a doctor to practice medicine, in which case, it means the health care costs of a job provider or job creator has escalated or is escalating.

I talked about the competitive advantage that we must have in America if we expect jobs to stay here. The cost of lawsuits, relative to countries that we compete against, are high. In other words, the cost of litigation in America makes it more difficult for us to compete with nations in Europe, for example.

And so I want to thank our panelists for coming today to help add some expertise to this notion that if we can achieve legal reform in America, it'll make it a better place for people to either start a business and/or find work.

Now, there's much more to a comprehensive economic expansion program than just legal reform, but a cornerstone of any good program is legal reform. And there's a practical aspect to our discussions today, because I want the people who get to decide whether we're having legal reform to hear from experts, and that would be Members of the House and Senate from both sides of the aisle. I am here to not only thank our panelists but to make it clear as I possibly can that I intend to take a legislative package to Congress which says we expect the House and the Senate to pass meaningful liability reform on asbestos, on class action, and medical liability.

I want to thank my good friend Don Evans, who has served so well as the Secretary of Commerce. As you know, he has made the decision to go back to the State of Texas. I'm glad my departure was delayed by 4 years. *[Laughter]*

**Secretary Evans.** So am I. *[Laughter]*

**The President.** But I do want to thank him for serving so admirably, and I want to thank you for hosting this event.

**Secretary Evans.** Mr. President, thank you so much. We have a very distinguished panel but a far-reaching panel. As you know, the issue of lawsuit abuse has many, many

facets to it. And so I'm delighted that we have been able to assemble a number of people that look at it from an economist perspective, an academia perspective, a small-business perspective, a health care perspective, because there's many, many issues that relate to lawsuit abuse in this country.

I want to thank you, Mr. President, for your leadership on this particular matter, your attention you've given to it. And I'm one of the—only one of those out there has—that have seen your focus on it for over 10 years. I remember full well in 1993, when you were running for Governor of the State of Texas, it was one of the very top issues on your agenda. And after becoming Governor, you led and you made a difference in that State. And because of the difference you've made in tort reform in the State of Texas, the State of Texas economy is a stronger economy than it otherwise would have been. And you're bringing that same leadership here to Washington, DC, and the Federal Government, because certainly there's things we can do in Federal Government that will create a better environment for entrepreneurs and small-business owners to create jobs and grow our economy, and it had to do with legal reform and lawsuit reform.

Mr. President, you mentioned that I have served here for some 4 years as Secretary of Commerce, and one of the things I must say: One, it was an honor to serve the American people, and it certainly has been under your leadership. But as I've traveled across America, the one thing that I hear time and time again among manufacturers as well as service companies is the burdens of lawsuits, the burdens of junk and frivolous lawsuits and how they continue to weaken our economy and make it harder for us to compete domestically and internationally and not easier for us to compete domestically and internationally.

And that's the one question we ought to always ask ourselves when we make decisions in this town. Does this make it harder for us to compete and create jobs in America domestically, or does it make it easier for us to compete? So everything we do should say it makes it easier to compete and create jobs. And what lawsuit abuse has done is it not

only threatens our competitiveness and innovation in the world, but it also—it harms our health care system; it raises the cost of health care in this country; it stifles innovation, et cetera.

Last year, our Department went around the country, and we held roundtable discussions—some small- and medium-sized manufacturers all across America. And we heard this same message, with an incredible amount of passion and energy, not just from the manufacturers but also service companies as well, and that is how important it is to deal with lawsuit reform and deal with it now, because it's going to impact the creation of jobs in this country for generations to come. It's not only about today's economy, but it's the economy for your children and your grandchildren. And it's time to deal with it now.

Mr. President, you referred to some of the cost of tort reform or tort costs in this country. It represents over 2 percent of our gross domestic product, over \$250 billion in tort costs into our economy. That is a lot more than most of our—it in fact, it is more, as a percentage, as well as absolute terms, of those that we compete with around the world. The manufacturing sector bears a disproportionate share of that, about 4½ percent. And so when you think of the tort cost in manufacturing products in this country, then compare it with wages and salaries in the manufacturing sector—17½ percent of the cost of labor and wages goes—is part of the cost, where only—where 4½ percent is tort claims. So you can see how tort costs are a very significant price, a cost in everything that we purchase in this country.

I was in Missouri this last year, and I had a chance to really see up close and personal how it was impacting the health care industry. I talked to a David Carpenter, who is the CEO of North Kansas City Hospital, and what he told me was that there had been 30 doctors that had moved from Missouri to Kansas because Kansas had, indeed, passed tort reform and had put some caps in place. So you see it happening all across America, where doctors are moving around and trying to find a more friendly environment.

Lawsuit abuse is just simply piling up cost on the backs of not just companies but the

American people. I like to call it a tort tax. If you take the total cost of tort claims and judgments in our country and divide it by the number of people in the country, it's a tort tax of about \$809 per capita. So in everything that we purchase, everything that we buy, in there someplace is a tort tax or a tort cost. And so it's going to continue to drive up the cost of automobiles, groceries that we purchase, work boots that we purchase, whatever it is we purchase. It's going to continue to drive up those costs if we don't do something about it, and it's also going to continue to stifle innovation and the entrepreneurial spirit.

And what we ought to be doing is figuring out ways to lower risk and increase rewards, and that's exactly the opposite of what a junk and frivolous lawsuit does in a society. What they do is they increase risk and lower results so—and lower rewards.

So for us to continue to be the most competitive economy in the world, the most innovative economy in the world, this is an issue that we must deal with and we must deal with it now.

Again, I'm delighted to have this outstanding panel here to discuss this subject, important subject and issue, and I would like to begin by calling on Professor George Priest, who is the professor of Yale University, holds a John M. Olin Professor of Law chair there. George will take us through some of the modern expansion of tort liability in America and discuss some of the reform possibilities that we ought to be considering.

Professor.

**George Priest.** Thank you, Mr. Secretary. Let me give you a little history about the expansion of liability. This problem of lawsuit abuse and the problem of excessive litigation is really pretty much a modern problem. Prior to the 1960s, tort law was really a backwater. It was dominated by principles of corrective justice; litigation was minuscule. But ideas began to change, and there came to be a conception that developed that tort law could be turned into an instrument of public policy according to which tort judgments, damage judgments, could be used to internalize costs, the harms the people had suffered, to persons and to the companies that had caused them.

And so the idea was, by internalizing these costs, there would be incentives created to make products safer, to make other services safer, and also to provide a form of insurance for individuals that had suffered some type of harm.

The other advantage, or the thought that there was an advantage, was that this could be done universally. That is, safety regulation, direct safety regulation by agencies, applies only in a very few number of industries. Using tort law as a regulatory mechanism, on the other hand, could be applied to all activities in a society, and so it could become universal. And based upon this conception, courts began to expand liability. They began first in the products liability field but then it expanded to other areas more generally.

Now, I believe that this conception, this idea of internalizing costs, has had some beneficial features, has had some beneficial effects. That is, I think that it did enhance safety and reduce harm over some range. But the problem that has arisen—and it really is a problem that arose several decades ago—is that there are limits to the extent to which tort law and litigation can be effective in increasing safety and reducing harms. But the problem is that this conception of internalizing costs doesn't recognize those limits, and so even though those limits have been exceeded, courts have continued to expand liability in area after area. And when liability is expanded beyond the point where it can really effectively encourage greater safety, where—beyond the point where these harms can practicably be reduced, there are two forms of harmful societal effects that result.

The first is—and it's the one you were talking about, Mr. Secretary—that the cost of litigation has to be passed on in the prices of products and services. Exactly as you say, it's a tax. And it's a tax that every citizen has and every consumer has to pay on every product and service that they buy. Just to give an example—and you mentioned this too—in today's litigation environment, auto manufacturers are basically absolutely liable any time there's a serious accident. They will always be sued, and they will always have to settle the case in some way. And what does that mean? That means that auto prices have to increase. That litigation has no effect on

safety. It has no effect on the redesign of automobiles. We have an Agency, NHTSA, that is charged with monitoring auto safety. The litigation has no effect whatsoever. It simply adds to the costs. And adding to the costs hurts most severely the low-income in the society, because they're the least able to pay these costs and they're the ones that get the least return. Even if they do litigate, the damages they receive are lower than those of other citizens.

Now, in other industries, however, the results are even worse. That is, in some industries, liability has extended—has been extended to such an extent that the affected parties begin to make investments that are unproductive, that are not necessary, in order to try and shield themselves from liability. The medical industry is a good example. Defensive medicine is, in essence, counterproductive, and it's an investment that's made to try and ward off litigation for no useful purpose.

And the consequences of this whole—of the regime that we've created here is a legal system in which litigation is available with respect to every activity of the society. And worse, I think—and Phil Howard will talk about this too—we have been developing a culture in this society, in this country in which it's believed that any conceivable social problem can be solved by litigation. And so we have litigation trying to deal with every conceivable social issue.

Now, what can be done about it? Well, I think the most fundamental reforms have to come from the courts. It's the courts that created this problem, and it has to come from the courts in redefining liability rules. But what that means is it's extremely important to appoint or elect judges who are committed to tort reform. Now, what can—but there are other things that could be done, and there are some things that could be done at the congressional level, and I think the three reforms that the President mentioned are important reforms.

We need class action reform. The rules that were developed—and they were developed in the 1960s—with the thought of controlling class actions are quaint today, and there are many courtrooms in which there are no controls on class actions whatsoever.

Now, the “Class Action Fairness Act” takes a step. What it does is push these class actions into the Federal courts where there is going to be some more control. With all respect, it’s not a solution. It’s going to help. It’s a step that I think is a small step, but it’s important. It’s an important step.

I think Federal reform in particular industries, such as in the medical industry, a reform of medical malpractice, is important too, and it’s a promising reform because all of us need doctors and all of us know that we have to control health costs. And all of us know too and can see easily what the harmful effects of expanding liability against needed medical services is. So medical malpractice reform is important as well.

Third—and you mentioned this, Mr. President, and I agree entirely—Congress can attempt to do something about asbestos litigation. Asbestos litigation is an extraordinary phenomenon. I’ve been studying it the last couple of years. It’s just extraordinary. Everybody knows that there are hundreds of thousands of cases that have been filed and that there are millions more that are going to be filed. But I think few know exactly what kinds of cases these are. And let me just give you one example, and it’s illustrative of what this problem is.

A short time ago in California, a man recovered 4.5 million against an asbestos—a company that had used asbestos. And the only exposure this man could document, the only time he had ever been exposed to asbestos, was one day when he was the child when his mother and grandfather took him to their church, whose ceiling was being remodeled. That was the entire exposure. One day of asbestos, and he recovers 4.5 million. This asbestos litigation is a vast system of redistribution within the society. And indeed, by the standards of that case, every American is a victim of asbestos. But I certainly would say this: It is not a sign of a healthy society when every citizen can qualify as a litigant and file suit.

So I think there is an important need for legislation in many different areas to deal with this problem of excessive litigation. These reforms are—the three reforms that the President has talked about are going to be helpful. I think, again, they are small

steps, but they’re steps in the right direction, and they’re steps that it’s important to take and that every American should support.

Thank you.

**The President.** Nice job.

**Secretary Evans.** Yes, excellent job. Professor, thank you very much, for laying that out.

Speaking about asbestos, our next panelist is somebody who is personally being impacted by asbestos litigation, as are his 18 employees and the families that they’re responsible for. And so, Mike, an entrepreneur from Monroe, Louisiana, who runs a company there—why don’t you give us your perspective of asbestos litigation as it relates to your personal situation and company.

**Mike Carter.** Well, I have a business back in Monroe, Louisiana, Monroe Rubber and Gasket. And hopefully, I can be a small voice—or a big voice—for a lot of companies across the country that probably are in the same condition I am.

Probably about 3 years ago, I started receiving lawsuits for asbestos, and today I guess I’ve been inundated probably with about upwards of 100 now. And we’re a small company. We can’t legally fight these battles, and what’s happened is, over time, some of these are being settled out of court. We’ve got an insurance carrier that, back at that time, carried our insurance and helped us litigate some of this stuff over time. But the problem is, is this is going to end very soon. We’ve got about a million dollar cap. And if we have to get involved in a suit in court and we get a verdict handed to us, it’s a matter of us locking our doors.

But these things have been coming to us and coming to us, these lawsuits, as it is today. I’ve been to Washington on a couple of occasions, talking to our Senators from the State. We tried to get something passed within the State and failed to do that. But that’s not stopping the lawsuits. We’re neither a manufacturer nor an end user. All we’ve ever done and the thing we’re guilty of is buying what we thought over the years was a safe product and reselling it to an end user customer who asked for the product by name. And now, because all of the bigger corporations and the manufacturers have either gone bankrupt or filed—or gone out of business,

now they're going to that next tier of companies, which is people like us, and they're pulling us into this trap.

And we can't afford to fight this. The last couple of times I've been to Washington, I pleaded with the people I thought could get something done, and I told them this may be the last time I'm here. I don't know how long this will go on. I've got probably seven or eight court dockets this next year, and if I have to go to these—that's not to say I'll ever be back again. And hopefully, this is going to be an opportunity for me, like I say, to be just a voice for the small business across America, and then hopefully, we can get something done this year.

It's just—it's unfortunate that I've had to spend hundreds of hours of my time away from the business trying to fight this stuff, trying to get somebody to listen and to make a difference with what we're doing. All we're trying to do is run an honest business, and we've done that for so many years, and it's just a shame that something like this can take all that away from you. And after we're gone, there's really nobody out there to hear you anymore.

And it's just becoming increasingly difficult to do business. And as we go out now and try to buy products from other companies, they tend to see our name on the—I guess the Bradstreet—Dunn & Bradstreet, as having all these suits against us. They don't want to open us any lines of credit. We've reduced the amount of employees. We're just not rehiring, is what we're not doing. We've had probably five or six more at one point; we've got about 17 now. And we're trying to grow our business into other States. We can't do that because we just don't know what direction this is going to turn, and we don't want to get more in the pot now than we have. So it's affecting us in a way that we're not able to grow any more. We just—it's just a continuous fight, and we can't do anything. They just keep coming; the lawsuits keep coming.

And we're getting suits from people—the ones we're getting them from are end users, the mills, the chemical plants, the paper industry, that worked in those particular plants back years ago. And these trial lawyers, they'll come, and they'll set up a little hub and have

these people come in—and do the advertising prior to them getting there—have them come in, run a quick test on them. If they show anything in their lungs—which any of us could have something on our lung, be it from smoking, be it from pollution, whatever it is—but they all of a sudden qualify to be in the suit.

And as this stuff continues to grow like this, it's—they will couple one or two sick people with 10 or 15 nonsick people and run them through the courts. And you know, in the South, we're known to have very sympathetic juries. And don't get me wrong, I'm very—extremely sympathetic to those individuals that are sick, and I think they need to be taken care of. But the problem is, 90 percent of the people filing suits today are nonsick individuals. They've just been exposed. And I think everybody in this room has been exposed to asbestos if you've ever walked through a school hallway or you've ever been anywhere. I mean, it's just the way it is. But to allow this to happen, those 90 percent of the people, nonsick that are getting this money right now, over the 10 percent of the people are not getting it, and they're the ones that deserve it.

But then again, I think those people should be responsible that created this. And we, as just an honest-ran business, have not created this problem. And the gaskets and the things I've sold to these plants—we've had people come in and actually gauge us cutting the gasket out of the sheet, and there's no harmful asbestos dust or nothing in the air. But because during that timeframe we had asbestos beside our name, they're coming after us.

**Secretary Evans.** Mike, thank you very much. I appreciate your story.

**The President.** Let me make a comment on that. First of all, justice ought to be fair. And those who have hurt ought to have their day in—those who have been hurt ought to have their day in court. But a judicial system run amok is one that makes it really hard for small businesses to stay in business. And I appreciate you sharing your story with us. It's a—frankly, a painful tale to listen to because—what makes it even more painful, there's a lot of people like you.

Most new jobs in America are created by small-business owners. And when you hear

a small-business owner talking like that, and he says we got a problem we'd better address now before it's too late—thank you for sharing it with us.

**Mr. Carter.** Thank you.

**Secretary Evans.** Yes, it's painful not only for you but the 18 employees and their families that you're responsible for. And we hear your story.

Here's a man that's responsible for about 350,000 employees. And Bob Nardelli of Home Depot, why don't you give everyone kind of your insight as to the lawsuit abuse, the impact on your employees as well as on your company.

**Bob Nardelli.** Well, thanks. First of all, Mr. President, thank you for this opportunity—Secretary Evans—to participate on what I think is probably the most important panel on the high cost of lawsuit abuse in the overall economic conference that, Mr. President, you've called together the next couple of days.

I think what all of us in this room probably share—I think one of the things that we really want to try to make clear, and I'm going to reinforce in some of my comments what we've already heard—is that we're really not asking to be resolved—or absolved of our responsibility. All we're asking for is fairness, Mr. President, just as you said.

Lawsuit abuse is not a talking point anymore. I think it's a sore point for all of us and one that has to be addressed. Let me just put it in perspective, Mr. Secretary. Our customers, our 350,000 associates, as you've mentioned, and our supplier base, our shareholders of the company that I run and the company I love, are really being hurt every day. They're being hurt every day by a legal system, quite honestly, that's abusive. It's abusive to small businesses and big businesses alike.

I think there's excessive and unreasonable awards each and every day, that our taxpayers are paying more, Americans are being denied, Mr. Secretary, as you said, the essentials of goods and services and, perhaps most importantly, good paying jobs, wages, slowing investment growth, which is really dampening the entrepreneurial spirit of our country.

Let me give you an example. I like to think facts are friendly. The U.S. tort system basically costs every American about \$2,400 a year, based on a recent survey that we looked at. Let me put that in Home Depot terms. That would allow every family to buy a kitchen and a complete home of appliances, refrigerators, washers, dryers, range, microwaves, et cetera.

So when I look at this issue, I basically see about three pressure points that I want to talk about today. First, it's the hijacking in broad daylight that the tort system calls the class action lawsuit. The second is the seemingly endless story of excessive awards in asbestos litigation. We just heard Mike talk about that. And third, it is the excessive awards in medical liability suits. Quite honestly, it won't be long before we see a line item on every doctor's bill that's handed out in this country for litigation.

I think what all three of these have in common, unfortunately, is that there's a fair and reasonable solution in hand just waiting for implementation. That's what makes it so maddening, I think, to all of us.

Let me expand. The class action dilemma is probably a good place to start. It—since it's a trial bar who really reaps the reward. How many of you in this room have received a check for \$1.18 in recognition for your participation in a class action suit that you didn't even know you were part of? And what really happens is the millions of dollars go to the lawyers. So is justice really being served, is the question. In fact, I think only 20 cents of each dollar actually goes to the claimants for real economic damages and lost wages and medical expense.

So what you have today is business on one side, and you've got the trial lawyers on the other side. And you have the worst combination of all: You've got deep pockets colliding with shallow principles. *[Laughter]*

Let me make another point, if I can, on this magnet court system. There's a place like Madison County, Illinois, and I think a lot of us know of that. There's been a 5000 percent increase, 5000 percent increase in the number of class action filings since 1998. You know, the issue at hand may have nothing to do with anybody in that county or that

community, but the fact is, it hasn't stopped 49 other States from filing into that county.

So we really have, you know, quite honestly, I like to use the term, it's a "speed trap" for American civil litigation. I think that's kind of what we would classify it. So if we move, I think, as George said, our class actions into the Federal courts, with standard rules from coast to coast, we have a chance at getting things a little more fair, a little closer to fairness. And people who have been hurt will certainly have the ability to get damages and get recovery, but in a much more fair environment, less abusive environment.

So if we continue to leave these issues, as I see it, of national importance to the whims of the greedy, Mr. President, instead of the needy, we're going to continue to have a huge price in this country to pay for abusive litigation.

Let me kind of close out and make a few final comments. That's why I think that this "Class Action Reform Act" is so important to be passed. I think it's great that we've had a lot of bipartisan support. I think what we need is some bipartisan action, Mr. President, as you said in your opening comments. Also, I would take this asbestos litigation—and we would classify it as the gift that just keeps on giving to trial lawyers, 30 years and no end in sight. According to RAND Institute, 70 billion has been spent on asbestos litigation, 200,000 claims have been filed against 8,400 companies since 2002. So we see that continuing to grow.

The asbestos war, if you will, seems to be waged on—67 American companies have been put into bankruptcy. Now, here's the way I kind of like to look at that, is, while the lawyers are attacking corporate America, it's corporate Americans that are suffering. That's the issue. And we've had 60,000 corporate American jobs eliminated as a result of that.

So let me just conclude, Mr. President, and I really think that something has to be done. There's no better person to do that than you, in this term, in your second term. And we're tickled to death that your exodus was postponed for 4 years, let me say that. [Laughter] A great deal has been said about this issue, but I think the time is now. I think the emotion is high, and I'm here, Mr. Presi-

dent, to join you in leading the charge for relief from what I'll call trial lawyer tax.

Thank you for the opportunity.

**The President.** Good job.

**Secretary Evans.** Thank you, Bob. Bob, thank you very much. I think you're right. And when you talk about lawyers being on one side and business being on the other, and it's the families that are paying the price, the hard-working Americans. They're the ones caught in the middle. They don't always see it because they don't see the line item. Maybe it's on a medical bill. Maybe it ought to be on a lawnmower someday. What's the additional cost of a lawnmower because of tort costs.

Hilda, thank you so much for being here. Hilda Bankston. She's got a wonderful story to—it's a heartbreaking story to tell, but it's certainly a very moving story about the drugstore that she and her husband built in Fayette, Mississippi.

**Hilda Bankston.** Yes, sir. Thank you for the opportunity, Mr. Secretary.

My name is Hilda Bankston. I live in Fayette, Mississippi. I came to the United States from Guatemala in 1958. I met my husband, Navy Seaman 1st Class Mitchell Bankston while I was in the Marine Corps. When we got married, we fulfilled our lifetime dream of buying and operating a pharmacy. We worked hard, and my husband built a solid reputation as a caring and honest pharmacist in Fayette.

But one day, lawyers who were looking for—to strike it rich in Jefferson County, shook our world and dreams to their foundation. Bankston Drugstore was named as a defendant in a national mass action lawsuit, putting Jefferson County against two of the biggest manufacturers' drug companies, the manufacturers of Fen-Phen, FDA drug approved for weight loss. Though Mississippi does not allow for class action lawsuits, it does allow for consolidation of lawsuits in mass action.

Since ours was the only drugstore in Jefferson County and had filled prescriptions for Fen-Phen, the plaintiffs' lawyers could keep the case in a place already known for its lawsuit-friendly environment. Overnight, our life's work had gone from serving the public's health to becoming a means to an end for

trial lawyers to cash in on money-making class action lawsuits.

Three weeks after being named in the first lawsuit, my husband of 35 years, who was 58 years old and in good health, died of a massive heart attack. Since then, we have been named in more than 100 mass actions against national pharmaceutical companies over a variety of different drugs.

I had to sell the pharmacy, but I still spend countless hours retrieving records for plaintiffs' lawyers and getting dragged into court again and again to testify. Attorneys handling these claims compare their actions to winning the lottery.

The lawsuit frenzy has hurt my family, my community, and the State of Mississippi. The county's reputation has driven liability insurance rates through the roof, and businesses no longer locate there for fear of litigation. No small business should have to endure the nightmare I have experienced. I'm not a lawyer, but I know something is wrong with our legal system when innocent bystanders are abused in the way I was. Please, pass action to reform legislation to help fix our lawsuit system before more small-business owners and their families will get hurt.

Thank you, Mr. President. Thank you, Mr. Secretary.

**Secretary Evans.** Thank you, Hilda, very, very much.

Philip Howard, partner with Covington & Burling, author of the book "The Death of Common Sense"—Philip will provide an overview of the medical liability explosion in our economy.

**Philip K. Howard.** Thank you, Mr. Secretary, and I really appreciate the open-mindedness of you and the President in allowing a practicing lawyer to join your panel. [Laughter]

We forget sometimes why law is the foundation of freedom, and it is because it's supposed to be reliable and people can count on it in their daily lives. They make some choices in a free country to move forward with their lives, whether it's to make investments or deal with others or volunteer on the playgrounds or in Little League. Law is supposed to be there to affirmatively defend reasonable conduct.

The law in this country is no longer reliable, and the cost of it, I submit, is far greater than anything any of you have talked about today.

And so, let's go to medical liability. We have heard, and you are going to hear again how horrible it is when our best trained professionals, physicians, get driven out of business. One out of seven obstetricians in this country are no longer practicing obstetrics. One out of four people in Pennsylvania last year had to change their doctors because they either quit or moved out of the State. That's because of the direct cost of litigation in this country. But that's only the beginning. The cost of health care is out of control. We can't even talk about containing the cost, but who's going to not order an MRI that somebody demands if you might get sued for \$10 million for doing it.

This group, Common Good, that I founded a couple of years ago hired Harris Poll to survey all the doctors. Four out of five said that they admitted to ordering tests that they didn't think were needed. It is now part of the practice to waste money. We can't afford that. We've got 45 million people who don't have insurance. We have—and more every day because small businesses can't afford it. You can't contain costs, you can't provide health care for everybody until you have a solid foundation of justice that people can count on.

Quality—all of the quality experts have joined our coalition because their studies show them that the quality of health care in this country has suffered, and it has suffered because doctors and nurses no longer feel comfortable speaking up. They're afraid they may be taking responsibility.

So, you get—and at the same hospital where you get miracle cures, you'll have some mistake in a prescription, where somebody gets 500 milligrams instead of 5 milligrams. Studies are all—tragedies occur because people are afraid to speak up because they don't trust the system of justice. It's defended on the basis that it holds bad doctors accountable. Well, in fact, it does just the opposite. The current system of law—and it's true with unreliable law, generally—favors whoever is in the wrong.

And so if you're a doctor—if there's a doctor who is no good—and every hospital has this story—you try to fire them. What do they do? They hire a lawyer. They sue, or they threaten to sue. And the typical result is that they're allowed to keep practicing because people don't want to go through the 5 years of litigation for it to happen.

So what is needed here is far more than just—what is needed is to restore reliability. We need the rule of law back again. And I subscribe to everything that George—my friend George Priest said over there and the other panelists as well. We need to look at this not as a problem of just of business or just of doctors; we need to look at it as a problem for the whole society and what it means to live under the rule of law in a free country.

Thank you.

**The President.** Good job.

**Secretary Evans.** Thank you. Excellent job, Howard.

Barb Coen, Andy Kazar, both of Generations Women's Health Care out of Norton, Ohio. We certainly appreciate you being here to talk about your story. Barb and Andy will explain how medical liability crisis has caused, one, Barb to quit delivering babies, and the other, Andy, to lose her doctor.

Barb.

**Dr. Barbara L. Coen.** Thank you, Mr. President and Mr. Secretary, for the opportunity to be here today. I appreciate the fact, Mr. President, you've kept your promise to help physicians take better care of patients by getting rid of the medical liability problem that we have in this country.

I am an obstetrician/gynecologist who can longer call herself an obstetrician. Three years ago, my partner, Dr. Susan Clark, and I started a small practice called Generations Women's Health Care in Norton, Ohio. We had the help of Barberton Citizen's Hospital for 2 years. At the end of 2 years, we were to be independent from the hospital and be operating on our own. At that time, we decided to look for medical liability insurance and were stunned to find that our premiums were going from \$60,000 for our current space malpractice to \$118,000 for claims-made liability.

At that time, we had 110 pregnant women in the practice and had 3 weeks to tell them they they had to find a new physician. Anyone who has ever had a baby understands the relationship between the obstetrician and that patient is so special. They're trusting you with their most precious possession, the life of that child. And it was awful to call those patients and tell them we couldn't take care of them. I got notes saying, "I promise I won't sue you. Please deliver my baby." It was absolutely heartbreaking. Some people were due the next week. It's an awful system that needs to be reformed.

The things that bother me the most about the medical liability system in this country right now is the Trial Lawyers Association will come out and tell you that medical liability is only 1 to 2 percent of health care costs every year. Well, when health care costs are \$1.2 trillion, I think if you told anybody in this room, "Your salary next year is going to only be 1 to 2 percent of the national health care cost," it would be a substantial raise, wouldn't it? I mean, I think we'd all be pretty excited to be getting that.

The other thing that bothers me is 80 percent of frivolous—of lawsuits against physicians get thrown out. What if I was only right 20 percent of the time? What if that was the standard I was held to? I see 30 patients a day. What if I only got it right on six of them? What's going to happen to the other 24? I think we need to hold these people to a higher standard, the same standard that physicians are held to. And I appreciate the fact that you're all working on reforming the system.

Thank you.

**Secretary Evans.** Thank you, Barb. Thank you very much. Nice job. Andy?

**Aundria D. Kazar.** My name is Andy, and thank you, sir, first of all, for having us here and letting us tell our stories. I appreciate it. I'm, as you can't tell, 32 weeks pregnant, and am also the practice manager for Drs. Susan Clark and Barbara Coen. When the decision was made at the end of August of '03 to no longer do obstetrics because looking at it, you know, financially it wasn't feasible, it was like, "Oh, that's okay, I can still see

them.” They’ve delivered my other two children, and I think anyone here knows the relationship that you have with your physician—you tell them stuff that you don’t tell anyone.

And so with Barb and Sue doing my other two deliveries, it was like, “Oh, we’re not going to have any more kids. I’ll get through this, no big deal.” Well, May, we’re having another child. And it came to an issue of now who am I going to have, because the women that I trust more than anything else in the world, who have entrusted in me to run their practice and pay their bills and hire the employees and deal with patients—I can’t go back to them for my most important thing that’s going to happen to my husband and I.

So we decided that we needed to go find someone else, obviously, since they can’t deliver me, even if I sign a piece of paper. We made a choice to see a midwife. And we have a wonderful midwife that we’re seeing, but we were informed on Friday that the physician that backs her may not be continuing to practice.

So now, again, at 32 weeks pregnant, we are now on the look for another provider of service. And I don’t feel that anyone should have to go through this. I mean, I know most of the physicians in town because of working in medicine for so long. I don’t know how the normal, average person who doesn’t can go and say, “Okay, how do I pick this doctor?” You know, “Oh gosh, are they going to be here in 6 months?” They’re leaving—the physicians are leaving in mass exodus out of Ohio, because it’s not cost-effective to run a practice there. And something needs to be done. And I’m asking you, please.

**Secretary Evans.** Andy, thank you.

**The President.** It’s not the first time she’s asked. Can I make a couple—I’m the President.

**Secretary Evans.** Oh, hold on just a minute. [Laughter]

**The President.** I met these two ladies before in Ohio. Philip said that one in seven doctors are leaving. In certain States, the number is much higher than that, and in certain specialties, the numbers are much higher than that. And just a couple of observations.

When I came to Washington, I thought that medical liability reform was a State issue. I was a Governor and a person who said, “We can do it better at the States than the Federal Government.” It turns out, so far the States who have had medical liability reform have done it better than the Federal Government because we haven’t done anything yet at the Federal level. Nevertheless, I looked at the impact of the defensive practice of medicine, at the unnecessary tests that doctors prescribe in order to make a defense when they get sued—not if they get sued but when. The odds are they’ll be sued, and it costs the Federal budget about 27 billion a year.

And so when you cite the statistics from the trial lawyers, what they don’t talk about is the defensive practice of medicine as a cost to society. There is a direct cost to the taxpayers. It’s a quantifiable number. It’s a lot at 27 billion a year. And so I decided it’s a national issue that requires a national solution.

You know, there’s a lot of rhetoric when it comes to medical liability reform about accessibility and affordability of health care. It’s a nice mantra. We all should be for accessibility and affordability. And so should Members of the United States Senate who have blocked medical liability reform to date, because these lawsuits are driving really fine, competent people out of the practice of medicine—like Barb—which makes medicine less accessible.

And then you heard not only the cost to our budget but the cost to an individual doctor to practice medicine is passed on to patients, which makes medicine less affordable. We need medical liability reform. This is a vital issue for the quality of life of thousands of people in our country. And I want to thank these two women for joining us again. I met them first in Canton, Ohio. They were just as articulate there as they are here, and their case is, unfortunately, one that’s being repeated in many States around this Nation.

And so I told you then and I’m going to tell you again: This is a priority issue for not only me but for a lot of people in the Senate. I say the Senate—it will pass the House. It is being blocked by a few in the United States Senate, and the trial bar has made this the number one issue for them. But it’s, as I

think you mentioned, Hilda, the notion of a lottery—we cannot have the legal system to be a legal lottery. We want the legal system to be fair and balanced so people can get good health care, so small businesses can afford to stay in business, so we don't hear these horrible stories about someone drug through this class action meatgrinder that has caused her and her—to go out of business.

And so I want to thank you for all coming. I am passionate on the subject because I want America to be the best place in the world for people to find work or to raise their family or to get good health care. And I can assure you all that I intend to make this a priority issue as I stand before Congress, when I give the State of the Union, and as I talk to leaders of the Congress about what I think ought to be done in the upcoming legislative session.

**Secretary Evans.** Do you want to say anything else? [Laughter]

Thank you, Mr. President. You know, I'm also glad that this issue is going to be right at the center of every kitchen table all across America, because it's those Americans that are getting impacted by this in such a serious and harmful way, and they need to be sending the message to Washington, how they also want something done about it.

Well, we've got a few moments here for a couple of questions. Professor, let me come at you, if you don't mind, just for a minute. Can you share with us an example of how plaintiff attorneys are using leverage to threaten companies with settlements? And in addition to that, I notice where you have taught in the past—capitalism, insurance policy, tort law, product liability, but you've added a new course called “economic development.” Are we starting to put this together finally in America, how this litigious society that we are in is having a dramatic impact on economic development in our country and job creation in our country?

**Mr. Priest.** Oh, I think it does have a dramatic impact on economic development in this country. What my course does is look cross-culturally, across countries to see how—to see what the determinants of development are. But I think there is no doubt that it's our litigation system that's dragging

our country behind and keeping it from developing even faster.

Now, on your question about tactics that lawyers use, can you give me 2 or 3 hours—[laughter]—I could answer that. Actually, the class action is one of the most powerful tactics that trial attorneys use. You know, for all of the class actions that are filed, there are very few that are ever litigated. There are some litigated in the discrimination field, but of mass tort class actions, they're never litigated. They're not even anticipating litigating them when they file them. It's simply such a bludgeon that it's known that if the class is certified, which is a kind of legal technicality that doesn't—purportedly doesn't look at the merits of the case, then the companies that are sued have to settle, because, as Mike has pointed out, they have to settle the case, because otherwise the company's going to go down the drain because of the stakes involved in the case.

So there's this ideal of a class action of representing a wide set of consumers repairing wrongs at a small level over a wide number—it doesn't work that way. It's almost entirely a bludgeon as it's currently being employed by the trial lawyers.

**The President.** Let me ask you something.

**Mr. Priest.** Sure.

**The President.** You said that the pending legislation—I think you referred to it as a “small” step or a “better” step? There was an adjective which, frankly, wasn't a “huge” step. [Laughter]

**Mr. Priest.** It's not a huge step, no, no, no.

**The President.** All right. Well, let me ask you something: What should Congress do? I mean, for example, in the class action—the bill, as I understand it, takes it from the States—makes it more difficult to keep it in the State court and moves it to the Federal courts, reflecting the interstate nature of the lawsuits, which therefore make it more difficult to achieve these—help me out here.

**Mr. Priest.** Well, what it does is take it out of the bailiwick of the Madison Counties and the Jefferson, Mississippi, that—where local judges who have close ties with plaintiff attorneys—I don't want to use the word

“conspire,” but they have a mutually symbiotic relationship—[laughter]—in letting these class actions go forward.

**The President.** Got that part.

**Mr. Priest.** So it will help to send the case to an Article III judge, who—in the Federal courts that operates differently. But that’s not going to solve the problem.

**The President.** Right. And so you said—help us with some solutions. Here’s your chance.

**Mr. Priest.** The most important solution in class actions—but it’s going to take more than the Congress; the courts are going to have to go along with this too—is to have—before certification—to have the courts evaluate whether there’s any merit to the class action or not.

**The President.** Got you.

**Mr. Priest.** I mean, the problem—even class actions that are certified at the Federal level can operate as bludgeons against the defendants who face them. Now, it’s harder to get it certified at the Federal level, and that’s the benefit, the step that would be taken by the class action legislation that is currently on the table. But it’s only a step. It’s not going to solve the entire problem.

And what really has to be done is to get the—what you call junk litigation, the frivolous litigation, the litigation where there’s really no merit to the underlying litigation and it wouldn’t succeed if it were litigated, but it’s too dangerous for the defendant to find that out and to gamble on whether—gamble the entire company on whether its lawyers or the opponent’s lawyers are going to be more successful before the judge.

**Secretary Evans.** Phil, do you want to jump in here?

**Mr. Howard.** Yes, I do. I mean, judges in America today don’t have the idea that part of their job is to actually draw the boundaries of what’s a reasonable or excessive claim or what’s a frivolous claim or not. People bring a claim, and they act like referees. I was debating the McDonald’s hot coffee judge—on Oprah, actually. [Laughter] It was really fun. But during a break he said, “You know, your theories are fine, but who am I to judge?” [Laughter]

And there’s this idea out there that justice is kind of an open season. Well, it’s not. The

rule of law requires deliberate choices. This is a valid claim; this isn’t. This is an excessive claim; this isn’t. No one is making those judgments today, and the people who are the victims are all Americans. Every day when they’re in the classroom, when they’re going through their jobs and they’re not saying what they think, or they’re not taking the kids out on field trips because they’re scared—they’re scared because they don’t trust the system of justice because the judges aren’t doing their job.

**Secretary Evans.** We just have a few moments left, and I want to come over here to Mike and talk about jobs for just a minute, because you really represent the backbone of the American economy. You’re a small business. They generate 70 percent of the new jobs in America. Give us a feel of how this is impacting your ability to create jobs or hire more employees. Can you give us any sense of that?

**Mr. Carter.** Well, it’s impacting us directly because we’re not able to grow our business like we would like to grow it. We can’t man our business like we would like to man it. And as far as trying to grow into another sector, into another State possibly, and have a business—you don’t know if you’re setting yourself up for the fall. I mean, it scares you to try to grow anything. And when you get to a point like that, it’s tough when you feel like you want to be aggressive, and you’ve got to just kind of hold back and pull the reins and sit there and wait to see how this stuff is going to unravel. It’s just created—and there are so many companies across the United States in the same position that I’m in, but we’ve just not had anybody hear us yet. And it’s just a great opportunity, Mr. President, to be here and be able to tell you this, and Mr. Secretary as well—

**The President.** Thanks.

**Mr. Carter.** —to get this voice out. And hopefully this year or sometime in the near future, something can be done on this, and get this straightened out to where we can go on and do what we do best, and that’s run our businesses and grow our companies. And until that happens, we’ve got to kind of hold back and wait and see what happens with this because if we end up in one court with one verdict, like I say, we’re upwards

of 100 different lawsuits right now, and we just got pulled into a class action as well. And we just don't know——

**The President.** Let me ask George something here.

You've studied the legal systems of different countries compared to the United States?

**Mr. Priest.** Yes.

**The President.** Give people a sense for the difference.

**Mr. Priest.** Oh, well, it's entirely different. Most legal—there's no legal system like the United States. There is no legal system that has anywhere near the magnitude of litigation measured in any terms, per capita, according to gross national product. No, no, no, we're by far the most litigious society that there has ever been.

In Europe, for example, one of our great and growing competitors, litigation is nothing like this. Decisions are made chiefly by judges. They don't have juries, which is a difference. And I'm not saying we ought to get rid of juries. But it is a much more controlled and defined legal system. The numbers of lawsuits are miniscule compared to the United States. And what's happening, of course, is—I mean the Europeans know; the Europeans aren't fools—they're coming to the United States and trying to sue in the United States courts for losses that they have suffered there. And some of our courts are entertaining these lawsuits.

And it's not just the Europeans. We're having lawsuits brought in the United States from citizens all over the world because, again, in terms of litigation, if you're a plaintiff, this is the land of opportunity. [*Laughter*] That isn't what our country has been about, of course.

**Secretary Evans.** It's really an industry, yes.

**The President.** I think it's important for people to understand that, particularly people who are going to be deciding the fate of these bills, that we live in a global economy, that we either have a disadvantage or advantage based upon our regulatory system, legal system, capital system. And this is an area, clearly, where we have a disadvantage relative to competitors.

**Mr. Priest.** Can I add one thing?

**The President.** Yes.

**Mr. Priest.** With regard to each of the three reforms that you've talked about, Mr. President, those aspects of the legal system don't exist in Europe or any other place in the developed world. There are no class actions in Europe, England, anywhere. There are—there's no malpractice liability to the extent we have it here against doctors. Typically, there's no lawsuits at all against doctors because they're a different—it's a different form of system. And, third, there's no asbestos litigation. Again, the only asbestos litigation of any magnitude in the world is here in the United States.

**Secretary Evans.** Let me ask you about Canada, which happens to be our number one trading partner. How would you stack up——

**Mr. Priest.** Canada—well, Canada is a good—it's a good case, actually. Canada comes from an English legal environment. The jury system doesn't exist over a very wide range. There are some juries, not very many, as in England. There are different sets of procedural rules, such as the loser pays. If you file a lawsuit and you lose the case, then you've got to pay cost to the other side. And so there has been nothing like the litigation explosion that we've seen here over the last three decades in Canada—nothing like it.

Now, Canada is starting to change a little, and they're starting to entertain different forms of justice much like they see in the United States, and that's not to the benefit of Canada, and it's not to the benefit of Canadian growth. But their way—in terms of this litigation explosion, they're not—it's not close. It's not close.

**Secretary Evans.** Bob, one last statement.

**Mr. Nardelli.** Let me just make two points if I can. I think this whole issue about corporate America, outsourcing America, that isn't the case at all. And it's not even foreign countries winning jobs. This is about lawyers pushing jobs out of this country. And Mr. President, you said this continuum from supplier to redistribution, I mean, it's just added cost. Everybody has to pile on.

And I—to Mike's point, let me just say, in America today, where corporations would normally reach out and help these corporate

Americans who, through no fault of their own, are losing jobs, because this continuum of responsibility or liability, acquisitions aren't being made. People aren't reaching out, because the minute you make one of these acquisitions, you take on that full responsibility. So it's really stagnating entrepreneurship and capital investment.

**Secretary Evans.** Bob, how does it impact your decision as to where you're going to locate your next plant and the American workers that you would therefore hire?

**Mr. Nardelli.** Well, we do a pretty rigorous job of identifying family formation per capita—for family income and so forth, Mr. Secretary. So we pretty much have to go where the customers are, in spite of these, what I'll call swampland jurisdictional areas. We'll still put a store in there because we're trying to serve our customers. It's a market-customer-back approach. But I would tell you that the cost, all the way up the supply chain, of everything that's been talked about here today just keeps piling on. And while we keep fighting to bring value to our customers, I think they become disadvantaged in this—just to take an example, of \$2,400. You know, their standards of living are impacted because of this.

**Secretary Evans.** Thank you very much. Well, I just thank all of you—audience, everybody else—for coming. I think it gave us a chance to zero in on probably one of the central issues as it relates to economic growth and job creation in this country, not only in the near term but for generations to come. We appreciate all this insight very, very much. And believe me, we're going to work as hard as we can to make sure that Congress understands your message, your thoughts, and we get meaningful tort reform passed in this upcoming session.

Thank you all very much. Appreciate it.

NOTE: The panel discussion began at 1:32 p.m. at the Ronald Reagan Building and International Trade Center.

## **Memorandum on Suspension of Limitations Under the Jerusalem Embassy Act**

*December 15, 2004*

Presidential Determination No. 2005–14

*Memorandum for the Secretary of State*

*Subject:* Suspension of Limitations Under the Jerusalem Embassy Act

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the “Act”), I hereby determine that it is necessary to protect the national security interests of the United States to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act. My Administration remains committed to beginning the process of moving our embassy to Jerusalem.

You are hereby authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the *Federal Register*.

This suspension shall take effect after transmission of this determination and report to the Congress.

**George W. Bush**

## **Proclamation 7855—60th Anniversary of the Battle of the Bulge, 2004**

*December 15, 2004*

*By the President of the United States of America*

### **A Proclamation**

Sixty years ago, more than 600,000 American soldiers fought at the Battle of the Bulge in the Ardennes Forest region of Belgium and Luxembourg. What began as a German surprise attack on December 16, 1944, became the largest land battle involving U.S. troops in World War II and ended with an Allied victory on January 25, 1945. By the end of the battle, there were 81,000 American casualties, including approximately