known homosexuality is not a disorder,'' Stachelberg said.

Lott spokeswoman Susan Irby declined to comment on Stachelberg's remarks.

Williams, the television program host, said the interview probably will be aired this week.

Mr. WELLSTONE. Mr. President, the majority leader, when asked whether or not homosexuality is a sin, stated, ''Yes, it is.'' He added that ''in America right now there's an element that wants to make that alternative lifestyle acceptable.'' Then he went on to say, ''Others have a sex addiction or are kleptomaniacs. There are all kinds of problems and addictions and difficulties and experiences of this kind that are wrong. But you should try to work with that person to learn to control that problem.''

He also said—to be fair to the majority leader—''You still love that person and you should not try to mistreat them or treat them as outcasts. You should try to show them a way to deal with that.'' That was the beginning of the quote. I do not want to take anything out of context.

Mr. President, I am concerned about calling homosexuality a sin, comparing it to the problems of alcoholism or other diseases. I am concerned because of the medical evidence. I am concerned because I think that in many ways this statement takes us back quite a ways from where we are.

We do not bash each other here; and there is civility here. That is what I like best. So let me just simply say, the majority leader is entitled to his view and he is entitled to his vote. But I am concerned. I have been on the floor of the Senate week after week talking about the nomination of James Hormel. I really believe that, given this statement by the majority leader, and given other statements that have been made, the U.S. Senate would be better off if we bring this nomination to the floor.

It was literally back in November of last year, November 4, 1997, that Mr. Hormel was voted out of the Senate Foreign Relations Committee by a 16–2 vote. There have been holds on the nomination. We ought to bring it to the floor so that we can have an honest discussion. The majority leader is entitled to his opinion and he is entitled to his vote, but the rest of us are also entitled to our opinions and we are entitled to our votes.

I think it is extremely important that this nomination be brought to the floor; that we have an honest discussion. No acrimony whatsoever, but please let us deal with this issue, and let us give Mr. Hormel the fairness that he deserves. I will not talk more about him right now. I will not talk about his very distinguished career. But I must say, given the majority leader's statements, it makes me stronger in my belief that we need to bring this nomination to the floor, and we need to have a discussion about this question.

It will be a civil discussion. It will be an honest discussion. I think the vast majority of Senators are ready to vote for Mr. Hormel. I will have an amendment that I will put on a bill that will deal with this question, probably the first bill after the tobacco bill. But where I want to get to is to bring this nomination to the floor. Otherwise I worry about a climate that is going to become increasingly polarized, increasingly poisonous, and we do not want that to happen. We do not want that to happen.

So I am hopeful that the U.S. Senate, in a spirit of civility and honesty with one another, and honesty with Mr. James Hormel, will bring this to the floor.

I thank my colleagues for letting me also mention this matter. I yield the floor.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

Mr. SESSIONS. Mr. President, I would like to thank——

Mr. GORTON. Will the Senator yield?

Mr. SESSIONS. I will.

AMENDMENT NO. 2705, AS MODIFIED

Mr. GORTON. Mr. President, I have a modification of my amendment at the desk. And I take it that I have the right to modify the amendment.

The PRESIDING OFFICER. The Senator has that right. The amendment is so modified.

The amendment, as modified, is as follows:

At the end of the pending amendment, add the following:

SEC. LIMIT ON ATTORNEYS' FEES.

(a) FEES COVERED BY THIS SECTION.—Notwithstanding any other provision of law, or any arrangement, agreement, or contract regarding attorneys' fees, attorneys' fees for—

(1) representation of a State, political subdivision of a state, or any other entity listed in subsection (a) of Section 1407 of this Act;

(2) representation of a plaintiff or plaintiff class in the Castano Civil Actions described in subsection (9) of Section 701 of this Act;

(3) representation of a plaintiff or plaintiff class in any ''tobacco claim,'' as that term is defined in subsection (7) of Section 701 of this Act, that is settled or otherwise finally resolved after June 15, 1998;

(4) efforts expended that in whole or in part resulted in or created a model for programs in this Act,

shall be determined by this Section.

(b) ATTORNEYS' FEES.

(1) JURISDICTION.—Upon petition by any interested party, the attorneys' fees shall be determined by the last court in which the action was pending.

(2) CRITERIA.—In determining an attorney fee awarded for fees subject to this section, the court shall consider—

(A) The likelihood at the commencement of the representation that the claimant attorney would secure a favorable judgment or substantial settlement;

(B) The amount of time and labor that the claimant attorney reasonably believed at the commencement of the representation that he was likely to expend on the claim;

(C) The amount of productive time and labor that the claimant attorney actually invested in the representation as determined through an examination of contemporaneous or reconstructed time records;

(D) The obligations undertaken by the claimant attorney at the commencement of the representation including—

(i) whether the claimant attorney was obligated to proceed with the representation through its conclusion or was permitted to withdraw from the representation; and

(ii) whether the claimant attorney assumed an unconditional commitment for expenses incurred pursuant to the representation;

(E) The expenses actually incurred by the claimant attorney pursuant to the representation, including—

(i) whether those expenses were reimbursable; and

(ii) the likelihood on each occasion that expenses were advanced that the claimant attorney would secure a favorable judgment or settlement;

(F) The novelty of the legal issues before the claimant attorney and whether the legal work was innovative or modeled after the work of others or prior work of the claimant attorney;

(G) The skill required for the proper performance of the legal services rendered;

(H) The results obtained and whether those results were or are appreciably better than the results obtained by other lawyers representing comparable clients or similar claims;

(I) The reduced degree of risk borne by the claimant attorney in the representation and the increased likelihood that the claimant attorney would secure a favorable judgment or substantial settlement based on the progression of relevant developments from the 1994 Williams document disclosures through the settlement negotiations and the eventual federal legislative process;

(J) Whether this Act or related changes in State law increase the likelihood of the attorney's success;

(K) The fees paid to claimant attorneys that would be subject to this section but for the provisions of subsection (3);

(L) Such other factors as justice may require.

(3) EFFECTIVE DATE.—Notwithstanding any other provision of law, this section shall not apply to attorneys' fees actually remitted and received by an attorney before June 15, 1998.

(4) LIMITATION.—Notwithstanding any other provision of law, separate from the reimbursement of actual out-of-pocket expenses as approved by court in such action, any attorneys' fees shall not exceed a per hour rate of—

(A) $4000 for actions filed before December 31, 1994;

(B) $2000 for actions filed on or after December 31, 1994, but before April 1, 1997, or for efforts expended as described in subsection (a)(4) of this section which efforts are not covered by any other category in subsection (a);

(C) $1000 for actions filed on or after April 1, 1997, but before June 15, 1998;

(D) $500 for actions filed after June 15, 1998.

(c) SEVERABILITY.—If any provision of this section or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this section and the application of the provisions of such to any person or circumstances shall not be affected thereby.

Mr. GORTON. I thank the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank the Senator from Washington for his legislation, which I am pleased to support.

I suppose it is round four in this battle. This is the fourth vote we will have had on it. I think the Senator from Washington has attempted in good faith to deal with some of the complaints that have been raised about capping attorneys' fees.

Our last vote was at $1,000 an hour. He has come in and said, well, if you establish certain things, and you started early, and you worked hard on this and are one of the people who really deserve credit for this litigation, you could get up to $4,000—that is up to $4,000. So it should not be criticized as a guarantee of $4,000 per hour. I think these judges would decide on that. But he caps it at that amount. For other people who were involved less in the case, it would be capped later.

And to my good friend, the Senator from Minnesota, he talked about the Minnesota perspective. I believe Minnesota has been at this some time. They worked a number of hours on this case. They would be paid at least $2,000, and I believe up to perhaps $4,000 per hour for their work, depending on how much the judge were to give them. I think that is a very generous legal fee. As a matter of fact, it goes beyond what I would consider within the mainstream.

As a matter of fact, I was just called off the floor a few minutes ago and met a group of young people from my home State. And I asked them if they thought $4,000 an hour—how would they feel about that to pay an attorney for doing legal work. And they did not think I was serious. They thought it was a joke. Talking about $4,000 an hour—that is a lot of money. So I think we have to deal with this.

Let me talk briefly about the fact that Senators on the other side have suggested, well, we have an arbitration process. The arbitration process is not between the people who are paying the fees or the defendants in the litigation. The arbitration process is between the plaintiffs, which in this case are the States represented by the attorneys general, and their attorneys, the plaintiffs' lawyers, the attorneys. And what it says is, if they are unable to agree; that is, the attorney general and the lawyer he hired and who agreed to a certain fee, if those two are unable to agree with respect to any dispute that may arise between them regarding the fee agreement—regarding the fee agreement—then the matter goes to arbitration, then the matter goes to arbitration. Under the fee agreement, they are talking about a 25 percent, 20 percent, 15 percent contingent fee, which would enrich these lawyers to an extraordinary degree.

What the Senator from Washington has understood—and I think his legislation recognizes—is that a lot of the attorneys in this litigation have done little or no work. A few of these cases were started early on; a lot of legal work was done; a lot of attorney investment and time and some personal funds were expended on behalf of this litigation. And that is one thing.

But as the time went by, other States joined. Many of them joined in a matter of weeks or a matter of months before the settlement by the tobacco companies was offered. Those lawyers now want to walk in and claim 25 percent of what is being paid in, and they worked only a very few hours on this case.

Some of these lawyers, it has been estimated, according to a professor from Cardozo Law School, are to receive as much as $92,000 per hour—$92,000 per hour—unless something is done about it. So I think we have to act now. We have a responsibility to act. And I am certain of that.

Mr. GORTON. Will the Senator from Alabama yield?

Mr. SESSIONS. I certainly will.

Mr. GORTON. Is the Senator from Alabama aware of the fact that the U.S. district court of Texas has determined that a legal fee of $2.3 billion would be reasonable?

Mr. SESSIONS. I am aware of that. And I am glad the Senator from Washington made that insightful observation.

Mr. GORTON. Does not the Senator from Alabama agree that is a matter in which we here in the Congress, dealing with this bill, can be interested in saying, no, that is too high?

Mr. SESSIONS. I certainly do.

Mr. GORTON. I thank my friend from Alabama.

Mr. SESSIONS. With regard to the Florida case, the trial judge found it was unconscionable, as I hope this body finds these fees are unconscionable. But that case has been reviewed at a higher court and that opinion has been withdrawn.

So we don't know yet whether the lawyers in Florida will get $2.8 billion that they request or not. In fact, Mr. Montgomery, the lead attorney in the case, said he fully expects to be paid what his fee agreement said. He expects to prevail. He says he has a contract.

How can we violate contracts? We violate contracts all the time in this body. We are telling the tobacco companies they can't advertise. Many of them have advertising contracts extended for years. We are changing the whole way of doing business about tobacco. Everything about the tobacco business is being changed by this legislation. It is a comprehensive legislation in which we deal with almost every aspect of it. One of those aspects ought to be how much these fees should count for.

I was in Alabama recently to see one of the finest and biggest industrial announcements in the history of the State and one of the largest in the country. Boeing is going to build a rocket plant near Decatur. It is 50 acres under one roof. They told me with great pride that the cost of that building and facility and land and construction would be $450 million. We are talking about attorneys in Florida asking $2.8 billion, five or six times that much, five or six times the cost of one of the largest industrial announcements in America by one of the world's largest corporations. That is the extent of the fees we are talking about in Alabama. The general fund of the noneducation budget is less than $1 billion. These attorneys are asking for more than that.

As a matter of fact, a professor from Cardozo Law School estimates that it will make 20 to 25 attorneys in America billionaires. I had my staff check. I believe the Fortune Magazine that rates America's richest people, the world's richest people, listed 60 billionaires in the United States. This litigation, unless we act, could create 20 more billionaires, many of whom have worked less than a year, maybe even only a few months, on the cases with which they are dealing.

Now, I am not against a contingent fee. I support that concept. But the attorneys and the attorneys general have come to the Congress and asked us to legislate. The plaintiff attorneys have and the attorneys general have asked us to comprehensively review this entire process and litigate on it. This is an unusual type of case because we have never seen these kind of moneys before and we have never seen these kind of fees before.

It is perfectly appropriate for us to contain them. As the Senator from Washington said, we limit fees to $125 an hour in equal access to justice cases. Appointed criminal attorneys in Federal court get paid $75 an hour. I think $2,000, $4,000 an hour is enough. It will make them rich beyond all imagining, just that alone. If they haven't done any work on the case and don't have any hours into the case, they ought not be made any more rich than they are.

Mr. CONRAD. Will the Senator yield?

Mr. SESSIONS. I yield.

Mr. CONRAD. In the Senator's previous amendment, didn't the Senator have a cap of $1,000 an hour?

Mr. SESSIONS. Yes.

Mr. CONRAD. How can this Senator justify supporting an amendment now that goes to $4,000 an hour?

Mr. SESSIONS. I am glad to answer that. First of all, if we don't cap it at $4,000 an hour, we are likely to end up as in Texas at $92,000 an hour. A judge has approved that fee in Texas. It is going to go through. So certainly this is better than nothing.

No. 2, the fee is capped at $4,000 an hour. A judge must consider the skill, the expertise, the commitment, and the value of the contribution of that attorney. Some flunky in the firm isn't going to be paid $4,000 an hour. The lead lawyers, the ones who have demonstrated the greatest skill and leadership and effectiveness, would have the opportunity to reach that high but no higher.

So it is certainly a step in the right direction and preferable to nothing, although, as you well know, I was very supportive of the $1,000-per-hour cap.

Mr. CONRAD. Could I ask the Senator a further question?

Mr. SESSIONS. Certainly.

Mr. CONRAD. Is it not the case in the Texas matter that there has not been a dollar paid and there is no final resolution of that matter, that that matter is on appeal, and the Governor has interceded in that case?

Mr. SESSIONS. That is correct. But the suggestion that judges are going to somehow guarantee that these exorbitant, as you indicated, unconscionable fees will not occur is not clear from that case because the judge has, in fact, affirmed that case.

The Governor, George Bush of Texas, is doing everything he can to resist the payment of those exorbitant fees, but he has not yet prevailed. We don't need to have litigation in every State in America. We ought to comprehensively legislate this legislation with all of the others in this case.

Mr. CONRAD. One final question I ask of the Senator. Isn't the Senator concerned, as I am, that the $4,000-per-hour fee cap that is supposed to be a cap, supposed to be a ceiling, could well turn into a floor, and the fact is that we will see unconscionable attorneys' fees under this amendment?

The Senator viewed $1,000 an hour as a limit and now this has $4,000 an hour as a limit. Isn't it possible that we will see absolutely unconscionable attorneys' fees out of an amendment like this?

Mr. SESSIONS. Let me respond with a question. Does the Senator from North Dakota believe there should be no cap on the attorneys' fees?

Mr. CONRAD. The Senator from North Dakota believes that the Senate is ill equipped to reach into the thousands of cases across the country and determine what is an appropriate fee. The Senator from North Dakota is the author of the arbitration provisions that are in this bill because I concluded after listening to witnesses on all sides that we could see truly outrageous returns to attorneys, windfall profits for attorneys under the cases that are across the country. The best way to stop that was arbitration panels. Any time we fix an arbitrary fee amount, it may be way too much or may turn out to be too little.

I must say, I can't imagine any circumstance in which $4,000 an hour is too little. I can imagine a circumstance in which, as a previous amendment had $250 an hour proposed, I can imagine for those firms that went out on their own nickel and took on the tobacco industry, that they faced a very tough circumstance, $250 an hour may be too little.

I really am very concerned when we say $4,000 an hour and we put our stamp of approval on that. For every case that was filed back before 1994, we will wind up with a circumstance where people get unjustly enriched.

Mr. SESSIONS. I understand that, but the point clearly is this is a cap of $4,000 per hour. It is not a guarantee of $4,000 per hour. I preferred a cap of $1,000 per hour. The Senator from North Dakota opposed that. So we raised the figure now. I don't see how anybody can complain about this cap.

As to this arbitration agreement, it either does one of two things: It either violates the contracts and, therefore, the legislation written by the Senator from North Dakota has, in fact, undertaken to override the fee written agreement between the attorneys general and their plaintiff lawyers; or it does not.

I am afraid, however, that it doesn't do what the Senator from North Dakota suggests, because the way I read it, the only complaint that can be made is when the attorney general disagrees with the amount of the fee with the lawyer he hired. The exact language is:

> With respect to any dispute that may arise between them regarding the fee agreement, the matter shall be submitted to arbitration.

So, I am not sure that this arbitration agreement has any impact whatever on attorneys' fees. The only thing that would happen is some judges may find it unconscionable and just refuse to enforce it. That is obvious to us, that many of these agreements are unconscionable and ought not to be enforced.

With regard to the Florida fee where the judge held it to be unconscionable, those lawyers have worked a pretty good while on that case. They have done a pretty good amount of work.

The lawyers in Mississippi and Texas have put in a lot of work. The lawyers in Minnesota have put in a lot of work. But there are quite a number of States where the attorneys have done almost no work and they expect to receive a billion dollars. A lawyer, Mr. Angelos, who I believe owns the Baltimore Orioles, had a 25 percent agreement with the State of Maryland. After the case collapsed and they agreed to pay the money—and I don't know how long after he filed the lawsuit, but he certainly wasn't one of the early hard workers on the litigation—he agreed to cut his fee in half to 12.5 percent. That was real generous of him. As I read that in the newspapers, that was a billion dollars. That 12.5 percent was over a billion dollars. And he has done almost nothing.

These are fees the likes of which the world has never seen in history. The amount of work that went into obtaining these fees is minuscule in many cases, and as we are going about tobacco legislation, we simply ought not to allow it to happen. I can't say how strongly I believe that is true. No bill should come out of this Congress that does not have a realistic cap on attorneys' fees. To do so would be to dishonor the taxpayers of this country. And to argue, as some have, that it is being paid by the lawyers or the tobacco companies, and therefore not paid by the citizens of the country, is likewise an improper and unacceptable argument.

The truth is that any way you look at it, it is money paid by the tobacco companies to settle the lawsuit. It is sort of unwise and unhealthy, in my opinion, for it to be structured this way. Well, the plaintiff lawyers who are representing the State of Alabama, or the State of Mississippi, say: State of Mississippi, you don't have to pay my fee; I will just take my fee over here from the tobacco companies; they will pay it.

Well, one of the classic rules of law is that a person who pays your fee is the one you have loyalty to. It creates an impermissible conflict of interest, in my view, between the attorney and his true client—the State—that he is representing. So sometimes they argue that it doesn't count because it was paid by the tobacco companies. That is bad from an ethical point of view, in my opinion. It is also an unjustified argument, because the tobacco company doesn't care whether the money they pay goes to the attorneys' fees or to the State, they just want the lawsuit to end, so they will pay some of it over there and some over there. They just say, ''Tell me where you want me to pay it, State of North Dakota, and I will write the check. Do you want me to write a billion dollars to the attorneys? I will do it. Or I will write you a check for $4 billion. Whatever you say.'' It is just money to settle a lawsuit to them. Certainly that billion dollars could have been put in for health care, tax reductions, and other good things. So that argument, to me, is very unhealthy.

In the history of litigation throughout the entire world, we have never seen the kind of enrichment possibilities that exist for attorneys as it exists in this case. With regard to the Florida case, although the trial judge found it unconscionable and he tried his best to eliminate it, his opinion has been withdrawn and is not the final court opinion. The attorney who stands to gain the money still asserts he hopes to get those fees exactly as he was promised. With regard to Texas, a judge has approved a $2.3 billion attorney fee already. I don't know if Governor Bush can succeed in turning that around or not. He is doing all he can to do so, as well he should, because when you consider how much Texas could use $2.3 billion, as any State could, he ought to resist the loss of that revenue for the people of Texas.

I think the Senator from Washington has worked hard on this amendment. He has listened to the objections from the other side, and he has sought to draft a piece of legislation that would meet those objections. It pays a little more than I think is necessary, but it would have a significant impact in containing the most unconscionable fees that are likely to occur in this matter. I think he has done a good job with it. It certainly does not mandate $4,000-

per-hour fees. A judge has to justify those kinds of fees in a finding. That should mean that young lawyers who may have just done basic background work, or a little research and other types things, won't be paid $4,000; only the very best will.

I think it is a good step forward. We will now see who wants to pay these attorneys a legitimate wage for their work. This is a legitimate wage for their work. I expect that we would have bipartisan support for Senator GORTON's amendment. It is a good amendment. It is a generous amendment for the trial lawyers. It rewards them to a degree that is unheard of for their work. I don't know of any fees I have ever heard of at $4,000 per hour. It ought to bring this matter to a conclusion. Again, I don't believe we will have any legislation on tobacco that does not contain a limitation on attorneys' fees, and that certainly represents my opinion.

I yield the floor.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, this is a well-intentioned amendment but it is a profound mistake—absolutely profound. The Senator from Alabama said the courts would have to justify paying the $4,000 an hour provided for in this amendment. We have just provided the justification. If you read the amendment, it says, ''The amendment sets the following limits on attorney's fees: $4,000 an hour for actions filed before 12/31/94.''

Well, guess what? If you file an action before 12/31/94, you just hit the gusher, you get $4,000 an hour. And the U.S. Senate has said that is OK. I don't think the Senate of the United States should say OK to $4,000 an hour for every case filed before 12/31/94. How can we possibly justify that on the floor of the U.S. Senate?

This amendment says that you get $2,000 an hour for any action filed between 12/31/94 and 4/1/97—$2,000 an hour. Again, you hit the jackpot. It is almost like playing instant lotto and you are a guaranteed winner, because if you filed a case before 12/31/94, you get $4,000 an hour, and the U.S. Senate says that is an appropriate fee. Well, this Senator is not going to say that is an appropriate fee, and this Senator is not going to say it is an appropriate fee to provide $2,000 an hour if you filed any time between 12/31/94 and 4/1/97—absolutely not.

The Senator from Washington argued persuasively on the last amendment, which had a $1,000 cap, that it might be too much or it might be too little. Now we have $4,000. Well, I can guarantee you that, in most cases, that is far too much. Yet, the U.S. Senate will be on record as saying that is an appropriate legal fee. I don't think it is an appropriate legal fee. As one Senator, I am not going to endorse that.

Mr. SESSIONS. Will the Senator yield?

Mr. CONRAD. Yes.

Mr. SESSIONS. Would the Senator recognize that the language that he quoted starts off and says, ''attorneys' fees as approved by the court in such action'' and ''any attorneys' fees shall not exceed the per hour rate of . . .'' Then there is a set of criteria for the judge to consider what the hourly fee should be. I suggest that very few will justify reaching that rate. But whatever, it will be decided by judges on a case-by-case basis.

As the Senator suggested, he believes that some cases are different. This allows flexibility.

Would the Senator not agree with that?

Mr. CONRAD. No; the Senator would not agree with that, because this is the exact criterion that is included in the bill with respect to reforming the arbitration panel decisions—the exact same criterion. I know what is going to happen. The courts out there are going to see that the U.S. Senate says that it is appropriate to bill $4,000 an hour if your action was filed before 12–31–94. That is what is intended—is the ceiling is going to become a floor. And we are going to see case after case where the attorneys are unjustly enriched at $4,000 an hour.

That is exactly what is wrong with this kind of an amendment. It is arbitrary, it is capricious, it sets a limit that allows for unjust enrichment, and it will have the stamp of endorsement of the U.S. Senate. That is a profound mistake. We shouldn't be in the business of deciding what the legal fees are in any case. That is not our business. That is overreach. That is the kind of micromanagement that people on the other side of the aisle have warned us against. It is the kind of thing that people resent, because they know we can't possibly know the factual matter in each and every case that is before a court in every jurisdiction in this country. For us to substitute our judgment for State judges' determinations of what are the appropriate legal fees in a case is a profound mistake. We shouldn't do it.

I go on to point out in the amendment that the Senator from Washington just changed his amendment. The change he made is very interesting. He just sent a modification to the desk that says, upon petition by any interested party, the attorneys' fees shall be determined by the last court in which the action was pending.

Those words don't seem to really mean much. But do you know, they mean a lot. They mean a lot. What they mean is that in the four cases that have already been resolved where the tobacco industry has agreed to pay the attorneys, that now they would be able to come in the back door and challenge the fees that they already agreed to. That is what this language could do. This little modification was just sent so quietly to the desk and received no explanation. ''Any interested party.'' That means Philip Morris might challenge the attorneys' fees of the attorneys that brought the case against Philip Morris. That is a pretty good deal.

That is exactly the kind of thing we shouldn't be doing. That is not the kind of thing we should be allowing. That isn't the kind of thing that should be permitted here on the floor of the U.S. Senate.

Let me say to my colleagues who are well intended on the other side, to put in a stamp of approval by the U.S. Senate that $4,000 an hour is an appropriate legal fee is just a profound mistake. We embarrass this Chamber, we embarrass this Congress, by putting our stamp of approval and say $4,000 an hour is OK. I don't believe the Senator from Alabama believes $4,000—I mean, I think it is preposterous, and yet we are about to vote seriously on an amendment that says $4,000 an hour is OK. I don't think it is OK. I don't think it should be approved.

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, here we go again.

There are people who hate trial lawyers just intuitively and instinctively. I guess the fact that I used to be one before I was elected to the House of Representatives, I kind of take exception to that observation.

But I can recall times in my legal practice when people would walk into my office who were literally dirt poor. They didn't have any money. They had been injured, or they had some claim. And, frankly, the only opportunity they had to go to court was if an attorney said, ''OK, we will take it on a contingency-fee basis. If we can win the case, then you pay a part of the winnings. If we don't win, you don't pay anything.'' Contingency fee, trial lawyers—for a lot of people, it is their only ticket to the courthouse.

Who in the world can come up with $50,000 or $100,000 to pay some lawyer or some legal firm when they need representation? A lot of Americans just can't do that.

So this is really a system of justice which gives the plaintiff a ticket to the door of the courthouse on a contingent basis: ''If we win, you pay the lawyer. If we lose, the lawyer gets nothing.''

Take the case of the tobacco companies. Imagine, if you will, 42 State attorneys general who said, ''We want to sue the tobacco companies, the largest corporations in America, the most politically powerful, a group that never loses a lawsuit. How are we going to do that?'' You can't stop the business of representing the attorney general of Illinois or California. The only way you can do this is by going to the private sector, to private attorneys, and saying to them, ''Will you give us a contingent-fee deal here?'' In other words, ''Will you join the State attorneys general in suing the tobacco companies? And, if we win—if we win—you will be

paid. If we lose, you won't get anything.'' Contingency fee basis. Trial lawyers.

And imagine the tobacco company executives when finally it dawned on them that 42 States had found these law firms around the country willing to take on the risk, willing to take the gamble. Was it a gamble, or was this a sure thing? History tells us it was the biggest legal gamble in the history of America. The tobacco companies had never lost a lawsuit—never. Yet, these law firms came forward and said, ''We will help the State attorneys general. We will sign on a contingency-fee basis. Win or lose, let's see what happens.'' We know what happened. It ended up that the tobacco companies came to the realization that they couldn't win. They sat down about a year ago with the States' attorneys general and tried to hammer out some kind of an agreement. Part of that agreement has to be, ''How are we going to pay these attorneys? We agreed we would pay them for what they were going to do if we won.''

Now come the tobacco companies and those people who have no use for trial lawyers to the floor of the U.S. Senate and say, ''We want to have a voice in this process. We want to rewrite these agreements. We want to decide what was fair and unfair.''

I don't think this is a fundamentally sound amendment. I think we should defeat this amendment. Let me give you one basic reason why we should defeat this amendment: Because the critics of the trial lawyers, the critics of the attorneys who brought these lawsuits against the tobacco companies, have done it again, ladies and gentleman. They have come in and said it is an outrage to pay lawyers this amount of money, an absolute disgrace, if they are plaintiffs' lawyers, if they are lawyers representing people who died of cancer, if they are representing people in the State of Illinois who paid out millions of dollars in taxes. But did they put any limit whatsoever on the fees paid to tobacco company lawyers? Not one word.

Take a look at this amendment. It is disgraceful for us to stand up here and say this is a matter of justice, that we are not going to allow these attorneys to be paid that amount of money, and to exempt the tobacco companies' lawyers. Make no mistake: In these lawsuits, these law firms representing tobacco companies have been raking in millions and millions and millions of dollars for decades. Now we know, because of the suit in Minnesota, for example, that there has been an effort to hide important documents behind the attorney-client privilege. We know these lawyers have been complicit in this effort. Do we punish them with this amendment? No, no, no, no. Our anger for lawyers is reserved only for those lawyers who sue tobacco companies, not for the lawyers who defend tobacco companies.

Let me tell you that I think this is fundamentally unfair. It is fundamentally unfair for us to step in at this stage in the proceedings, not only because of the injustice which it does to the lawsuits which have been filed but because if this amendment passes, it applies to future lawsuits as well. Who will stand up in the future and tackle the billionaire giant tobacco companies with the prospect of limitation of legal fees of this magnitude? Four thousand dollars sounds so exceedingly generous until you wonder and speculate what is at risk here. How would a law firm decide to dedicate all of its resources and all of its time for an entire year or more to try to get to trial against the tobacco companies? What a gamble. What a risk. And the people who are pushing this amendment want to make certain that couldn't happen again. They want to close the courthouse doors to make sure that people who head up tobacco companies are not going to be intimidated by these lawsuits.

We would not be here today on the floor of the Senate, we would not be discussing a tobacco bill, if it were not for the initiative of the State attorneys general and were it not for the cooperation of these private attorneys who got involved in the lawsuit.

You hear a lot of speculation: ''You know these lawyers get paid billions of dollars. Isn't that too much?'' Yes; I think it is. But that is my judgment. The judgment in the bill says it will be made by arbitration panels. We will have people sit down and decide what is fair. And in States, they have dramatically reduced the attorneys' fees that would have come to these private firms with these judges' decisions and arbitration panels. And that will continue. That is the right thing to do. But for us to step up as the U.S. Senate to intervene in this debate and say that we know best, to say that the firms that came forward to have the courage to take on the tobacco companies should now be ignored and their agreements be ignored, their contracts pushed off the table, we know best here in the U.S. Senate, I think it is an outrage. It is an outrage for us, and it is an outrage for those in the future who count on this mechanism, who count on the opportunity to go into court and to plead their case in order to find justice.

How many times in the history of this country have this Congress and the President failed to act and relied on the courts? So many times in my lifetime. I can recall the civil rights struggle. It generally started in the courts. It wasn't until the important cases in the 1950s that finally Congress could muster the courage to deal with this thorny issue. And the same thing is true on tobacco. I have been fighting these tobacco companies as long as I have been in Congress.

I have had some victories and I have had some defeats. They are tough customers, and they have a lot of money. And boy do they have a lot of friends in the House and Senate. They found out there was one group they could not buy, the judicial system. They found out that when lawyers could come into court before a jury of peers and argue the case about their deadly product and what they were doing with it, they could not win. A year ago they threw in the towel and said, ''We are ready to settle. We are ready to make big changes in the way we market our product.''

That never would have happened were it not for the judicial system, I am sorry to say. And now we have those who resent that system, the tobacco companies, critics of trial lawyers, who say, ''Isn't it a shame that this happened the way it did. We are going to rewrite history. We are going to change the terms for these attorneys.''

We cannot let them do it because, ladies and gentlemen, we do not know where the next argument is going to be and where the next case will be. These were 42 cases brought on behalf of 42 different States. In my home State of Illinois, Attorney General Jim Ryan, a Republican, a man I admire for the courage in filing this lawsuit, stood up for our taxpayers. Michael Moore in Mississippi was the man who initiated that action.

And now we come to the question, Are we going to close the door in the future to this opportunity? Which will be the group that wants to take on the tobacco companies? How will they muster the resources? How will they put together the lawsuit and the case law to prevail? If this amendment passes, we are tying their hands. We are saying to them that in the future you will not have the same chance as these 42 different attorneys general.

That is fundamentally unfair. To do this and tie the hands of the plaintiffs' attorneys, the attorneys representing the people, while saying that the tobacco lawyers can continue to rake it in, millions of dollars deceiving, millions of dollars defending, that is fundamentally wrong. I stand in opposition to this amendment.

We have an important bill here, a bill that can reduce the number of deaths in America from tobacco. It is a shame that we are diverted now in a battle against trial lawyers. This should be a battle against the tobacco company tactics that lure our children into a nicotine addiction, which for one out of three of them means an early grave. That is what this bill is really about. It is not about lawyers. It is about our kids. I sincerely hope my colleagues on both sides of the aisle will join me in opposing this amendment.

I yield back the remainder of my time.

Mr. CONRAD. Mr. President, I thank the Senator from Illinois for his really superb presentation. He makes many important points about what this amendment is about. I just want to direct my final remarks to those who may think, as I do, that some lawyers are in line for unjust enrichment. I tell you it makes my blood boil to hear

lawyers in Texas may get $2 billion. That is outrageous. That is unconscionable. I do not believe it is going to happen. That matter is on appeal.

In Florida, when the lawyers there submitted bills like that, the court said it was unconscionable and told them to forget it. That is what every State court ought to do when presented with unconscionable claims by lawyers in these cases.

I have to say to my colleagues who are thinking about voting for this amendment, you are going to have to be able to go back home and justify the Senate of the United States saying $4,000 an hour is OK. I do not believe it is. I do not believe you can justify going back home and saying, yes, I voted for an amendment that would provide $4,000 an hour for any case filed before 12–31 of 1994. I do not think people in my State would think the Senate ought to say, well, $4,000 an hour is OK for every case filed before 12–31 of 1994. Boy, I tell you, the best lawyers in my State bill about $150 an hour. And now we would be saying, well, in a tobacco case, if you just happened to file before this magical date of 12–31–94, you get $4,000 an hour. And the Senate has said that is OK. Boy, I tell you, I think that would be a profound mistake.

Let me just say the Senator from Illinois is also correct; there are circumstances where some of the limits are not enough. The $500 an hour which is provided for in this amendment for cases filed after 6–15 of 1998 may be too little. If we discover, going through the documents, that there is some new legal theory to take on the tobacco industry but we say to firms across America you are limited to $500 an hour when you do not have any idea whether you are going to win or not and you may have to put millions of dollars into making the case and then the Senate, in its wisdom, says you are limited to $500 an hour, that is probably too little. What law firm is going to take the case?

And then, as the Senator from Illinois has pointed out, interestingly enough, this amendment applies to one set of lawyers, the lawyers for the people who are hurt by these products. The lawyers for the families of somebody who has contracted cancer or has lung disease or has heart disease, they are limited but the tobacco industry lawyers are not. And the bizarre thing is the limits that are put on here may well be far too much. I really cannot see justifying $4,000 an hour. I don't know how that gets justified. And $2,000 an hour if you filed between 12–31–94 and 4–1–97; $1,000 an hour for actions filed before 4–1–97 and 6–15–98, those are pretty fancy numbers where I come from. So I just think this amendment is a mistake and ought to be rejected by our colleagues.

I thank the Chair and yield the floor.

Mr. MCCONNELL. Mr. President, I rise today to speak, yet again, on the issue of limiting tobacco trial lawyer fees to a reasonable level.

Unfortunately, the Senate has repeatedly refused to limit the fees to a reasonable wage. And, now we are forced to consider an amendment to allow tobacco trial lawyers to earn as much as $4,000 an hour!

But—Mr. President—$4000 an hour is better than the alternative and it's about all we have left. We've tried to cap the fees at a reasonable level, and that's been rejected. A cap of $4000 an hour is our last alternative. If we fail to pass the Gorton amendment, then we will be allowing attorneys to make as much as $88,000 an hour!

Let me remind my colleagues of how we got to $4000 an hour. First, we tried to limit the fees to $250 an hour—nearly 50 times the minimum wage. This attempt was soundly rejected by the Senate. $250 an hour was simply not enough for the trial lawyers.

So, Senator FAIRCLOTH, Senator SESSIONS and I got together to regroup and try again. We discussed how much is enough for the trial lawyers? $500/hour? $750/hour?

We debated these amounts—and frankly—it turned our stomachs to think about the federal government approving a bill to give tobacco trial lawyers $500 an hour or $750 an hour. Especially when you consider that the average lawyer in America only earns about $48 an hour and the average doctor only earns about $100 an hour.

But, we knew that it would be difficult to get the friends of the trial bar to agree to any limit at all. So, we held our noses and introduced a new amendment to cap the lawyer fees at $1000 an hour! Surely, $1000 an hour would be considered a fair wage for the trial bar.

Mr. President, was $1,000 an hour enough for the friends of the trial bar? No, absolutely not. They needed much more. They wanted to maintain the status quo. They wanted the Senate to keep the National Trial Lawyer Enrichment Bill intact.

The friends of the trial bar wanted us to continue to allow: lawyers in Minnesota to earn $4,500 an hour; lawyers in Florida to earn $7,000 an hour—assuming of course that these Florida lawyers worked 24 hours a day for three-and-a-half years; lawyers in Mississippi to earn $10,000 an hour; and lawyers in Texas to earn $88,000 an hour.

So, we tried to cap the fees at $1000 an hour and we lost 50–45. We got closer, but still not enough.

So Senator GORTON has put together a comprehensive outer-limits amendment that says—$4,000 an hour is better than $88,000 an hour. Surely, we can get 51 Senators to agree to that notion.

Now, let me take a minute to address two or three issues raised by the proponents of unlimited billionaire fees for trial lawyers.

Billionaire Lawyer Argument No. 1: ''We're just businesspeople, like anybody else'':

First, Senator DASCHLE argued a few days ago that the Senate should not limit plaintiff's lawyer fees because ''[a] lawyer is a legal businessperson.'' So, Senator DASCHLE is effectively arguing that we should no longer see lawyers as lawyers, but rather we should see them as businessmen and venture capitalists—a few good men looking to make a buck.

With all due respect, I could not disagree more. Lawyers are not supposed to be businessmen and businesswoman out to make up a buck. It is this type of make-a-buck-at-any-cost mentality that drives so much wasteful and frivolous litigation in our society. Too often, litigation is about enriching the lawyer, not compensating the client.

Mr. President, every first-year law student is taught that he or she is not some businessperson out to make a buck. I remember my days in law school where our professors taught us that we were supposed to be fiduciaries—representing the interests of our client, not our own selfish, profit-making interests.

In fact, legal ethics prohibit attorneys from charging fees that are not ''reasonable.'' As Professor Lester Brickman explained in today's Wall Street Journal: ''If the standard of reasonableness has any meaning, it is surely violated by fees of tens of thousands of dollars an hour?''

Moreover, Professor Brickman concluded:

> The public has a compelling interest in preserving legal ethics, including th[e] rule that fees must be reasonable. The higher the fees tort lawyers get, the greater the share they take of injured clients' recoveries. Moreover, the higher the fees, the more tort litigation and the more costs that are imposed on society. The civil justice system, which generates the fees that Mr. Daschle does not want curbed, exists to serve citizens. Lawyers are not businesspeople; they are professionals entrusted with the people's businesses.

So, Mr. President, every lawyer in America knows that he or she has no constitutional right to charge excessive and unreasonable fees. We must pass the Gorton amendment as our last best hope of ensuring that the fees get somewhere near reasonable and rational.

Billionaire Lawyer Argument No. 2: ''Private Contracts Can Never Be Altered'':

Second, the proponents of unlimited lawyer fees argue that the federal government cannot interfere with private contracts in any way, shape or form.

This argument is absolutely nonsensical. The tobacco bill is full of provisions that may force tobacco companies to abrogate contracts with retailers and advertisers—among others. The Supreme Court has made clear that ''Congress may set minimum wages, control prices, or create causes of action that did not previously exist.''

Furthermore, the Court has made clear that private parties may not preempt governmental action by simply entering a contract. Can you imagine if every time that we passed a new minimum wage law, we exempted all employers who have a previous contract

with their employees to pay at a level lower than the new minimum wage? Can you imagine the outcry in the Senate if we exempted private parties from a new minimum wage law whenever those parties had a contract ''preempting'' Congressional action?

I also find it curious that my colleagues on the other side of the aisle argue on the one hand that the right of contract is inviolate and above Congressional action—yet on the other hand, argue that the right of contract may be violated by some unknown arbitration panel.

So, the friends of plaintiffs bar argue that an unknown arbitration panel may modify contracts, but the United States Senate—the elected representatives of the people—may not modify fee contracts.

Which one is it? Can we adjust these contracts or can we not adjust contracts? Mr. President, we can't have it both ways. We can't say out of one side of our mouths that the fees and contracts can be adjusted by an arbitration panel, and then say out of the other side of our mouth that the fees and contracts are a done deal and may not be adjusted by Congressional action.

The bill as currently written says that all types of contracts can be adjusted by this sweeping federal regulatory bill. In particular, the bill says that lawyer fee contracts can be adjusted by an arbitration panel.

So, frankly, I am tired of hearing that contracts cannot be adjusted and that fees cannot be made reasonable. If we are giving the arbitration panel the ability to adjust contracts and fees, then it is perfectly consistent to establish a fee ceiling and a frame of reference for adjusting these contracts and fees.

Billionaire Lawyer Argument No. 3: ''$4,000 Is Too Generous'':

I was amazed this morning to hear those who carry the water for the trial bar arguing that $4,000/hour is too much money for their friends to earn. Yes, Mr. President, you heard me right. Some of the friends of the trial bar are now arguing that $4,000 an hour is too much money for the trial bar.

So, let me get this straight. $250 an hour is not enough money for the lawyers. But, $4,000 an hour is too much money for the lawyers.

What about something in between $250 and $4,000? Oh, say, $1,000 an hour. What about $1,000 an hour as a midpoint? Oh wait a minute, the Senate rejected that amount to.

So $250 an hour is not enough. $4,000 an hour is too much. And, $1,000, I suppose, just doesn't feel right.

If $4,000 an hour is too high, then what is $88,000 an hour?

I'll tell you what $88,000 an hour is—it's how much money we are going to allow the attorney general to pay the lawyers in Texas if we don't pass the Gorton amendment.

We must pass the Gorton amendment. It deals with every possible permutation and takes into account any variation in degrees of risk assumed by the plaintiffs' lawyers.

It provides a cap of $4,000 an hour for all the attorneys who suited up and led the fight to kill tobacco in the earliest stages of the war.

It provides a cap of $2,000 an hour for those who signed up when the war was coming to a close in the national settlement last spring and summer.

It then provides a cap of $1,000 an hour for any lawyer who ran onto the battlefield after the settlement was signed, and a cap of $500 an hour for all lawyers who will rush straight to the courthouse as soon as we pass this fee cap.

Senator GORTON has covered the waterfront here. I hope that we can pass this amendment as the last best hope for a fee cap.

Mr. FAIRCLOTH. Mr. President, I am shocked that the Senate rejected two prior attempts to limit these attorneys' fees, and I am amazed that we are here to debate whether a four thousand dollar per hour cap is enough for the trial lawyers.

Over the past few days, a number of constituents asked me how we could possibly condone paying these lawyers more than 250 dollars per hour, which was the rate in my original amendment.

Where I come from, Mr. President, 250 dollars is an incredible amount of money. That is a weekly wage for a lot of working people. These are the same working people, I might add, whose taxes we are raising to pay these lawyers' fees. This bill is an unparalleled transfer of wealth from the poor to the super-rich.

My constituents were upset about 250 dollar per hour and 1000 per hour payments to lawyers, but I explained that the Texas lawyers expect to make ninety-two thousand dollars per hour, and my constituents enthusiastically agreed that these caps were better than ninety-two thousand dollars per hour. The Texas lawyers have already been paid ninety million dollars and expect more than two-point-two billion dollars more.

In fact, the Attorney General of Texas is so intent on paying them their two-point-three billion dollars in fees that he filed a lawsuit against the Governor because the Governor tried to intervene on behalf of the taxpayers who will foot the bill. Yes, the taxpayers, because the Attorney General admitted to the New York Times on May 27 that part of the attorneys' fees will come from the Federal Government.

It is a betrayal of the American people, the taxpayers, to raise their taxes to pay lawyers four thousand dollars per hour. That's more than most families make in a month. That is outrageous. Working Americans—people scraping to pay the mortgage—being asked to pay for more luxury houses and yachts for billionaire trial lawyers. It's an abuse of the taxpayers. Yes, the taxpayers, that's what the Texas Attorney General said.

It is important to note that this is a cap, not a flat fee, so few lawyers should expect to be paid at the top end of these categories. The amendment limits the number of cases that fall within the top category to just a handful. That is a critical distinction, Mr. President, and one that makes this amendment more attractive to those of us shocked by these numbers.

However, as the Senate rejected my previous two amendments to limit fees, I have no alternative but to vote for these higher dollar numbers. These outrageous numbers are testament to the strength of the ultimate Washington special interest, the special interest most inclined to put personal interest above national interest, the trial lawyers.

Mr. President, I will vote for this amendment, but I do so only because some limitation is better than no limitation on these predatory and, I might add, unethical attorneys' fees payments.

Mr. LEVIN. Mr. President, I cannot support the Gorton amendment. This amendment would create a complicated, bureaucratic and arbitrary set of criteria for establishing payments to the plaintiffs' lawyers while leaving the fees of the tobacco companies' lawyers without restriction. The amendment would set forth unusually high hourly amounts for attorneys' fees which could lead to higher payments. The underlying legislation establishes a preferable process by setting up a three-person arbitration board to resolve disputes regarding the attorneys' fees. The board would have a representative of the plaintiff, a representative of the attorney, and a third party chosen jointly by those two arbitrators.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as I understand, we have an order for adjournment at 12:30?

The PRESIDING OFFICER. The Senate is to adjourn at 12:30.

Mr. KENNEDY. I ask unanimous consent that we might extend that for 7 minutes.

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

Mr. KENNEDY. I thank the Chair.

Mr. President, as Senator DURBIN and Senator CONRAD have pointed out, the current amendment is not really about saving money for the States. The amendment is one more backhanded attempt to protect the tobacco industry. It is the third amendment offered on attorneys' fees. The prior two were rejected by a substantial majority. It is a transparent effort to distract attention from the enormous public health issues on which the American people want us to focus. Let's defeat this amendment and turn our attention to stopping youth smoking.

The Senate has debated this landmark youth smoking reduction bill for

a month. Each of us has had an ample opportunity to state our views. The Senate should commit to vote on final passage this week. We owe it to the children who are being entrapped into a life of addiction and premature death by the tobacco industry every day.

The opponents of this legislation have used every parliamentary tool at their disposal to extend the debate and divert attention to an unrelated issue. They want to talk about every subject but the impact of smoking on the Nation's health. However, the real issue cannot be obscured by their verbal smokescreen. It is time for us to move from talking to voting. Each day that the opponents delay final Senate passage of the bill, 3,000 more children begin to smoke and a third of these children will die prematurely from lung cancer, emphysema, heart disease, and other smoking-caused illnesses.

Each day that we delay, the price of a pack of cigarettes will continue to be affordable to the Nation's children and more and more of them will take up this deadly habit. And each day that we delay, tobacco will continue to target children with billions of dollars in advertising and promotional giveaways that promise popularity, excitement, and success for young men and women who start smoking. Each day that we delay, millions of nonsmokers will be exposed to secondhand smoke. According to the Environmental Protection Agency, secondhand smoke causes 3,000 to 5,000 lung cancer deaths each year in the United States—more than all other regulated hazardous air pollutants combined. Secondhand smoke is also responsible for as many as 60 percent of cases of asthma, bronchitis, and wheezing among young children.

Each day that we delay, tobacco will remain virtually the only product manufactured for human consumption that is not subject to federal health and safety regulations, despite the fact that it causes over 400,000 deaths a year.

Preventing this human tragedy should be the Senate's first order of business. With so much at stake for so many of our children, it is truly irresponsible for the opponents of this legislation to practice the politics of obstruction. Let the Senate vote.

The public supports this bill overwhelmingly, despite the tobacco industry's extravagantly funded campaign of misinformation.

A new poll released this morning shows that the American people want the McCain bill to pass by a margin of two to one; 62 percent support the legislation, while only 31 percent oppose it. The American people can see through the tobacco industry's smokescreen, why can't the Senate?

The same survey shows that the public knows who will be responsible if the McCain bill does not pass. By a 2½ to 1 margin, the American people say the Republicans in Congress will be most responsible if the bill dies. By a similar margin, voters say they would be more likely to vote for a candidate who supported the McCain bill, and less likely to vote for a candidate who opposed it.

This bill will do an effective job of providing that protection for our children. It will save 5 million of today's children from a lifetime of addiction and premature death. It contains a series of strong provisions that have withstood repeated attempts to weaken them:

It contains a substantial price increase to keep children from starting to smoke.

It gives the FDA strong authority to regulate tobacco like the drug it is.

It has tough restrictions on advertising, to stop tobacco companies from cynically targeting children.

It contains a strong lookback provision that requires large additional payments by tobacco companies if they fail to meet the targets in the bill for reducing youth smoking in the years ahead.

It gives no immunity from liability to the tobacco companies for the illnesses they have caused.

We can reach a reasonable accommodation on how best to protect tobacco farmers, and how best to use the revenues obtained from the tobacco industry. There is no excuse for further delay. The Senate should pass this bill this week, and send it to the House. Senators who refuse to act will pay a high price for abdicating their responsibility.

Mr. President, I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I ask unanimous consent that we postpone the recess for 5 minutes.

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

Mr. GORTON. Mr. President, in an informal discussion with the Senator from North Dakota, each of us has expressed a hope that we may be able to vote on my amendment shortly after the recess and perhaps after the official photograph of the Senate. I will simply summarize arguments that the Presiding Officer has made so eloquently on each of the amendments on this subject that has been before us and that I made earlier.

It does seem to me curious that the two opponents of the amendment made dramatically opposite statements in opposing this amendment. The Senator from North Dakota said in spite of the clear language of the amendment, that instead of a ceiling of so many thousands of dollars an hour, depending on when the litigation began that is the thrust of my amendment, that, in fact, it will be considered a floor.

One can take that position only by not reading the amendment and all the considerations that are included in it, but he was afraid that it would mean in many cases we would be paying too much.

The Senator from Illinois felt it was terrible to limit lawyers even to $4,000 an hour, because many of them had made agreements under which they would get more. And indeed, as the Presiding Officer said in response to a question from me, we already have one example of one set of attorneys already being awarded well over $2 billion for representing one State, the State of Texas, in litigation of this sort and the attorney general of Texas bitterly opposing the attempt by the Governor of Texas to get a more reasonable set of attorneys' fees.

We want to end those debates, and the adoption of this amendment will end those debates, because it will provide a ceiling, I think a highly reasonable ceiling. In fact, I had some of my colleagues tell me privately that they don't like my amendment because it is too much. They can't explain even these amounts. In the abstract, that, of course, is the case, but as against $2.3 billion, as against many of the contingent fee agreements, one can explain these limitations and they are just that; they are ceilings and not anything else.

For those who feel that the sky should be the limit, that no matter how many billions of dollars attorneys have contracted for, no matter how much they have pled with us to pass this legislation, no matter how much minute regulation they are asking us to impose on every aspect of the tobacco industry—the farmers, the manufacturers, the wholesalers, the retailers—more regulation than the Congress of the United States has ever imposed on any other legal business in history, that, nonetheless, one aspect of the contracts between States and other plaintiffs and their lawyers should be entirely free of any concern on our part whatsoever.

Mr. President, I just can't see how anyone can justify this bill, hundreds of pages of detailed regulations, and say nothing about attorneys' fees other than an arbitration in which the only people represented are the plaintiffs' lawyers and the plaintiffs who have signed the contracts in the first place. No, that is not balance; that is not fair.

As the Presiding Officer knows, I disagreed with his previous amendment because it seemed to me that there were certain circumstances under which it was too low. I think we ought to do justice to lawyers who have done an extraordinary job, who have in some cases come up with new theories and have been successful with those theories, but I think we have the right to say enough is enough. This amendment, Mr. President, says enough is enough. And in the future, when tobacco litigation will be very, very easy, a much smaller enough is going to be enough.

Probably the long-term result of this amendment would be not dissimilar in the total amount of attorneys' fees paid from the Faircloth amendment that came so close to adoption late last week. This amendment, however, would see to it the lion's share of those recoveries would go to the attorneys who actually earned them and not those who have gotten in very late.

I commend this to my colleagues, both Republicans and Democrats, as being reasonable and as being something that should be a part of any overall pattern that we pass, and that is to put us at the heart of the whole debate over tobacco. If we can regulate everyone else, we can regulate the attorneys. We do it fairly in this amendment, and I trust as soon as we come to an agreement on the time it will be voted on, that it will be adopted and we can go on to other important developments in this bill.

RECESS UNTIL 2:15 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, at 12:38 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the President Pro Tempore.

Mr. LOTT addressed the Chair.

The PRESIDENT pro tempore. The distinguished able majority leader is recognized.

OFFICIAL PHOTOGRAPH OF THE 105TH CONGRESS

Mr. LOTT. Mr. President, for the information of all Senators, if they would go ahead and be seated if they are in the Chamber—I note that there are a number of our colleagues who are still not here—we will go into a quorum call momentarily to allow Senators to reach the Chamber and be seated.

Also, those who are here, I want to note that the camera is located in this corner over to your right. So I ask that all Senators turn their chairs toward the camera. We need to be able to see the camera. The photographer will then take eight pictures, so there will be eight flashes.

Once we get started, it should not take very long. But it would be helpful if the Senators who are in the Chamber would take their seats so that when the others arrive we will be able to go straight to the pictures.

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

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LOTT. Mr. President, if all Senators would take their seats, we could get a more accurate count of who might be absent.

I also want to note once again, as I did earlier, the camera that will be taking the picture is over my right shoulder here in the corner. If both sides of the aisle would adjust chairs where you can see the camera, we could get a good shot. The photographer will take 8 pictures with 8 flashes. Once we get all Senators in their chairs, it shouldn't take but just a few minutes to get that done.

After the photograph is taken, we will go, I believe immediately without any intervening debate, to a vote on the Gorton amendment. Then we will go to the next Democrat amendment.

Those of you that are due to be at a bill signing ceremony about 3 o'clock should be able to make it. If all Senators would take their seats we should be ready to go momentarily.

I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

RECESS

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, the Senate, at 2:26 p.m., recessed until 2:31 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. COATS).

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 2705, AS MODIFIED

The PRESIDING OFFICER. The pending question is the Gorton amendment, No. 2705, as modified.

Mr. LOTT. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not.

Mr. LOTT. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

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

The legislative clerk called the roll.

Mrs. BOXER (when her name was called). Present.

Mr. LOTT (when his name was called.) Present.

Mr. NICKLES. I announce that the Senator from Pennsylvania (Mr. SPECTER) is absent because of illness.

The result was announced—yeas 49, nays 48, as follows:

YEAS—49

Abraham	Dodd	Hutchinson
Allard	Domenici	Hutchison
Ashcroft	Dorgan	Inhofe
Bond	Enzi	Kempthorne
Brownback	Faircloth	Kyl
Burns	Frist	Lieberman
Byrd	Gorton	Lugar
Campbell	Gramm	Mack
Chafee	Grams	McCain
Coats	Grassley	McConnell
Collins	Gregg	Murkowski
Coverdell	Hagel	Nickles
Craig	Helms	Roberts
Santorum	Snowe	Thurmond
Sessions	Stevens	Warner
Smith (NH)	Thomas	
Smith (OR)	Thompson	

NAYS—48

Akaka	Feinstein	Leahy
Baucus	Ford	Levin
Bennett	Glenn	Mikulski
Biden	Graham	Moseley-Braun
Bingaman	Harkin	Moynihan
Breaux	Hatch	Murray
Bryan	Hollings	Reed
Bumpers	Inouye	Reid
Cleland	Jeffords	Robb
Cochran	Johnson	Rockefeller
Conrad	Kennedy	Roth
D'Amato	Kerrey	Sarbanes
Daschle	Kerry	Shelby
DeWine	Kohl	Torricelli
Durbin	Landrieu	Wellstone
Feingold	Lautenberg	Wyden

ANSWERED ''PRESENT''—2

Boxer	Lott

NOT VOTING—1

Specter

The amendment (No. 2705), as modified, was agreed to.

Mr. MCCAIN. I move to reconsider the vote.

Mr. KERRY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXPLANATION OF VOTE

Mrs. BOXER. Mr. President, I wish to inform the Senate of the reason I voted ''present'' on the Gorton amendment related to limits on attorneys' fees in tobacco cases.

I abstained on this vote because my husband's law firm is co-counsel in several lawsuits against tobacco companies filed in California state court by health and welfare trust funds.

The Ethics Committee has advised me that voting on an amendment such as this ''would not pose an actual conflict of interest'' under the Senate Code of Conduct.

However, I decided that this vote could create the appearance of a conflict of interest and therefore I abstained by voting ''present.''

EXPLANATION OF ABSENCE

Mr. DURBIN. Mr. President, I would like to take a moment to explain my absence during vote number 159 last night. I was returning to Washington from Chicago when the airplane I was on was delayed by weather problems. While the vote was going on, the plane was in the air over the Washington area as we waited for the airport to reopen so that we could land.

Had I been present, I would have voted 'nay' on the motion to table the Reed amendment to the tobacco bill. I am a cosponsor of the Reed amendment and I believe it should be part of the final tobacco legislation.

The tobacco industry has been targeting kids with its advertisements and marketing gimmicks for far too long. The tobacco bill would re-promulgate the FDA's regulations, currently on hold, that seek to restrict tobacco advertising and marketing that appeals to children.

The Reed amendment adds new teeth to the restrictions by linking each tobacco company's tax deduction for advertising expenses to its compliance