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THE WHITE HOUSE

WASHINGTON

May 9, 1996

MEMORANDUM FOR BRUCE LINDSEY

CC: JACK QUINN, KATHY WALLMAN

FROM: ELENA KAGAN EK

SUBJECT: CRUISE VESSEL TORT REFORM

I received the attached from Jim Brown of OMB today. As Brown's memo notes, the Department of Transportation would like to know whether the cruise vessel tort reform provision in the Coast Guard Authorization bill might provoke a presidential veto.

Brown told me on the phone that some members of Congress are working on a compromise provision that would delete the limits on liability for malpractice and emotional distress, but retain the bar on foreign seamen suing foreign-flag vessels in U.S. courts. My sense, however, is that this bar is the most problematic aspect of the provision, because of the competitive advantage it gives to foreign-flag shipping over U.S.-flag vessels.

What should we tell Brown and the Transportation Department? (You can ignore the part of Brown's memo that requests guidance by "this afternoon." He is not expecting anything before next week.)

Bruce — what do you think? Jack

051306M

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

09-May-1996 10:53am

TO: Elena Kagan

FROM: James A. Brown
Office of Mgmt and Budget, LRD

SUBJECT: Liability provision in Coast Guard Authorization bill

Negotiations between House and Senate conferees on S. 1004, the Coast Guard Authorization Bill for FY 1996, have been stalled for several months over a liability provision included in the House version of the bill.

On March 27 the Department of Transportation sent a letter to conferees "strongly recommending" that the provision be deleted.

Since then, there has been a lot of activity regarding liability limitation provisions in other legislation. The Department has asked us to provide (hopefully, this afternoon) a current reading on whether the provision would tolerable, even though objectionable, in an enrolled Coast Guard authorization bill, or whether it is so objectionable that the President would feel required to veto the bill.

I will fax the provision to you separately, and will be grateful for any guidance you can provide. Thanks.

Brown

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S.1004

Coast Guard Authorization Act For Fiscal Year 1996 (Engrossed House Amendment)

SEC. 430. CRUISE VESSEL TORT REFORM.

(a) Section 4283 of the Revised Statutes of the United States (46 App. 183), is amended by adding a new subsection (g) to read as follows:

'(g) In a suit by any person in which a shipowner, operator, or employer of a crew member is claimed to have direct or vicarious liability for medical malpractice or other tortious conduct occurring at a shoreside facility, or in which the damages sought are alleged to result from the referral to or treatment by any shoreside doctor, hospital, medical facility, or other health care provider, the shipowner, operator, or employer shall be entitled to rely upon any and all statutory limitations of liability applicable to the doctor, hospital, medical facility, or other health care provider in the State in which the shoreside medical care was provided.'.

(b) Section 4283b of the Revised Statutes of the United States (46 App. 183c) is amended by adding a new subsection to read as follows:

'(b) Subsection (a) shall not prohibit provisions or limitations in contracts, agreements, or ticket conditions of carriage with passengers which relieve a manager, agent, master, owner, or operator of a vessel from liability for infliction of emotional distress, mental suffering, or psychological injury so long as such provisions or limitations do not limit liability if the emotional distress, mental suffering, or psychological injury was--

'(1) the result of substantial physical injury to the claimant caused by the negligence or fault of the manager, agent, master, owner, or operator;

'(2) the result of the claimant having been at actual risk of substantial physical injury, which risk was caused by the negligence or fault of the manager, agent, master, owner, or operator; or

'(3) intentionally inflicted by the manager, agent, master, owner, or operator.'.

(c) Section 20 of chapter 153 of the Act of March 4, 1915 (46 App. 688) is amended by adding a new subsection to read as follows:

'(c) Limitation for Certain Aliens in Case of Contractual Alternative Forum-

'(1) No action may be maintained under subsection (a) or under any other maritime law of the United States for maintenance and cure or for damages for the injury or death of a person who was not a citizen or permanent legal resident alien of the United States at the time of the incident giving rise to the action, if the incident giving rise to the action occurred while the person was employed on board a vessel documented other than under the laws of the United States, which vessel was owned by an entity organized other than under the laws of the United States or by a person who is not a citizen or permanent legal resident alien.

'(2) The provisions of paragraph (1) shall only apply if--

'(A) the incident giving rise to the action occurred while the person bringing the action was a party to a contract of employment or was subject to a collective bargaining agreement which, by its terms, provided for an exclusive forum for resolution of all such disputes or actions in a nation other than

the United States, a remedy is available to the person under the laws of that nation, and the party seeking to dismiss an action under paragraph (1) is willing to stipulate to jurisdiction under the laws of such nation as to such incident; or

`(B) a remedy is available to the person bringing the action under the laws of the nation in which the person maintained citizenship or permanent residency at the time of the incident giving rise to the action and the party seeking to dismiss an action under paragraph (1) is willing to stipulate to jurisdiction under the laws of such nation as to such incident.

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U.S. Department of Transportation
Office of the Secretary of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

March 27, 1996

The Honorable Larry D. Pressler
Chairman
Committee on Commerce, Science and Transportation
Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Department of Transportation respectfully submits the following comments opposing the enactment of Section 430 of S. 1004, the Cruise Vessel Tort Reform provision contained in the Coast Guard Authorization Act for Fiscal Year 1996, as passed by the House on February 22, 1996. The Senate's version of S. 1004 does not contain a provision similar to Section 430. The Department strongly recommends that the provision be deleted from S. 1004 during conference because of the adverse competitive effect on U.S.-flag cruise ship companies, the potential harm to U.S. passengers on cruise ships, and the potential abrogation of rights currently granted to foreign seafarers by U.S. convention and law.

Because Section 430 has no effect on the safe operation of cruise vessels, it should not be included in an otherwise noncontroversial Coast Guard Authorization bill. The disagreement over this provision now threatens the success of S. 1004 in this Congress. S. 1004 contains too many agreed-upon provisions important to the Coast Guard, the Coast Guard Auxiliary, the maritime industry and the general public, to allow the "cruise vessel tort reform" debate to further delay its enactment.

Section 430 has three major provisions which are discussed below. On their face, the limited liability provisions in the first two subsections apply to all passengers on cruise vessels leaving U.S. ports and to both U.S.-flag and foreign-flag cruise vessels operating out of U.S. ports. However, 95 percent of the passengers on cruises leaving U.S. ports are U.S. citizens and nearly all of those vessels are foreign-flag. Thus, the adverse impact of the provisions falls mainly on U.S. passengers while at the same time benefiting foreign-flag cruise operators -- operators who pay few U.S. taxes and avoid U.S. minimum wage and fair labor laws. The third subsection gives a competitive advantage to foreign-flag cruise vessel owners by allowing them to escape liability in U.S. court for injuries to their foreign crew, while U.S.-flag vessel owners would remain liable for injuries to their crew.

LIMIT LIABILITY FOR MEDICAL MALPRACTICE

The first part of Section 430 limits the liability of cruise ship owners in certain malpractice tort actions brought by passengers. Under Subsection 430(a), a cruise ship owner's liability cannot exceed the legal liability of the shore-based facility where a sick or injured passenger is taken for treatment. As a result, this subsection may encourage a cruise ship owner to "forum shop" and limit its potential liability by referring a sick or injured passenger to treatment in the port with the most restrictive malpractice laws, rather than the closest port with the best available hospital. This provision could harm U.S. passengers by restricting their ability to hold the cruise ship owners fully accountable for mistreatment or injury resulting from the owners' referral to a local facility.

LIMIT LIABILITY FOR EMOTIONAL DISTRESS, ETC.

Subsection 430(b) limits the liability of cruise ship owners in civil tort actions brought by passengers for the infliction of emotional distress, mental suffering or psychological injury. Through conditions printed on passenger tickets, cruise vessel owners may limit the recovery of an injured passenger for emotional damages to instances where emotional distress was the direct result of substantial physical injury. Compensation for emotional injury is the primary civil remedy in rape cases, for example, which, unfortunately, do occur on cruise vessels. Subsection 430(b) would allow a cruise vessel owner to escape liability for emotional distress or psychological injury suffered by a passenger raped on a cruise ship unless there is also substantial physical injury.

PRECLUDE ACCESS TO U.S. COURTS BY FOREIGN SEAFARERS

Subsection 430(c) bars foreign seafarers injured on board a foreign-flag vessel from bringing an action in U.S. courts for "maintenance and cure" or damages for injury or death. The right of seafarers to receive food and lodging and medical care during illness or injury ("maintenance and cure") while in the service of the ship has been a bedrock principle of international maritime law for more than 200 years. The principle is designed to protect the welfare of seafarers. The right to "maintenance and cure" is a fundamental right consistently recognized by U.S. courts, including the Supreme Court, the courts of other maritime nations, and international labor agreements. As a practical matter, Subsection 430(c) would remove this right for seafarers employed on foreign ships trading regularly and primarily in U.S. ports.

Another longstanding right superseded by Subsection 430(c) is the right of foreign crew to file claims in U.S. courts under the Jones Act, 46 App. U.S.C. §688, for injury or death aboard foreign-flag vessels doing business in the United States. This right has also been reaffirmed by the Supreme Court.[1] The Supreme Court recognized the importance of including foreign-flag vessels as employers under the Jones Act as a matter of "commercial equity". Denying foreign seafarers the right to sue in U.S. courts would give a significant competitive advantage to foreign-flag cruise ships over U.S.-flag cruise ships. Section 430(c) restricts access to foreign seafarers, but U.S. seafarers would continue to have the ability to pursue their claims in U.S. courts.

Barring foreign seafarers' access to U.S. courts also might violate the Shipowners' Liability (Sick and Injured) Convention (No. 55), 1936, a convention adopted by the International Labor Organization and approved by the United States on October 29, 1938. This convention grants seafarers the right to receive "maintenance and cure" and to pursue this right in the courts of all nations in which the convention is in force. We would also like to call the Committee's attention to the fact that the U.S. State Department opposes Subsection 430(c) because of the commercial disadvantage to U.S.-flag cruise operations and the potential conflicts with U.S. obligations under Friendship, Commerce and Navigation treaties which allow reciprocal access to U.S. courts by nationals of other treaty parties.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the submission of this report.

Thank you for the opportunity to comment on Section 430 of S. 1004, the Coast Guard Authorization Act for Fiscal Year 1996.

Sincerely,

Nancy E. McFadden

Nancy E. McFadden

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[1]In Hellenic Lines Ltd. v. Rhoditis, 398 U.S. 306 (1970), the Supreme Court upheld the right of foreign seafarers to use U.S. courts to recover "maintenance and cure" and to make claims under the Jones Act.

fl. Tort Reform

The Institute for Civil Justice

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Deborah R. Hensler
Director
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November 11, 1996

It's not clear how tort reform will figure on next year's Congressional agenda or what actions states will take. But however the debate unfolds, I think we can gain valuable perspective by reflecting on the nature of debate this past year. In this newsletter, key ICJ staff whose analytic expertise was frequently called upon in the course of the year, comment on the issues, the process, and prospects for the future.

Sincerely,

Deborah R. Hensler

DRH/dam

Enclosure CP-223 (10/96)

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FACTS & Trends

RAND ❖ Institute for Civil Justice

Vol. 4, No. 3 October 1996

Reflections on Tort Reform

This has been an active—indeed, turbulent—year for tort reform at both the state and federal level. This spring, Congress debated and passed the product liability component of the more extensive tort reform package contained in the Contract with America. President Clinton vetoed the bill, and congressional supporters could not muster the votes for an override. States launched their own tort reform initiatives. In California, an attempt to implement tort reform through the referendum process was ultimately unsuccessful. Other states have tort reform initiatives still simmering.

ICJ research and ICJ staff figured prominently in many aspects of this debate. We fielded numerous requests for our empirical findings on jury verdicts, product liability, and auto no-fault; we provided materials to members of Congress on both sides of the aisle and testified on various aspects of our work to several state legislatures; and we gave interviews and provided background information to the media. In the debate leading up to the March ballot initiatives in California, our research was part of the formal ballot's explanation of the estimated effects of Proposition 200, the auto no-fault initiative, and was widely cited in media coverage of the debate.

I thought this would be an appropriate time to gain some perspective—on the recent debate in particular and on the nature of tort reform in general. So I've asked the ICJ staff who have been most involved to comment on the debate as policy analysts. Steve Garber reflects on the discussion surrounding product liability. Steve Carroll draws some general lessons from the nature of the no-fault debate in California. And Cindy Lebow, formerly Senior Counsel for Policy in the Civil Division of the U.S. Department of Justice, describes the role that empirical information plays, and could play, in informing the debate.

Deborah R. Hensler

CONTENTS

file.

TORT REFORM

The President's basic position on tort reform

The President has stated that he believes there are reforms that can, and perhaps should, be made at the federal level in our system of assigning responsibility for economic and non-economic damages caused by faulty products. However, these reforms should be made in full acknowledgement of the traditional role of the states as the primary entities responsible for tort law, and in recognition of the effectiveness of the states as laboratories for experimentation with various reforms. The President's position in favor of "modest" civil justice reform has largely been confined to the area of product liability and separately to liability under the federal securities laws -- he has generally been highly skeptical of broad federal tort reform, preferring to leave this to the states.

There are two specific areas concerning products liability where the President has taken a firm position in opposition to Republican initiatives:

- **No cap on punitive damages:** The President has consistently opposed any cap on punitive damages. Punitive damages are awarded where a jury finds there has been egregious misconduct and that a damage award will deter repetition by the defendant. (While judges can award punitives, the "abuse" the Republicans are attempting to stop relates to "excessive" jury awards.) Capping punitive damages is contrary to our strong and traditional belief in the importance and effectiveness of juries and, moreover, would have the effect of making punitive damages ineffective against large companies, for whom economic damage awards and smaller punitive damage awards might become simply a "cost of doing business."

  Note: According to a study by Michael Rustad of the Roscoe Pound Foundation, in the 25 years between 1965 and 1990, there were an average of only 11 punitive damages awards made each year in non-asbestos products liability cases. This is not an epidemic.

- **No limit on joint and several liability for non-economic damages:** The President has stated that as between innocent injured plaintiffs and defendants admittedly at fault, it is more important for the plaintiff to be made whole than for defendants to be released from some liability. (This is particularly important where one or more defendants has gone bankrupt, as has happened with some frequency among makers of defective products.) Defendants who inflict non-economic damage -- traditionally "pain and suffering" -- should be treated no differently than those who inflict economic damage. Less favorable treatment of non-economic damages is particularly harmful to women working at home, the elderly and the poor.

Comparison of the President's position with Senator Dole's Proposal[1]

Senator Dole's fact sheet calls for "Common Sense Legal Reform." While it does not explicitly include all elements of the House Republicans' proposal by that same name, there is no indication that particularly damaging elements of that proposal -- such as the notion that the loser should pay the winner's costs, which severely limits access by the poor to the legal system -- would not in fact be included. As to the items specifically mentioned:

- **Limit punitive damages to $250,000 or three times economic damages except in cases involving death, serious injury, alcohol or drug use, criminal misconduct or civil rights violations.** As noted above, the President has opposed any cap on punitive damages. As noted above, the punitive damage system is not out of control. Even the "outrageous punitive damage award" cited in the Fact Sheet -- the award of $2.7 million for third-degree burns requiring skin grafts arising from excessively hot McDonald's coffee -- was reduced by the court to $480,000. To the extent reform is needed, our legal system is providing it: the Supreme Court last term in the BMW v. Gore case found that judicial and state legislative limitations on punitive damages could be appropriate. We should allow that case to work its way through the system before reevaluating the need for federal legislative intervention.

- **Abolish joint and several liability for non-economic damages in all civil cases.** As noted above, the President has opposed this proposal even in the area of products liability; Senator Dole would go further and include all civil cases including such areas as sexual harassment, civil rights violations and other causes of action which may generate significant non-economic harm.

- **Promote early settlement by effectively prohibiting non-economic damage awards of any type where a plaintiff does not accept a defendant's settlement offer for economic damages (only) within 120 days.** In addition to the fact that this is an extreme back-door way of eliminating -- not just limiting -- damages for non-economic losses and punitive damages -- and therefore should be opposed for the same reasons as the two prior

1 This is based on the Bob Dole for President Fact Sheet, "Restoring the American Dream: Bob Dole's Pro-Growth Plan for America's Families," issued August 5(?), 1996, pages 11-13.

proposals, 120 days is simply too short a period to fully understand the full nature and extent of even economic damages. Think of asbestos cases, the Dalkon shield cases, and other cases involving injuries with long latency periods. Moreover, why is this only one-sided; why shouldn't a plaintiff be entitled to force a defendant to accept a settlement offer? After all, according to a recent study by the Consumer Federation of America, for every $1 paid to plaintiff's lawyers, at least $1.31 was paid to defense attorneys. While the President has indicated support for encouraging alternative dispute resolution and other non-judicial means of resolving disputes outside of court, Senator Dole's proposal is just a giveaway to those who injure others.

- **Allow contingency fee awards only for recoveries in excess of a defendant's "acceptable settlement" offer.** The contingency fee system ensures that non-rich injured people have a chance to recover damages in respect of a good case. No lawyer is going to waste time on a case without merit if he's not going to get paid unless he wins. But a lawyer will be willing to take a good case on behalf of someone who cannot pay his or her normal hourly fee if the lawyer is assured a portion of the recovery. This proposal is merely another way of limiting access to the judicial system to only the rich. And who is to judge what is an "acceptable settlement" offer?

- **Work to implement a system of "auto choice," under which drivers would be able to choose to forego most access to the court system in return for a less expensive auto insurance policy, but one in which the claimant's insurance party would always pay, even if someone else were at fault.** Automobile insurance and tort liability systems are classic examples of state interests. And the states have been experimenting for approximately the last twenty years, with a variety of results. A new RAND study suggests that some of the state no-fault insurance systems are associated with lower levels of false or inflated auto injury claims. On the other hand, Californians recently rejected, by referendum, a version of Senator Dole's proposal. This is an area where further research by both private parties and the federal government would be appropriate, perhaps including development of "best practices," that in fact reduce costs. But we're certainly not ready for the federal government to take over a system the states have been carefully developing and revising, and with a totally untested proposal.

<u>Note on the numbers in Dole fact sheet</u>

On page 11, the fact sheet cites the Tillinghast, Nelson and Warren study to show there is an annual "litigation tax" of $132 billion attributable to lawsuit abuse. The Tillinghast study is of the **entire cost of running the insurance system**, not just the costs of lawsuits, let alone products lawsuits, or abusive lawsuits. The RAND study that showed tort litigation costs in 1985 of $28 to $35 billion included $13 to $15 billion in net compensation to plaintiffs (not including the fees paid to plaintiffs' attorneys), suggesting strongly that only a very small part of the cost is for "lawsuit abuse."

On page 11, the fact sheet also cites the McDonald's coffee case award. As noted above, the court reduced the punitive damage award to $480,000, and moreover the injuries were serious. McDonald's had a record of previous complaints about the temperature of the coffee, which was more than 40 degrees hotter than coffee from home machines!

On page 12, the fact sheet says that "the average American family pays an extra $200 per year in insurance premiums to make up for phony claims." I have nothing directly available to refute this (other than its inherent unbelievability), but note that one of the traditional problems with this type of statistic is that the insurance companies have not fought such claims, but rather paid them and passed on the cost to the rest of us. Only now, with various legal and business constraints preventing them from constantly increasing premiums, are the insurance companies beginning seriously to fight this type of fraud -- which has less to do with the legal system than with the insurance companies' style of doing business.

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FROM: JENNIFER DUDLEY (NAME) 62668 (PHONE NUMBER) 2ND FL/WW (ROOM NUMBER)

MESSAGE DESCRIPTION: TORT/TAX PROVISION IN MINIMUM WAGE LEGISLATION

TO (AGENCY)	DELIVER TO	DEPT/ROOM NO.	PHONE NUMBER
JACKSON, TN	BRUCE LINDSEY		

REMARKS:

August 19, 1996

MEMORANDUM

To: Jack Quinn
Bruce Lindsey
Todd Stern

From: Jonathan Yarowsky

Re: Tort/Tax Provision in Minimum Wage Legislation

Late Friday, we were notified that a tort recovery/tax issue was "buried" in the minimum wage legislation, H.R. 3448.

Attached is the language that Chairman Archer added quietly in conference. The provision found in subsection 104(b) would tax as income any compensatory damage for emotional distress or "nonphysical" injury (above that for "medical care" to treat the non-physical injury, e.g., psychotherapy). Thus, damages for emotional pain and suffering resulting from misconduct such as sexual harassment or racial discrimination would be subject to federal taxation as distinct from damages awarded for harm suffered from physical injury. The provision appears to continue the assault on non-physical damage awards that was part of the larger product liability reform effort of the 104th Congress.

Section 104(c) deals with repealing the tax exclusion of punitive damage awards -- a much more volatile issue. Given the shortness of time before the bill signing ceremony tomorrow, it may be prudent at this time to consider brief language addressing only the non-physical damages provision.

Politically, consumer groups would probably prefer a statement of reservation on both the punitive damages and non-physical damage provisions. The trial lawyers have only weighed in on the provisions relating to damages not attributable to physical injuries and, officially, take "no position" on punitives.

Suggested language for the Presidential Statement is also attached.

H.R. 3448, THE SMALL BUSINESS JOB PROTECTION ACT

SEC.1605.REPEAL OF EXCLUSION FOR PUNITIVE DAMAGES AND FOR DAMAGES NOT ATTRIBUTABLE TO PHYSICAL INJURIES OR SICKNESS

(a) IN GENERAL.-Paragraph (2) of section 104(a) (relating to compensation for injuries or sickness) is amended to read as follows:

"(2) the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness;".

(b) EMOTIONAL DISTRESS AS SUCH TREATED AS NOT PHYSICAL INJURY OR PHYSICAL SICKNESS.-Section 104(a) is amended by striking the last sentence and inserting the following new sentence: "For purposes of paragraph (2), emotional distress shall not be treated as a physical injury or physical sickness. The preceding sentence shall not apply to an amount of damages not in excess of the amount paid for medical care (described in subparagraph (A) or (B) of section 213 (d)(1)) attributable to emotional distress."

(c) APPLICATION OF PRIOR LAW FOR STATES IN WHICH ONLY PUNITIVE DAMAGES MAY BE AWARDED IN WRONGFUL DEATH ACTIONS.-Section 104 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) APPLICATION OF PRIOR LAW IN CERTAIN CASES.-The phrase (other than punitive damages)' shall not apply to punitive damages awarded in a civil action-

"(1) which is a wrongful death action, and

"(2) with respect to which applicable State law (as in effect on September 13, 1995 and without regard to any modification after such date) provides, or has been construed to provide by a court of competent jurisdiction pursuant to a decision issued on or before September 13, 1995, that only punitive damages may be awarded in such an action.

This subsection shall cease to apply to any civil action filed on or after the first date on which the applicable State law ceases to provide (or is no longer construed to provide) the treatment described in paragraph (2).".

(d) EFFECTIVE DATE.

(1) IN GENERAL.-Except as provided in paragraph (2), the amendments made by this section shall apply to amounts received after the date of the enactment of this Act, in taxable years ending after such date.

(2) EXCEPTION.-The amendments made by this section shall not apply to any amount received under a written binding agreement, court decree, or mediation award in effect on (or issued on or before) September 13, 1995.

PROPOSED LANGUAGE FOR INCLUSION IN PRESIDENTIAL STATEMENT ACCOMPANYING H.R. 3448

"I do have strong reservations about one aspect of Section 1605, repealing the federal tax exclusion for damages not attributable to physical injuries or sickness. It is unfair for the federal government to tax damages paid to a person to compensate for an injury, whether the injury is physical or not. Civil damages are meant to make injured parties whole -- not to enrich them -- so these damages are inappropriate as a source of revenue.

/ml

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release August 20, 1996

STATEMENT BY THE PRESIDENT

Today I have signed into law H.R. 3448, the "Small Business Job Protection Act of 1996."

This is important and long overdue legislation that provides a badly needed pay raise for millions of Americans and their families who struggle to make ends meet while working at the minimum wage. The Act boosts the minimum wage in two steps -- a 50 cent increase from $4.25 to $4.75 an hour that takes effect October 1, followed by an additional 40 cent rise to $5.15 an hour on September 1, 1997. This increase will help some 10 million of our hardest pressed working families build a better future. It is true to the basic American bargain that if you work hard you ought to have food on your table and a living wage in your pocket. It is the right thing to do.

I should note that I disagree with certain provisions added to the minimum wage title of the Act, such as the provision creating a new subminimum wage for young people and the one denying increased cash wages to most employees who rely on tips for part of their income. Still, those defects do not obscure the central accomplishment of this Act -- securing the first minimum wage increase since 1991.

Beyond raising the minimum wage, this Act represents real progress on a number of other fronts.

First, I am particularly gratified by the important provisions in this Act concerning adoption. The Act provides a nonrefundable tax credit of up to $5,000 per child for adoption expenses; $6,000 for children with special needs. It will help thousands of children waiting for a family who wants them. It will help thousands of middle class parents realize their dream of adopting a child. It will build stronger families and stronger communities.

Moreover, the Act bars placement agencies that receive Federal funds from denying or delaying adoptions based on race, color, or national origin. As I have consistently said, it is time to end the historical bias against interracial adoptions. That bias has too often meant interminable delay for children waiting to be matched with parents of the same race. It is time to put the creation of strong and loving families first.

Second, the Act creates a simplified, 401(k) retirement plan for small businesses, making it far easier for such companies to offer pensions to their employees. This new plan includes many of the pension reforms my Administration proposed more than a year ago. For example, it increases the portability of pensions, allowing more new workers to start saving for retirement from their first day on the job. It cuts the vesting period for workers in multiemployer plans from 10 years to 5, immediately vesting over 1 million workers in their benefits. It repeals the so-called "family aggregation rule," which limited the retirement benefits of family members working together in the same business. It allows nonprofit organizations and Indian tribes to maintain 401(k) plans for their workers; assures veterans they will have continued pension coverage if they return to a civilian job after military

more

(OVER)

service; and makes pension benefits safer and more secure for millions of employees of State and local governments. The pension provisions in the Act are not perfect -- they provide a smaller share of benefits to lower and middle wage workers than I proposed. But they are a significant step in the right direction.

Third, the Act gives a boost to small business by increasing the amount of capital that small businesses can write off as an expense. I proposed a $15,000 increase in 1993 in order to encourage the kind of investment that creates new growth and jobs. The Congress passed half of what we advocated then and this legislation gives us the other half. Although the measure in this Act is phased in more slowly than I proposed, it will still give small businesses a good incentive for capital investment.

Fourth, the Act extends the research tax credit, an important measure for a high-tech economy that will retain its competitive edge in the 21st century only if we remain committed to innovation and the research that underlies it. I wanted the Congress to go further by reinstating the research credit retroactively to July 1, 1995, when it last expired, and making it permanent. But this extension, through May of next year, is an important step forward.

Fifth, the Act extends a tax incentive for businesses that train and educate their employees. That incentive excludes from an employee's taxable income as much as $5,250 of educational assistance provided by an employer. Such assistance is another key element in maintaining U.S. competitiveness because a better trained, better educated work force is vital to achieving higher productivity. I regret that the Congress failed to make this incentive permanent and that it has eliminated the incentive for post-graduate education. But in extending the incentive for undergraduate education through May 1997, the Act takes a useful step.

Sixth, by replacing the expiring Targeted Jobs Tax Credit (TJTC) with a new Work Opportunity Tax Credit, the Act provides a significant incentive for employers to hire people from certain targeted groups most in need of jobs, such as high-risk youth. I am pleased to see improvements that address many of the concerns raised about implementation of the TJTC. For example, the minimum employment period required before an employer becomes eligible for the credit will promote longer, more meaningful work experiences for those hired.

As strong a piece of legislation as this is overall, however, I am concerned about three provisions, two of which I objected to when they were included in legislation I vetoed last year.

The first provision repeals the tax credit related to corporate investments in Puerto Rico and other insular areas. I urged the Congress to reform the credit and use the resulting revenue for Puerto Rico's social and job training needs. My proposal would have, over time, prevented companies from obtaining tax benefits by merely attributing income to the islands, but it would have continued to give companies a tax credit for wages and local taxes paid and capital investments made there, as well as for earnings reinvested in Puerto Rico and qualified Caribbean Basin Initiative countries. This legislation ignores the real needs of our citizens in Puerto Rico, ending the incentive for new investment now and phasing out the incentive for existing investments. I remain committed to my proposal for an effective incentive based on real economic

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activity that preserves and creates jobs in underdeveloped islands, and I hope that the Congress will act to ensure that the incentive for economic activity remains in effect.

A second provision repeals a 1993 initiative of this Administration that reduces tax incentives for U.S. companies to move jobs and operations abroad. Repeal of this provision will allow businesses to avoid taxes by accumulating foreign earnings without limit.

Finally, I have reservations about a provision in the Act which makes civil damages based on nonphysical injury or illness taxable. Such damages are paid to compensate for injury, whether physical or not, and are designed to make victims whole, not to enrich them. These damages should not be considered a source of taxable income.

Notwithstanding these objections, this is important, forward-looking legislation. It gives millions of hard-pressed workers a well-deserved raise, will make adoption a reality for thousands of grateful families and children, takes a good first step toward providing adequate retirement benefits and security for employees of small businesses, and creates useful tax incentives for the benefit of small businesses and their employees. Where there are improvements yet to be made, we will continue to work with the Congress to make them.

WILLIAM J. CLINTON

THE WHITE HOUSE,
August 20, 1996.

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