

MULTIDISTRICT, MULTIPARTY, MULTIFORUM TRIAL  
JURISDICTION ACT OF 1999

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JULY 30, 1999.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. COBLE, from the Committee on the Judiciary,  
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2112]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2112) to amend title 28, United States Code, to allow a judge to whom a case is transferred to retain jurisdiction over certain multidistrict litigation cases for trial, and to provide for Federal jurisdiction of certain multiparty, multiforum civil actions, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Multidistrict, Multiparty, Multiforum Trial Jurisdiction Act of 1999”.

**SEC. 2. MULTIDISTRICT LITIGATION.**

Section 1407 of title 28, United States Code, is amended—

(1) in the third sentence of subsection (a), by inserting “or ordered transferred to the transferee or other district under subsection (i)” after “terminated”; and

(2) by adding at the end the following new subsection:

“(i)(1) Subject to paragraph (2) and except as provided in subsection (j), any action transferred under this section by the panel may be transferred for trial purposes, by the judge or judges of the transferee district to whom the action was assigned, to the transferee or other district in the interest of justice and for the convenience of the parties and witnesses.

“(2) Any action transferred for trial purposes under paragraph (1) shall be remanded by the panel for the determination of compensatory damages to the district court from which it was transferred, unless the court to which the action has been transferred for trial purposes also finds, for the convenience of the parties and witnesses and in the interests of justice, that the action should be retained for the determination of compensatory damages.”.

**SEC. 3. MULTIPARTY, MULTIFORUM JURISDICTION OF DISTRICT COURTS.**

(a) BASIS OF JURISDICTION.—

(1) IN GENERAL.—Chapter 85 of title 28, United States Code, is amended by adding at the end the following new section:

**“§ 1369. Multiparty, multiforum jurisdiction**

“(a) IN GENERAL.—The district courts shall have original jurisdiction of any civil action involving minimal diversity between adverse parties that arises from a single accident, where at least 25 natural persons have either died or incurred injury in the accident at a discrete location and, in the case of injury, the injury has resulted in damages which exceed \$75,000 per person, exclusive of interest and costs, if—

“(1) a defendant resides in a State and a substantial part of the accident took place in another State or other location, regardless of whether that defendant is also a resident of the State where a substantial part of the accident took place;

“(2) any two defendants reside in different States, regardless of whether such defendants are also residents of the same State or States; or

“(3) substantial parts of the accident took place in different States.

“(b) SPECIAL RULES AND DEFINITIONS.—For purposes of this section—

“(1) minimal diversity exists between adverse parties if any party is a citizen of a State and any adverse party is a citizen of another State, a citizen or subject of a foreign state, or a foreign state as defined in section 1603(a) of this title;

“(2) a corporation is deemed to be a citizen of any State, and a citizen or subject of any foreign state, in which it is incorporated or has its principal place of business, and is deemed to be a resident of any State in which it is incorporated or licensed to do business or is doing business;

“(3) the term ‘injury’ means—

“(A) physical harm to a natural person; and

“(B) physical damage to or destruction of tangible property, but only if physical harm described in subparagraph (A) exists;

“(4) the term ‘accident’ means a sudden accident, or a natural event culminating in an accident, that results in death or injury incurred at a discrete location by at least 25 natural persons; and

“(5) the term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

“(c) INTERVENING PARTIES.—In any action in a district court which is or could have been brought, in whole or in part, under this section, any person with a claim arising from the accident described in subsection (a) shall be permitted to intervene as a party plaintiff in the action, even if that person could not have brought an action in a district court as an original matter.

“(d) NOTIFICATION OF JUDICIAL PANEL ON MULTIDISTRICT LITIGATION.—A district court in which an action under this section is pending shall promptly notify the judicial panel on multidistrict litigation of the pendency of the action.”

(2) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 85 of title 28, United States Code, is amended by adding at the end the following new item:

“1369. Multiparty, multiform jurisdiction.”

(d) REMOVAL OF ACTIONS.—Section 1441 of title 28, United States Code, is amended—

(1) in subsection (e) by striking “(e) The court to which such civil action is removed” and inserting “(f) The court to which a civil action is removed under this section”; and

(2) by inserting after subsection (d) the following new subsection:

“(e)(1) Notwithstanding the provisions of subsection (b) of this section, a defendant in a civil action in a State court may remove the action to the district court of the United States for the district and division embracing the place where the action is pending if—

“(A) the action could have been brought in a United States district court under section 1369 of this title, or

“(B) the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1369 in a United States district court and arises from the same accident as the action in State court, even if the action to be removed could not have been brought in a district court as an original matter.

The removal of an action under this subsection shall be made in accordance with section 1446 of this title, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a party to an action under section 1369 in a United States district court that arises from the same accident as the action in State court, or at a later time with leave of the district court.

“(2) Whenever an action is removed under this subsection and the district court to which it is removed or transferred under section 1407(j) has made a liability determination requiring further proceedings as to damages, the district court shall remand the action to the State court from which it had been removed for the determination of damages, unless the court finds that, for the convenience of parties and witnesses and in the interest of justice, the action should be retained for the determination of damages.

“(3) Any remand under paragraph (2) shall not be effective until 60 days after the district court has issued an order determining liability and has certified its intention to remand the removed action for the determination of damages. An appeal with respect to the liability determination and the choice of law determination of the district court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the district court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination and the choice of law determination shall not be subject to further review by appeal or otherwise.

“(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

“(5) An action removed under this subsection shall be deemed to be an action under section 1369 and an action in which jurisdiction is based on section 1368 of this title for purposes of this section and sections 1407, 1660, 1697, and 1785 of this title.

“(6) Nothing in this subsection shall restrict the authority of the district court to transfer or dismiss an action on the ground of inconvenient forum.”

(e) CHOICE OF LAW.—

(1) DETERMINATION BY THE COURT.—Chapter 111 of title 28, United States Code, is amended by adding at the end the following new section:

**“§ 1660. Choice of law in multiparty, multiform actions**

“(a) FACTORS.—In an action which is or could have been brought, in whole or in part, under section 1369 of this title, the district court in which the action is

brought or to which it is removed shall determine the source of the applicable substantive law, except that if an action is transferred to another district court, the transferee court shall determine the source of the applicable substantive law. In making this determination, a district court shall not be bound by the choice of law rules of any State, and the factors that the court may consider in choosing the applicable law include—

- “(1) the place of the injury;
- “(2) the place of the conduct causing the injury;
- “(3) the principal places of business or domiciles of the parties;
- “(4) the danger of creating unnecessary incentives for forum shopping; and
- “(5) whether the choice of law would be reasonably foreseeable to the parties.

“When the jurisdiction of the district court is based in whole or in part upon section 1369 of this title, a subpoena for attendance at a hearing or trial may, if authorized by the court upon motion for good cause shown, and upon such terms and conditions as the court may impose, be served at any place within the United States, or anywhere outside the United States if otherwise permitted by law.”

(B) The table of sections at the beginning of chapter 117 of title 28, United States Code, is amended by adding at the end the following new item:

“1785. Subpoenas in multiparty, multiforum actions.”

#### SEC. 4. EFFECTIVE DATE.

(a) SECTION 2.—The amendments made by section 2 shall apply to any civil action pending on or brought on or after the date of the enactment of this Act.

(b) SECTION 3.—The amendments made by section 3 shall apply to a civil action if the accident giving rise to the cause of action occurred on or after the 90th day after the date of the enactment of this Act.

### PURPOSE AND SUMMARY

H.R. 2112 would allow a designated U.S. district court (a so-called “transferee” court) under the multidistrict litigation statute<sup>1</sup> to retain jurisdiction over referred cases arising from the same fact scenario for purposes of determining liability and punitive damages, or to send them back to the respective courts from which they were transferred. In addition, the legislation would streamline the process by which multidistrict litigation governing disasters are adjudicated. The bill would save litigants time and money, but would not interfere with jury verdicts or compensation rates for attorneys.

### BACKGROUND AND NEED FOR THE LEGISLATION

#### SECTION 2: MULTIDISTRICT LITIGATION/THE “LEXECON” DECISION

The Administrative Office of the U.S. Courts (the “AO”) is concerned over a recent Supreme Court interpretation of 28 U.S.C. §1407, the federal multidistrict litigation statute. The case in question is commonly referred to as “*Lexecon*.”<sup>2</sup>

Under §1407, a Multidistrict Litigation Panel (MDLP)—a select group of seven federal judges picked by the Chief Justice—helps to consolidate lawsuits which share common questions of fact filed in more than one judicial district nationwide. Typically, these suits involve mass torts—a plane crash, for example—in which the plaintiffs are from many different states. All things considered, the panel attempts to identify the one U.S. district court nationwide which is best adept at adjudicating pretrial matters. The panel then remands individual cases back to the districts where they were originally filed for trial unless they have been previously terminated.

<sup>1</sup>28 U.S.C. §1407.

<sup>2</sup>*Lexecon v. Milberg Weiss Bershad Hynes & Lerach, et. al.*, 118 S. Ct. 956 (1998).

For approximately 30 years, however, the district court selected by the panel to hear pretrial matters (the “transferee court”) often invoked §1404(a) of Title 28 to retain jurisdiction for trial over all of the suits. This is a general venue statute that allows a district court to transfer a civil action to any other district or division where it may have been brought; in effect, the court selected by the panel simply transferred all of the cases *to itself*. According to the AO and the current Chairman of the MDLP, this process has worked well since the transferee court was versed in the facts and law of the consolidated litigation. This is also the one court which could compel all parties to settle when appropriate.

The *Lexecon* decision alters the §1407 landscape. This was a 1998 defamation case brought by a consulting entity (Lexecon) against a law firm that had represented a plaintiff class in the Lincoln Savings and Loan litigation in Arizona. Lexecon had been joined as a defendant to the class action, which the MDLP transferred to the District of Arizona. Before the pretrial proceedings were concluded, Lexecon reached a “resolution” with the plaintiffs, and the claims against the consulting entity were dismissed.

Lexecon then brought a defamation suit against the law firm in the Northern District for Illinois. The law firm moved under §1407 that the MDLP empower the Arizona court which adjudicated the original S&L litigation to preside over the defamation suit. The panel agreed, and the Arizona transferee court subsequently invoked its jurisdiction pursuant to §1404 to preside over a trial that the law firm eventually won. Lexecon appealed, but the Ninth Circuit affirmed the lower court decision.<sup>3</sup>

The Supreme Court reversed, however, holding that Section 1407 *explicitly* requires a transferee court to remand all cases for trial back to the respective jurisdictions from which they were originally referred. In his opinion, Justice Souter observed that “the floor of Congress” was the proper venue to determine whether the practice of self-assignment under these conditions should continue.

Section 2 of the bill responds to Justice Souter’s admonition. In the absence of a *Lexecon* “fix,” the MDLP will be forced to remand cases to their transferor districts, and then have each original district court decide whether to transfer each case back to the transferee district for trial purposes under §1404. This alternative, to invoke the Chairman of the MDLP, would be “cumbersome, repetitive, costly, potentially inconsistent, time consuming, inefficient, and a wasteful utilization of judicial and litigant resources.”<sup>4</sup>

Since *Lexecon*, significant problems have arisen that have hindered the sensible conduct of multidistrict litigation. Transferee judges throughout the United States have voiced their concern to the MDLP about the urgent need to clarify their authority to retain cases for trial. Indeed, transferee judges have been unable to order self-transfer for trial, even though all parties to constituent cases have agreed on the wisdom of self-transfer for trial.<sup>5</sup> Instead, complex multidistrict cases should be streamlined as much as possible

<sup>3</sup> 102 F.3rd 1524 (9th Cir. 1996).

<sup>4</sup> *Hearing on H.R. 2112 Before the Subcomm. on Courts and Intellectual Property of the House Comm. on the Judiciary*, 106th Cong., 1st Sess. (June 16, 1999) (statement of the Honorable John F. Nangle, Chairman, Judicial Panel on Multidistrict Litigation, at 5).

<sup>5</sup> *See, e.g., MDL-1125—In re Air Crash Near Cali, Columbia, on 12/20/95*, S.D. Fla. (Judge Highsmith).

by providing the transferee judge as many options as possible to expedite trial when the transferee judge, with full input from the parties, deems appropriate. In other words, there is a pressing need to recreate the multidistrict litigation environment pre-*Lexecon*.

The change advocated by the MDLP and other multidistrict practitioners makes sense in light of judicial practice under the Multidistrict Litigation statute for the past 30 years. It promotes judicial administrative efficiency and will encourage parties to complex federal litigation to settle.

SECTION 3: MULTIPARTY, MULTIFORUM JURISDICTION OF DISTRICT COURTS/“DISASTER” LITIGATION

The genesis of Section 3 took place during oversight hearings conducted in the 95th Congress by the House Subcommittee on Courts, Civil Liberties and the Administration of Justice (now Courts and Intellectual Property). These efforts were joined by those of the Carter Administration to improve judicial machinery by abolishing diversity of citizenship jurisdiction and to delineate the jurisdictional responsibilities of state and federal courts. These efforts fell short, however, based on Senate opposition. Thereafter the Subcommittee narrowed its focus and began to concentrate on the problem of dispersed complex litigation arising out of a single accident resulting in multiple deaths or injuries.<sup>6</sup>

Legislation on this more specific issue was introduced in both the 98th and 99th Congresses. The House of Representatives subsequently approved legislation identical to Section 3 of H.R. 2112 in the 101st and 102nd Congresses; and the full Committee on the Judiciary favorably reported this language in the 103rd Congress as well. Moreover, Section 3 of H.R. 2112 is identical to that set forth in Section 10 of the Subcommittee substitute to H.R. 1252, the “Judicial Reform Act,” from the 105th Congress, which the House passed in amended form with Section 10 fully intact. The Judicial Conference and the Department of Justice have supported these previous legislative initiatives.

The need for enactment of §3 of H.R. 2112 was articulated by an attorney who testified on behalf of a major airline manufacturer at the June 16, 1999, hearing.<sup>7</sup> It is common after a serious accident to have many lawsuits filed in several states, in both state and federal courts, with many different sets of plaintiffs’ lawyers and several different defendants. Despite this multiplicity of suits, the principal issue that must be resolved first in each lawsuit is virtually identical: Is one or more of the defendants liable? Indeed, in lawsuits arising out of major aviation disasters, it is common for the liability questions to be bifurcated and resolved first, in advance of any trial on individual damage issues. The waste of judicial resources—and the costs to both plaintiffs and defendants—of

<sup>6</sup>Letter from Michael J. Remington, former Chief Counsel to the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the Committee on the Judiciary, U.S. House of Representatives, to Representative F. James Sensenbrenner, Jr. (July 14, 1999).

<sup>7</sup>Hearing on H.R. 2112 Before the Subcomm. on Courts and Intellectual Property of the House Comm. on the Judiciary, 106th Cong., 1st Sess. (June 16, 1999) (statement of Thomas J. McLaughlin, Esq., Perkins Coie, LLP, Attorneys for the Boeing Company at 4–9).

litigating the same liability question several times over in separate lawsuits can be extreme.

Different expert consultants and witnesses may be retained by the different plaintiffs' lawyers handling each case. The court in each lawsuit can issue its own subpoenas for records and for depositions of witnesses, potentially conflicting with the discovery scheduled in other lawsuits. Critical witnesses may be deposed for one suit and then redeposed by a different set of lawyers in a separate lawsuit. Identical questions of evidence and other points of law can arise in each of the separate suits, meaning that the parties in each case may have to brief and argue—and each court may have to resolve—the same issues that are being briefed, argued, and resolved in other cases, sometimes with results that conflict.

Current efforts to consolidate all state and federal cases related to a common disaster are incomplete because current federal statutes restrict the ways in which consolidation can occur—apparently without any intention to limit consolidation. For example, plaintiffs who reside in the same state as any one of the defendants cannot file their cases in federal court because of a lack of complete diversity of citizenship, even if all parties to the lawsuit want the case consolidated. For those cases that cannot be brought into the federal system, no legal mechanism exists by which they can be consolidated, as state courts cannot transfer cases across state lines. In sum, full consolidation cannot occur in the absence of federal legislative redress.

Finally, there is a crying need in federal multidistrict disaster actions for simplification of choice-of-law rules. Currently, the courts must apply those rules of the forum from which each case was transferred (i.e., where it was originally filed). The court must then apply these various choice-of-law rules separately to each major issue in the claims against each defendant. With cases originally filed in several different fora, each of which may have a unique choice-of-law rule, the courts and the parties face a truly daunting task. It is also difficult in the current environment for courts to find the time to wade through the stacks of briefing and absorb the arguments that are typically necessary on this issue. Similarly, settlement discussions can be delayed and hindered by confusion or uncertainty about which law will control the claims, thereby prolonging the entire litigation process.

The changes set forth in §3 of H.R. 2112 speak directly to these problems. The revisions should reduce litigation costs as well as the likelihood of forum-shopping in airline accident cases; and an effective one-time determination of punitive damages would eliminate multiple or inconsistent awards arising from multiforum litigation.

#### HEARINGS

The Committee's Subcommittee on Courts and Intellectual Property held a hearing on H.R. 2112 on June 16, 1999. Testimony was received from three witnesses representing three organizations.

## COMMITTEE CONSIDERATION

On July 15, 1999, the Subcommittee on Courts and Intellectual Property met in open session and ordered reported the bill H.R. 2112 by voice vote, a quorum being present. On July 27, 1999, the Committee met in open session and ordered reported favorably the bill H.R. 2112 with amendment by voice vote, a quorum being present.

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## COMMITTEE COST ESTIMATE

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee believes that the costs incurred in carrying out the bill H.R. 2112 would be as follows: Section 3 of H.R. 2112 was incorporated in Section 10 of H.R. 1252 from the 105th Congress. There was no specific reference to Section 10 in the score, but CBO noted that “various other [i.e., non-judicial pay raise] provisions could affect direct spending by increasing the workload for judges, *but CBO expects that any such effects would not be significant.*” In addition, the Committee maintains that both Sections 2 and 3 of H.R. 2112 would actually *conserve* judicial resources by increasing the likelihood that a transferee court in a given consolidated action will settle most, if not all, of the trial issues adjudicated under the multidistrict litigation process. These issues would otherwise be resolved by multiple U.S. district courts from which the consolidated cases were originally transferred. In other words, H.R. 2112 should generate savings.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article III, section 1 of the Constitution.

## SECTION-BY-SECTION ANALYSIS AND DISCUSSION

*Sec. 1. Short Title.* The Act may be cited as the “Multidistrict, Multiparty, Multiforum Trial Jurisdiction Act of 1999.”

*Sec. 2. Multidistrict Litigation.* Section 2 of H.R. 2112 is based upon the contents of H.R. 1852, the “Multidistrict Trial Jurisdiction Act of 1999,” which Representative Sensenbrenner introduced on May 18, 1999. It would simply amend §1407 by explicitly allowing a transferee court to retain jurisdiction over referred cases of a consolidated action for trial, or refer the cases to the respective transferor districts, as it sees fit, unless the terms of §3 of the bill would apply to the action.

In addition, based on a colloquy between Representative Sensenbrenner and Representative Berman during the July 15, 1999, Subcommittee markup, staff was instructed to develop an amendment for consideration at full Committee markup on the issue of compensatory damages. Representative Berman expressed his concern that, pursuant to §3 of the bill, *infra*, a transferee judge is not permitted to retain referred cases for the adjudication of compensatory damages, unless done so “in the interest of justice and for the convenience of the parties and witnesses.” There was no comparable presumption of remand on the matter of compensatory damages for actions litigated under §2 as originally drafted. Accordingly, Representatives Berman and Sensenbrenner subsequently offered an amendment during the full Committee markup which conforms the compensatory damage remand standard in §2 with that in §3. The amendment passed by voice vote and is now incorporated in the bill as amended and favorably reported.

*Sec. 3. Multiparty, Multiforum Jurisdiction of District Courts.* Section 3 of H.R. 2112 consists of the contents of H.R. 967, which Representative Sensenbrenner introduced on March 3, 1999. Briefly, §3 would bestow original jurisdiction on federal district courts in civil actions involving minimal diversity jurisdiction among adverse parties based on a single accident where at least 25 persons have either died or sustained injuries exceeding \$50,000 per person. The district court in which such cases are consolidated would retain those cases for determination of liability and punitive damages, and would also determine the substantive law that would apply for findings of liability and damage.

More specifically, subsection (a) creates a new §1369 of Title 28 of the U.S. Code which confers original jurisdiction upon the federal district courts of any civil action

- (1) involving minimal diversity between adverse parties
- (2) that arise from a single accident
- (3) where at least 25 people have either died or incurred injury in the accident
- (4) and, in the case of injury, the injury has resulted in damages which exceed \$50,000 per person (exclusive of interest and costs) if
  - (a) a defendant resides in a state and a substantial part of the accident occurred in another state or other location (regardless of whether the defendant is also a resi-

- dent of the state where a substantial part of the accident occurred);
- (b) any two defendants reside in different states (regardless of whether such defendants are also residents of the same state or states); or
  - (c) substantial parts of the accident occurred in different states.

Subsection (b) of new §1369 sets forth certain “special rules” and definitions. They include the following:

- (1) *Minimal Diversity*. Exists between adverse parties if any party is a citizen of a state and any adverse party is a citizen of another state, a citizen/subject of a foreign state, or a foreign state.
- (2) *Corporation*. Deemed to be a *citizen* of any state, and a citizen or subject of any foreign state, in which it is incorporated or has its principal place of business; and is deemed to be a *resident* of any state in which it is incorporated or licensed to do business.
- (3) *Injury*. Physical harm to a person, and physical damage or destruction of tangible property, but only if physical harm exists.
- (4) *Accident*. A sudden accident, or a natural event culminating in an accident, that results in death or injury incurred at a discrete location by at least 25 natural persons.
- (5) *State*. Includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Subsection (c) of new §1369 permits any person with a claim arising from an accident as defined by the terms of the bill to intervene as a party plaintiff, even if that person could not have brought an action in district court as an original matter.

Pursuant to subsection (d) of new §1369, a federal district court in which an action is pending under the terms of the bill must promptly notify the MDLP of the pendency.

Subsection (b) of the Act amends the general federal venue statute<sup>8</sup> by permitting any action under the bill to be brought in any district court in which any defendant resides or in which a substantial part of the accident giving rise to the action took place.

Section 3(c) of H.R. 2112 creates a new subsection (j)(1) to §1407. This change allows a transferee court, which acquires jurisdiction over an action under the terms of the bill, to retain the action for determination of liability and punitive damages. The transferee court must remand the action, however, to the district court from which it was transferred for determination of damages (other than punitive damages), unless the transferee court finds, for the convenience of parties and witnesses and in the interest of justice, that the action should be retained for the determination of damages.

New §1407(j)(2)–(3) sets forth the terms by which an action is remanded, as well as the criteria for an appeal of decisions governing liability, punitive damages, and choice of law. Any decision con-

<sup>8</sup>28 U.S.C. §1391.

cerning remand for the determination of damages is not reviewable under new §1407(j)(4). The transferee court is also empowered to transfer or dismiss an action on the ground of inconvenient forum pursuant to new §1407(j)(5).

Section 3(d) permits a defendant in a civil action in state court to remove to the appropriate federal district court under 28 U.S.C. §1441 if

- (1) the action could have been brought under the terms of H.R. 2112, or
- (2) the defendant is a party to an action which is or could have been brought pursuant to the terms of the bill in a federal district court and arises from the same accident as the state court action.

New §1441(e)(2)–(5), as created by §3(d) of the Act, also sets forth the procedure for removal, along with the terms by which an action is remanded back to state court for determination of damages, including appellate procedures governing liability and choice of law. Any decision under §1441(e) concerning remand for the determination of damages is not reviewable by appeal or otherwise under new paragraph (6).

Section 3(e) of H.R. 2112 creates a new §1660 of title 28 governing choice of law in multiparty, multiforum actions. New §1660(a) authorizes the district court to which a state action has been brought or removed under its terms, or a transferee court under §1407, to determine the source of the applicable substantive law. The relevant district court is not bound by the choice-of-law rules of any state; instead, it may consider the following criteria in making a determination:

- (1) the place of the injury;
- (2) the place of the conduct causing the injury;
- (3) the principal place of business or domiciles of the parties;
- (4) the danger of creating unnecessary incentives for forum shopping; and
- (5) whether the choice of law would be reasonably foreseeable to the parties.

These factors shall be evaluated according to their relative importance with respect to the particular action. If good cause is shown in exceptional cases, including constitutional reasons, the court may allow the law of more than one state to be applied with respect to a party, claim, or other element of an action.

New §1660(b) further states that the district court shall enter an order designating the single jurisdiction whose substantive law is to be applied in all other actions under the bill and arising from the same accident. The substantive law of the designated jurisdiction shall be applied to the parties and claims in all such action before the district court, and to all other elements of each actions, except where federal law applies or the order specifically provides for the application of the law of another jurisdiction with respect to a party, claim, or other element of an action. In addition, new subsection (c) specifies that in any action remanded to another U.S. district court or a state court pursuant to the terms of §3 of H.R.

2112, the transferee court's choice of law under new §1660(b) shall continue to apply.

Finally, §3(f) of the bill establishes service-of-process authority for actions brought under its terms.

*Sec. 4. Effective Date.* The amendments made by §2 of the bill shall apply to any civil action pending on or brought on or after the date of enactment of the Act. The amendments made by §3 shall apply to a civil action if the accident giving rise to the cause of action occurred on or after the 90th day after the date of enactment of the Act.

#### AGENCY VIEWS

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF LEGISLATIVE AFFAIRS,  
*Washington, DC, June 14, 1999.*

Hon. HENRY J. HYDE,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: This letter sets forth the views of the Department of Justice regarding H.R. 967, the "Multiparty, Multiforum Jurisdiction Act of 1999" and H.R. 1852, the "Multidistrict Trial Jurisdiction Act of 1999." We support these bills.

H.R. 967 would amend 28 U.S.C. to give district courts original jurisdiction over civil actions arising out of a single accident that results in the death or injury of 25 or more persons, if the damages exceed \$50,000 per person and minimal diversity of citizenship exists. It also would authorize venue in any district in which a defendant resides or in which a substantial part of the accident occurred. The district court would be required to notify the Multidistrict Litigation Panel of the pendency of the action. The panel then would assist in consolidating the lawsuits in a single district court. The bill would expand district court jurisdiction over the transferred actions to permit trial of liability and punitive damage issues. Previously this authority covered only pretrial proceedings. The bill would require the remand of non-punitive damage determinations, including remand to State court, but would give the Federal court the option of retaining all damages phases of the action.

Removal of actions from State to Federal court would be permitted within 30 days of a defendant becoming a party to a suit or at a later time with leave of the court. The bill would establish a presumption in favor of discretionary remand to State courts for damages determinations after rulings on liability.

The court would make choice of law determinations without being bound by State court choice of law rules. The bill identifies five factors that the court "may consider" in making the choice of law determination. The court would be required to issue an order designating the State law to be applied in all actions arising from the accident. Finally, the bill would authorize nationwide service of process and, upon a showing of good cause, nationwide service of subpoenas with regard to actions under this Act.

H.R. 1852 would amend the current multidistrict litigation provisions, set forth at 28 U.S.C. section 1407, to allow a judge to whom

a case is transferred under the new multiparty bill to retain jurisdiction over the case for purposes of trial. The bill thus responds to the Supreme Court's decision in *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998) which held that transferee courts were prohibited from exercising jurisdiction over multi-district litigation cases for purposes of trial.

Together, H.R. 967 and H.R. 1852 would expand Federal jurisdiction in a very narrowly defined category of cases, *i.e.*, mass tort litigation arising from a "single accident." Ordinarily, the Department of Justice disfavors the expansion of the jurisdiction of the already-overloaded district courts. We remain concerned about the burdens that diversity cases impose on the Federal courts, diverting their attention from criminal cases and other Federal matters. However, these bills would delineate a unique category of litigation where the exercise of Federal jurisdiction in the manner specified would increase markedly the fair, speedy, and efficient resolution of mass tort cases and would avoid time-consuming, expensive, and repetitive liability proceedings before duplicative State and Federal courts. These bills would resolve the problems presented by suits arising from the same incident in more than one jurisdiction, indeed, often in many jurisdictions, both State and Federal. Moreover, they would assure litigants that liability would be determined once and for all in an expeditious manner before a court specifically designated to consider the litigation. Accordingly, we support these provisions.

Although we note that the proposed 28 U.S.C. section 1660 ("Choice of law in multiparty, multiform actions") includes a list of factors that the court "may consider" when it determines the applicable law for the proceedings, it is our understanding that these factors would not be exhaustive and are included in the bill merely to provide a measure of guidance to the district courts in the exercise of their discretion (which is to be informed through consideration of all relevant legal principles and facts bearing on the choice of applicable law). We urge that this consideration be reflected in the committee report.

Thank you for the opportunity to present our views on this legislation. Please let us know if we may be of additional assistance in connection with this or any other matter. The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

JON P. JENNINGS,  
*Acting Assistant Attorney General.*

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 28, UNITED STATES CODE

\* \* \* \* \*

PART IV—JURISDICTION AND VENUE

\* \* \* \* \*

CHAPTER 85—DISTRICT COURTS; JURISDICTION

Sec.						
1330.	Actions against foreign states.					
		*	*	*	*	*
1369.	<i>Multiparty, multiform jurisdiction.</i>					
		*	*	*	*	*

§ 1369. *Multiparty, multiform jurisdiction*

(a) IN GENERAL.—The district courts shall have original jurisdiction of any civil action involving minimal diversity between adverse parties that arises from a single accident, where at least 25 natural persons have either died or incurred injury in the accident at a discrete location and, in the case of injury, the injury has resulted in damages which exceed \$75,000 per person, exclusive of interest and costs, if—

(1) a defendant resides in a State and a substantial part of the accident took place in another State or other location, regardless of whether that defendant is also a resident of the State where a substantial part of the accident took place;

(2) any two defendants reside in different States, regardless of whether such defendants are also residents of the same State or States; or

(3) substantial parts of the accident took place in different States.

(b) SPECIAL RULES AND DEFINITIONS.—For purposes of this section—

(1) minimal diversity exists between adverse parties if any party is a citizen of a State and any adverse party is a citizen of another State, a citizen or subject of a foreign state, or a foreign state as defined in section 1603(a) of this title;

(2) a corporation is deemed to be a citizen of any State, and a citizen or subject of any foreign state, in which it is incorporated or has its principal place of business, and is deemed to be a resident of any State in which it is incorporated or licensed to do business or is doing business;

(3) the term “injury” means—

(A) physical harm to a natural person; and

(B) physical damage to or destruction of tangible property, but only if physical harm described in subparagraph (A) exists;

(4) the term “accident” means a sudden accident, or a natural event culminating in an accident, that results in death or injury incurred at a discrete location by at least 25 natural persons; and

(5) the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) INTERVENING PARTIES.—In any action in a district court which is or could have been brought, in whole or in part, under this section, any person with a claim arising from the accident described in subsection (a) shall be permitted to intervene as a party plaintiff in the action, even if that person could not have brought an action in a district court as an original matter.

(d) NOTIFICATION OF JUDICIAL PANEL ON MULTIDISTRICT LITIGATION.—A district court in which an action under this section is pending shall promptly notify the judicial panel on multidistrict litigation of the pendency of the action.

**CHAPTER 87—DISTRICT COURTS; VENUE**

\* \* \* \* \*

**§ 1391. Venue generally**

(a) \* \* \*

\* \* \* \* \*

(g) A civil action in which jurisdiction of the district court is based upon section 1369 of this title may be brought in any district in which any defendant resides or in which a substantial part of the accident giving rise to the action took place.

\* \* \* \* \*

**§ 1407. Multidistrict litigation**

(a) When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on multidistrict litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions. Each action so transferred shall be remanded by the panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred unless it shall have been previously terminated or ordered transferred to the transferee or other district under subsection (i): Provided, however, That the panel may separate any claim, cross-claim, counter-claim, or third-party claim and remand any of such claims before the remainder of the action is remanded.

\* \* \* \* \*

(i)(1) Subject to paragraph (2) and except as provided in subsection (j), any action transferred under this section by the panel may be transferred for trial purposes, by the judge or judges of the transferee district to whom the action was assigned, to the transferee or other district in the interest of justice and for the convenience of the parties and witnesses.

(2) Any action transferred for trial purposes under paragraph (1) shall be remanded by the panel for the determination of compensatory damages to the district court from which it was transferred,

*unless the court to which the action has been transferred for trial purposes also finds, for the convenience of the parties and witnesses and in the interests of justice, that the action should be retained for the determination of compensatory damages.”.*

*(j)(1) In actions transferred under this section when jurisdiction is or could have been based, in whole or in part, on section 1369 of this title, the transferee district court may, notwithstanding any other provision of this section, retain actions so transferred for the determination of liability and punitive damages. An action retained for the determination of liability shall be remanded to the district court from which the action was transferred, or to the State court from which the action was removed, for the determination of damages, other than punitive damages, unless the court finds, for the convenience of parties and witnesses and in the interest of justice, that the action should be retained for the determination of damages.*

*(2) Any remand under paragraph (1) shall not be effective until 60 days after the transferee court has issued an order determining liability and has certified its intention to remand some or all of the transferred actions for the determination of damages. An appeal with respect to the liability determination and the choice of law determination of the transferee court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the transferee court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination and the choice of law determination shall not be subject to further review by appeal or otherwise.*

*(3) An appeal with respect to determination of punitive damages by the transferee court may be taken, during the 60-day period beginning on the date the order making the determination is issued, to the court of appeals with jurisdiction over the transferee court.*

*(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.*

*(5) Nothing in this subsection shall restrict the authority of the transferee court to transfer or dismiss an action on the ground of inconvenient forum.*

**CHAPTER 89—DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS**

**§ 1441. Actions removable generally**

(a) \* \* \*

\* \* \* \* \*

*(e)(1) Notwithstanding the provisions of subsection (b) of this section, a defendant in a civil action in a State court may remove the action to the district court of the United States for the district and division embracing the place where the action is pending if—*

*(A) the action could have been brought in a United States district court under section 1369 of this title, or*

*(B) the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1369 in a United States district court and arises from the same accident as the action in State court, even if the action to be removed*

*could not have been brought in a district court as an original matter.*

*The removal of an action under this subsection shall be made in accordance with section 1446 of this title, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a party to an action under section 1369 in a United States district court that arises from the same accident as the action in State court, or at a later time with leave of the district court.*

*(2) Whenever an action is removed under this subsection and the district court to which it is removed or transferred under section 1407(j) has made a liability determination requiring further proceedings as to damages, the district court shall remand the action to the State court from which it had been removed for the determination of damages, unless the court finds that, for the convenience of parties and witnesses and in the interest of justice, the action should be retained for the determination of damages.*

*(3) Any remand under paragraph (2) shall not be effective until 60 days after the district court has issued an order determining liability and has certified its intention to remand the removed action for the determination of damages. An appeal with respect to the liability determination and the choice of law determination of the district court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the district court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination and the choice of law determination shall not be subject to further review by appeal or otherwise.*

*(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.*

*(5) An action removed under this subsection shall be deemed to be an action under section 1369 and an action in which jurisdiction is based on section 1368 of this title for purposes of this section and sections 1407, 1660, 1697, and 1785 of this title.*

*(6) Nothing in this subsection shall restrict the authority of the district court to transfer or dismiss an action on the ground of inconvenient forum.*

**[(e) The court to which such civil action is removed]** *(f) The court to which a civil action is removed under this section is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.*

**PART V—PROCEDURE**

\* \* \* \* \*

**CHAPTER 111—GENERAL PROVISIONS**

Sec.  
1651. Writs

\* \* \* \* \*

1660. *Choice of law in multiparty, multiforum actions.*

\* \* \* \* \*

**§ 1660. Choice of law in multiparty, multiforum actions**

(a) *FACTORS.*—*In an action which is or could have been brought, in whole or in part, under section 1369 of this title, the district court in which the action is brought or to which it is removed shall determine the source of the applicable substantive law, except that if an action is transferred to another district court, the transferee court shall determine the source of the applicable substantive law. In making this determination, a district court shall not be bound by the choice of law rules of any State, and the factors that the court may consider in choosing the applicable law include—*

- (1) the place of the injury;*
- (2) the place of the conduct causing the injury;*
- (3) the principal places of business or domiciles of the parties;*
- (4) the danger of creating unnecessary incentives for forum shopping; and*
- (5) whether the choice of law would be reasonably foreseeable to the parties.*

*The factors set forth in paragraphs (1) through (5) shall be evaluated according to their relative importance with respect to the particular action. If good cause is shown in exceptional cases, including constitutional reasons, the court may allow the law of more than one State to be applied with respect to a party, claim, or other element of an action.*

(b) *ORDER DESIGNATING CHOICE OF LAW.*—*The district court making the determination under subsection (a) shall enter an order designating the single jurisdiction whose substantive law is to be applied in all other actions under section 1369 arising from the same accident as that giving rise to the action in which the determination is made. The substantive law of the designated jurisdiction shall be applied to the parties and claims in all such actions before the court, and to all other elements of each action, except where Federal law applies or the order specifically provides for the application of the law of another jurisdiction with respect to a party, claim, or other element of an action.*

(c) *CONTINUATION OF CHOICE OF LAW AFTER REMAND.*—*In an action remanded to another district court or a State court under section 1407(j)(1) or 1441(e)(2) of this title, the district court’s choice of law under subsection (b) shall continue to apply.*

**CHAPTER 113—PROCESS**

Sec.

1691. Seal and teste of process.

\* \* \* \* \*

1697. *Service in multiparty, multiform actions.*

\* \* \* \* \*

**§ 1697. Service in multiparty, multiform actions**

*When the jurisdiction of the district court is based in whole or in part upon section 1369 of this title, process, other than subpoenas, may be served at any place within the United States, or anywhere outside the United States if otherwise permitted by law.*

\* \* \* \* \*

**CHAPTER 117—EVIDENCE; DEPOSITIONS**

Sec.

1781. Transmittal of letter rogatory or request.

\* \* \* \* \*

1785. *Subpoenas in multiparty, multiform actions.*

\* \* \* \* \*

**§ 1785. Subpoenas in multiparty, multiform actions**

*When the jurisdiction of the district court is based in whole or in part upon section 1369 of this title, a subpoena for attendance at a hearing or trial may, if authorized by the court upon motion for good cause shown, and upon such terms and conditions as the court may impose, be served at any place within the United States, or anywhere outside the United States if otherwise permitted by law.*

\* \* \* \* \*

## MINORITY VIEWS

H.R. 2112 is intended to improve the ability of federal courts to handle complex multidistrict litigation arising from a common set of facts. This bill represents an effective means by which to improve the manageability of complex litigation. In this narrow circumstance, we feel that there is sufficient justification to expand federal court jurisdiction.

There are two operative sections of this legislation. Section 2 of the bill allows a transferee court in multidistrict litigation to retain jurisdiction over all of the consolidated cases with the presumption that compensatory damages will be remanded to the transferor court. We strongly support this provision, which we believe works well as a matter of judicial expedience when cases are transferred to one federal district court by a Multidistrict Litigation Panel.

Section 3 expands federal court jurisdiction by requiring only minimal diversity (as opposed to complete diversity) for mass torts arising from a single incident; provides for the consolidation of these cases into a single district; and establishes new federal procedures in these narrowly defined cases for the selection of venue, service of process, issuance of subpoenas and choice of law. We also support Section 3 as a matter of judicial efficiency, but with the understanding that it does not in any way serve as a precedent for the broader expansion of diversity jurisdiction.

The following views clarify the reasoning behind our support of both sections of H.R. 2112:

### *Section 2—Overturns Lexecon v. Milberg*

Section 2 of H.R. 2112 reflects an intention to overturn the decision of the United States Supreme Court in *Lexecon v. Milberg Weiss Bershad Hynes & Lerach*,<sup>1</sup> interpreting 28 U.S.C. Section 1407, the federal multidistrict litigation statute. In *Lexecon*, the Supreme Court held that a transferee court (a district court assigned to hear pretrial matters by a multidistrict litigation panel in multidistrict litigation cases) must remand all cases back for trial to the districts in which they were originally filed, regardless of the views of the parties.

The Courts and Intellectual Property Subcommittee held a hearing on this issue.<sup>2</sup> Experts testified that for some 30 years the transferee court often retained jurisdiction over all of the suits by invoking a venue provision of Title 28, allowing a district court to transfer a civil action to any other district where it may have been brought. In effect, the transferee court simply transferred all of the cases to itself. The Judicial Conference testified that this process

<sup>1</sup> 118 S.Ct. 956 (1998).

<sup>2</sup> *The Multiparty, Multiforum Jurisdiction Act of 1999 and the Federal Courts Improvement Act of 1999: Hearing on H.R. 2112 and H.R. 1752 Before the Subcomm. on Courts and Intellectual Property of the House Comm. on the Judiciary, 106th Cong. (1999).*

has worked well because the transferee judge becomes the expert on the case as a result of supervising the day-to-day pretrial proceedings.

Criticism had been heard at the Subcommittee hearing, however, that the text was arguably more expansive than what was necessary to overturn *Lexecon*. It was argued that Section 2 went far beyond simply permitting a multidistrict litigation transferee court to conduct a liability trial, and instead, allowed the court to also determine compensatory and punitive damages. The absence of the presumption that compensatory damages would be remanded to the transferor court, it was asserted, would work an unfairness on victims in personal injury cases by making it more difficult for them to prove the damages for which they are seeking to be compensated. Many contended that the difficulty and added expense incurred by plaintiffs and their witnesses by having to testify in the transferee as opposed to the original local court posed an unfair burden.

As a result of discussions between the minority and majority, Rep. Berman successfully offered a bipartisan amendment addressing this concern at the Full Committee markup. The amendment to Section 2 provided that to the extent a case is tried outside of the transferor forum, it would be solely for the purpose of a consolidated trial on liability, and if appropriate, punitive damages, and that the case must be remanded to the transferor court for the purposes of trial on compensatory damages, unless the court to which the action has been transferred for trial purposes also finds, for the convenience of the parties and witnesses and in the interests of justice, that the action should be retained for the determination of compensatory damages.

We support this Section, as it was amended in the Full Committee, to achieve the worthwhile objective of overturning the *Lexecon* decision for reasons of judicial efficiency.

*Section 3—Minimal Diversity for Single Accidents Involving 25 People*

Section 3 of H.R. 2112: (1) expands federal court jurisdiction over civil actions arising out of a single accident that results in the death or injury of 25 or more persons, if the damages exceed \$75,000 per claim and minimal diversity of citizenship exists;<sup>3</sup> (2) requires the district court to notify the Multidistrict Litigation Panel of the pendency of the action so that the Panel may assist in consolidating the lawsuits in a single district court; and (3) establishes new federal procedures in this narrowly defined category of cases for the selection of venue, service of process, issuance of subpoenas and choice of law. It is our understanding that, in effect, Section 3 would only apply to a very narrowly defined category of cases, such as, plane, train, bus, boat accidents and environmental spills, many of which may already be brought in federal court. However, it would not apply to mass tort injuries that involve the

<sup>3</sup>Under the bill, minimal diversity exists between adverse parties if any party is a citizen of a state and any adverse party is (1) a citizen of another state, (2) a citizen/subject of a foreign state, or (3) a foreign state.

same injury over and over again such as asbestos and breast implants.

During the Subcommittee hearing, two broad concerns were raised regarding Section 3 of the bill: (1) that Section 3 is an incursion on the state courts' traditional jurisdiction—state courts are more than competent to handle personal-injury and wrongful death cases and (2) that Section 3 expands the jurisdiction of the already overloaded district courts which will result in victims having far slower access to justice.

We share these concerns. We generally oppose having federal courts decide state tort issues where complete diversity is not present, and disfavor the expansion of the jurisdiction of the already-overloaded federal district courts. But we also believe that in the narrow circumstance of single accident injuries with multiple parties from different states, there may be legitimate reasons to consolidate cases concerning the same accident in one federal forum. Litigating the same liability question several times over in separate lawsuits may waste judicial resources and may be costly to both plaintiffs and defendants. We believe the consolidation of these cases in one federal forum could prove to be beneficial in reducing delays, litigation costs, and drains on court resources. Section 3 would only expand federal court jurisdiction in a narrow class of actions with the objective of judicial efficiency. It is for this reasonable purpose, and in this narrow category of cases, that we are willing to support this legislation.

In this respect, H.R. 2112 can very easily be distinguished from the broader class action bill, the "Interstate Class Action Jurisdiction Act of 1999,"<sup>4</sup> which we unequivocally oppose. Unlike H.R. 2112, the class action bill requires only minimal diversity for *all* civil actions brought as class actions in federal court, regardless of the individual amounts in controversy or the number of separate incidents or injuries that may give rise to a class action. Rather than providing a reasonable, limited modification to diversity jurisdiction, the class action bill represents a radical rewrite of the class action rules and would ban most forms of state class actions. Thus, it would have a far more damaging impact on the federal courts than H.R. 2112. It is imperative for us to note here that while the Judicial Conference<sup>5</sup> and the Department of Justice<sup>6</sup> support H.R. 2112, they too oppose the broader class action bill, recognizing, among other things, its detrimental impact on the workload of the federal judiciary and traditional state court prerogatives.<sup>7</sup>

JOHN CONYERS, JR.

<sup>4</sup>H.R. 1875, 106th Cong. (1999).

<sup>5</sup>See *The Interstate Class Action Jurisdiction Act: Hearing on H.R. 1875 Before the House Comm. on the Judiciary*, 106th Cong. (1999) (Statement of Assistant Attorney General, United States Department of Justice, Eleanor D. Acheson) [hereinafter Department of Justice Class Action Testimony].

<sup>6</sup>See Letter from Jon P. Jennings, Acting Assistant Attorney General, Office of Legislative Affairs, United States Department of Justice to Henry J. Hyde, Chairman, U.S. House Judiciary Committee 1 (June 14, 1999) (on file with the Judiciary Committee Minority Staff).

<sup>7</sup>See Letter from Secretary Leonidas Ralph Mecham, Judicial Conference of the United States to Henry J. Hyde, Chairman, U.S. House Judiciary Committee (July 26, 1999) (on file with the Judiciary Committee Minority Staff) [hereinafter Judicial Conference Letter] and Department of Justice Class Action Testimony. The class action bill is also opposed by the Conference of State Chief Justices. See Letter from President David A. Brock, Conference of Chief Justices to Henry J. Hyde, Chairman, U.S. House Judiciary Committee (July 19, 1999) (on file with the Judiciary Committee Minority Staff).

HOWARD L. BERMAN.  
SHEILA JACKSON LEE.  
MARTIN T. MEEHAN.  
ROBERT C. SCOTT.  
MAXINE WATERS.  
WILLIAM D. DELAHUNT.  
ANTHONY D. WEINER.

