

An hourglass-shaped graphic with a globe inside. The top bulb is dark grey, and the bottom bulb is light blue. The globe is a darker shade of blue. The hourglass is centered on the page.

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MULTIDISTRICT JURISDICTION ACT OF 1999

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Abstract. The Multidistrict Jurisdiction Act of 1999, H.R. 2112, 106th Congress, as passed by the Senate, with an amendment in the nature of a substitute, would overturn a Supreme Court ruling by amending 28 U.S.C. Section 1407. The present plain meaning of the statute requires a federal district court that has been deciding pretrial matters in cases consolidated from various district courts to transfer the cases back to those courts for trial. This legislation would allow the court, which is familiar with the facts and law of the consolidated litigation, to retain the case for trial.

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Multidistrict Jurisdiction Act of 1999

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Summary

The Multidistrict Jurisdiction Act of 1999, H.R. 2112, 106th Congress, as passed by the Senate, with an amendment in the nature of a substitute, would overturn a Supreme Court ruling by amending 28 U.S.C. § 1407. The present plain meaning of the statute requires a federal district court that has been deciding pretrial matters in cases consolidated from various district courts to transfer the cases back to the those courts for trial. This legislation would allow the court, which is familiar with the facts and law of the consolidated litigation, to retain the case for trial. The 106th Congress adjourned without taking further action.

Since 1968, federal law has allowed a panel of federal judges to transfer civil actions with common questions of fact "to any district for coordinated or consolidated pretrial proceedings."² It provides that upon conclusion of the pretrial proceedings the actions are to be remanded for further proceedings to the district courts in which they were filed. This provision notwithstanding, after a circuit court endorsed the practice in 1971,³ it has become increasingly common for the transferee court, which has gained a familiarity with the issues, to retain the cases for disposition.

¹ This is an update of CRS Report RS20382, Multidistrict Jurisdiction Act of 1999 by Paul Morgan.

² 28 U.S.C. § 1407.

³ *Pfizer Inc. v. Lord*, 447 F.2d 122 (2nd Cir. 1971).

This practice, without clear statutory authority was criticized by academics and was subject of a persuasive dissent by Judge Kozinski in a Ninth Circuit decision.⁴ Noting that less than 4% of the cases were ever sent back to the transferor courts for resolution, Judge Kozinski termed the process a "remarkable power grab" by the transferee judges.⁵ The Supreme Court unanimously agreed with Judge Kozinski's conclusion that the process of retaining cases for trial did not have statutory authority.⁶

The Administrative Office of the U.S. Courts, the Judicial Conference of the United States and the Department of Justice favor the proposed legislation which would essentially change the law to effect the practice of the past thirty or so years. They argue that allowing the transferee court to retain the centralized cases for trial after pretrial proceedings is convenient to the parties and witnesses and promotes the efficiency of the courts.⁷

The bill would also allow transfer of the multiple actions back to the courts from which they came for determination of compensatory damages if the interests of justice and convenience of the parties so require.

H.R. 2112 was introduced by Representative James Sensenbrenner on July 9, 1999.⁸ It was reported to the House on July 30, 1999⁹, as amended by Committee on the Judiciary.¹⁰ The bill passed the House as amended by voice vote on September 13, 1999.¹¹ H.R. 2112 was referred to the Senate on October 21, 1999, where it was amended by the Senate Judiciary Committee.¹² On October 27, 1999, H.R. 2112 as amended by the Senate Judiciary Committee, passed the Senate by unanimous consent¹³. On November 16, 1999¹⁴, the House disagreed to the Senate amendment and a conference was requested on November 17, 1999, by the House without objection.¹⁵ The 106th Congress adjourned without taking further action.

⁴ *In Re American Continental Corp./ Lincoln Savings & Loan Securities Litigation*, 102 F.3d 1524 (9th Cir. 1996).

⁵ *Id.* At 1540.

⁶ *Lexicon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998).

⁷ *See generally* 145 Cong. Rec. S12835-S12837 (daily ed. October 19, 1999) [Introductory remarks of Senators Hatch, Leahy, Grassley, Kohl].

⁸ 145 Cong. Rec. H4022 (daily ed. July 9, 1999).

⁹ 145 Cong. Rec. H6758 (daily ed. July 30, 1999).

¹⁰ H. Rept. 106-276.

¹¹ 145 Cong. Rec. H8109 (daily ed. September 13, 1999).

¹² 145 Cong. Rec. S13011 (daily ed. October 21, 1999)

¹³ 145 Cong. Rec. S13327 (daily ed. October 27, 1999).

¹⁴ 145 Cong. Rec. H12020 (daily ed. November 16, 1999).

¹⁵ 145 Cong. Rec. S14693 (daily ed. November 17, 1999).