

seller subject to section 205(c), unless the claimant submits a valid affidavit that demonstrates that—

(i) with respect to a motion to dismiss contending the defendant is not a manufacturer, the defendant meets the applicable requirements for liability as a manufacturer under section 205(b); or

(ii) with respect to a motion to dismiss contending that the defendant is not a seller, the defendant meets the applicable requirements for liability as a seller under section 205(c).

(4) BASIS OF RULING ON MOTION TO DISMISS.—

(A) IN GENERAL.—The court shall rule on a motion to dismiss filed under subsection (a) solely on the basis of the pleadings of the parties made pursuant to this section and any affidavits submitted by the parties pursuant to this section.

(B) MOTION FOR SUMMARY JUDGMENT.—Notwithstanding any other provision of law, if the court determines that the pleadings and affidavits made by parties pursuant to this section raise genuine issues as concerning material facts with respect to a motion concerning contractual requirements and specifications, the court may deem the motion to dismiss to be a motion for summary judgment made pursuant to subsection (d).

(d) SUMMARY JUDGMENT.—

(1) IN GENERAL.—

(A) BASIS FOR ENTRY OF JUDGMENT.—A biomaterials supplier shall be entitled to entry of judgment without trial if the court finds there is no genuine issue as concerning any material fact for each applicable element set forth in paragraphs (1) and (2) of section 205(d).

(B) ISSUES OF MATERIAL FACT.—With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by claimant would be sufficient to allow a reasonable jury to reach a verdict for the claimant if the jury found the evidence to be credible.

(2) DISCOVERY MADE PRIOR TO A RULING ON A MOTION FOR SUMMARY JUDGMENT.—If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment made pursuant to this subsection, such discovery shall be limited solely to establishing whether a genuine issue of material fact exists as to the applicable elements set forth in paragraphs (1) and (2) of section 205(d).

(3) DISCOVERY WITH RESPECT TO A BIOMATERIALS SUPPLIER.—A biomaterials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section 205(d) or the failure to establish the applicable elements of section 205(d) solely to the extent permitted by the applicable Federal or State rules for discovery against nonparties.

(e) STAY PENDING PETITION FOR DECLARATION.—If a claimant has filed a petition for a declaration pursuant to section 205(b)(3)(A) with respect to a defendant, and the Secretary has not issued a final decision on the petition, the court shall stay all proceedings with respect to that defendant until such time as the Secretary has issued a final decision on the petition.

(f) MANUFACTURER CONDUCT OF PROCEEDING.—The manufacturer of an implant that is the subject of an action covered under this title shall be permitted to file and conduct a proceeding on any motion for summary judgment or dismissal filed by a biomaterials supplier who is a defendant under this section if the manufacturer and any other defendant in such action enter into a valid and applicable contractual agreement under which the manufacturer agrees to bear the cost of such proceeding or to conduct such proceeding.

(g) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier (or a manufacturer appearing in lieu of a supplier pursuant to subsection (f)) for attorney fees and costs, if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

**TITLE III—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE**

**SEC. 301. EFFECT OF COURT OF APPEALS DECISIONS.**

A decision by a Federal circuit court of appeals interpreting a provision of this Act (except to the extent that the decision is overruled or otherwise modified by the Supreme Court) shall be considered a controlling precedent with respect to any subsequent decision made concerning the interpretation of such provision by any Federal or State court within the geographical boundaries of the area under the jurisdiction of the circuit court of appeals.

**SEC. 302. FEDERAL CAUSE OF ACTION PRECLUDED.**

The district courts of the United States shall not have jurisdiction pursuant to this Act based on section 1331 or 1337 of title 28, United States Code.

**SEC. 303. EFFECTIVE DATE.**

This Act shall apply with respect to any action commenced on or after the date of the enactment of this Act without regard to whether the harm that is the subject of the action or the conduct that caused the harm occurred before such date of enactment.

And the Senate agree to the same.

From the Committee on the Judiciary, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

- HENRY HYDE,
- JAMES SENSENBRENNER, Jr.,
- GEORGE W. GEKAS,
- BOB INGLIS,
- ED BRYANT,

From the Committee on Commerce, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

- TOM BLILEY,
  - MICHAEL OXLEY,
  - CHRISTOPHER COX,
- Managers on the Part of the House.*
- LARRY PRESSLER,
  - SLADE GORTON,
  - TRENT LOTT,
  - TED STEVENS,
  - OLYMPIA SNOWE,
  - JOHN ASHCROFT,
  - J.J. EXON,
  - JOHN D. ROCKEFELLER,

*Managers on the Part of the Senate.*

When said conference report was considered.

After debate,

By unanimous consent, the previous question was ordered on the conference report to its adoption or rejection.

The question being put, viva voce,

Will the House agree to said conference report?

The SPEAKER pro tempore, Mr. GUNDERSON, announced that the yeas had it.

Mr. HYDE objected to the vote on the ground that a quorum was not present and not voting.

A quorum not being present,

The roll was called under clause 4, rule XV, and the call was taken by electronic device.

When there appeared { Yeas ..... 259  
Nays ..... 158

¶38.13

[Roll No. 110]

YEAS—259

- |               |               |               |
|---------------|---------------|---------------|
| Allard        | Galleghy      | Myrick        |
| Archer        | Ganske        | Nethercutt    |
| Armey         | Gekas         | Neumann       |
| Bachus        | Geren         | Ney           |
| Baker (CA)    | Gilchrest     | Norwood       |
| Baker (LA)    | Gillmor       | Nussle        |
| Ballenger     | Goodlatte     | Oxley         |
| Barcia        | Goodling      | Packard       |
| Barr          | Gordon        | Parker        |
| Barrett (NE)  | Goss          | Paxon         |
| Bartlett      | Graham        | Payne (VA)    |
| Barton        | Greenwood     | Peterson (FL) |
| Bass          | Gunderson     | Peterson (MN) |
| Bateman       | Gutknecht     | Petri         |
| Bereuter      | Hall (OH)     | Pombo         |
| Bilbray       | Hall (TX)     | Porter        |
| Bilirakis     | Hamilton      | Portman       |
| Bliley        | Hancock       | Pryce         |
| Blute         | Hansen        | Quillen       |
| Boehlert      | Harman        | Quinn         |
| Boehner       | Hastert       | Radanovich    |
| Bonilla       | Hastings (WA) | Ramstad       |
| Bono          | Hayworth      | Reed          |
| Boucher       | Hefley        | Regula        |
| Brewster      | Hefner        | Riggs         |
| Browder       | Heineman      | Roberts       |
| Brownback     | Herger        | Roemer        |
| Bryant (TN)   | Hilleary      | Rogers        |
| Bunn          | Hobson        | Rohrabacher   |
| Bunning       | Hoekstra      | Ros-Lehtinen  |
| Burr          | Hoke          | Roth          |
| Burton        | Holden        | Roukema       |
| Buyer         | Horn          | Royce         |
| Callahan      | Hostettler    | Salmon        |
| Calvert       | Houghton      | Sanford       |
| Camp          | Hunter        | Saxton        |
| Campbell      | Hutchinson    | Scarborough   |
| Canady        | Hyde          | Schaefer      |
| Castle        | Inglis        | Schiff        |
| Chabot        | Istook        | Seastrand     |
| Chambliss     | Johnson (CT)  | Sensenbrenner |
| Chenoweth     | Johnson, Sam  | Shadegg       |
| Christensen   | Jones         | Shaw          |
| Chrysler      | Kaptur        | Shays         |
| Clement       | Kasich        | Shuster       |
| Clinger       | Kelly         | Sisisky       |
| Coburn        | Kennelly      | Skeen         |
| Collins (GA)  | Kim           | Slaughter     |
| Combest       | Kingston      | Smith (MI)    |
| Condit        | Klug          | Smith (NJ)    |
| Cooley        | Knollenberg   | Smith (WA)    |
| Cox           | Kolbe         | Solomon       |
| Cramer        | LaHood        | Souder        |
| Crane         | Largent       | Spence        |
| Crapo         | Latham        | Spratt        |
| Creameans     | LaTourette    | Stearns       |
| Cubin         | Laughlin      | Stenholm      |
| Cunningham    | Lazio         | Stockman      |
| Davis         | Leach         | Stump         |
| Deal          | Lewis (CA)    | Talent        |
| DeLay         | Lewis (KY)    | Tanner        |
| Dickey        | Lightfoot     | Tate          |
| Dingell       | Lincoln       | Tauzin        |
| Dooley        | Linder        | Taylor (MS)   |
| Doolittle     | Livingston    | Taylor (NC)   |
| Dornan        | LoBiondo      | Thomas        |
| Dreier        | Longley       | Thornberry    |
| Duncan        | Lucas         | Tiahrt        |
| Dunn          | Manzullo      | Torkildsen    |
| Edwards       | McCollum      | Upton         |
| Ehlers        | McCrery       | Vucanovich    |
| Ehrlich       | McDade        | Waldholtz     |
| Emerson       | McHugh        | Walker        |
| English       | McInnis       | Walsh         |
| Ensign        | McIntosh      | Wamp          |
| Everett       | McKeon        | Watts (OK)    |
| Ewing         | Metcalf       | Weldon (FL)   |
| Fawell        | Meyers        | White         |
| Flanagan      | Mica          | Whitfield     |
| Foley         | Miller (FL)   | Wicker        |
| Forbes        | Minge         | Wolf          |
| Fox           | Molinar       | Young (AK)    |
| Franks (CT)   | Montgomery    | Young (FL)    |
| Franks (NJ)   | Moorhead      | Zeliff        |
| Frelinghuysen | Moran         | Zimmer        |
| Frisa         | Morella       |               |
| Funderburk    | Myers         |               |

NAYS—158

- |             |              |            |
|-------------|--------------|------------|
| Abercrombie | Barrett (WI) | Bevill     |
| Ackerman    | Becerra      | Bishop     |
| Andrews     | Bellenson    | Bonior     |
| Baessler    | Bentsen      | Borski     |
| Baldacci    | Berman       | Brown (CA) |

Brown (FL)	Jackson-Lee	Owens
Brown (OH)	(TX)	Pallone
Cardin	Jacobs	Pastor
Chapman	Jefferson	Payne (NJ)
Clay	Johnson (SD)	Pelosi
Clayton	Johnson, E. B.	Pickett
Clyburn	Johnston	Pomero
Coble	Kanjorski	Roybal-Allard
Coleman	Kennedy (MA)	Poshard
Collins (MI)	Kennedy (RI)	Rahall
Conyers	Kildee	Rangel
Costello	King	Richardson
Coyne	Kleczka	Rivers
Danner	Klink	Rose
DeFazio	LaFalce	Rush
DeLauro	Lantos	Sabo
Dellums	Levin	Sanders
Deutsch	Lewis (GA)	Sawyer
Diaz-Balart	Lipinski	Schroeder
Dicks	Lofgren	Schumer
Dixon	Lowey	Scott
Doggett	Luther	Serrano
Doyle	Maloney	Skaggs
Durbin	Manton	Skelton
Engel	Markey	Stark
Evans	Martinez	Studds
Farr	Martini	Stupak
Fattah	Mascara	Tejeda
Fazio	Matsui	Thompson
Fields (LA)	McCarthy	Thornton
Filner	McDermott	Thurman
Flake	McHale	Torricelli
Foglietta	McKinney	Towns
Frank (MA)	Meehan	Traficant
Frost	Meek	Velazquez
Furse	Menendez	Vento
Gejdenson	Miller (CA)	Visclosky
Gephardt	Mink	Volkmer
Gibbons	Moakley	Ward
Gilman	Mollohan	Waters
Gonzalez	Murtha	Watt (NC)
Green	Nadler	Waxman
Gutierrez	Neal	Williams
Hastings (FL)	Oberstar	Wilson
Hilliard	Obey	Wise
Hinchee	Olver	Woolsey
Hoyer	Ortiz	Wynn
Jackson (IL)	Orton	Yates

## NOT VOTING—14

Bryant (TX)	Ford	Stokes
Collins (IL)	Fowler	Torres
de la Garza	Hayes	Weldon (PA)
Eshoo	McNulty	Weller
Fields (TX)	Smith (TX)	

So the conference report was agreed to.

A motion to reconsider the vote whereby said conference report was agreed to was, by unanimous consent, laid on the table.

*Ordered*, That the Clerk notify the Senate thereof.

## ¶38.14 FURTHER CONTINUING APPROPRIATIONS FOR 1996

Mr. LIVINGSTON, pursuant to the special order of the House of heretofore agreed to, called up the joint resolution (H.J. Res. 170) making further continuing appropriations for fiscal year 1996, and for other purposes.

When said joint resolution was considered and read twice.

After debate,

The previous question having been ordered by said special order.

The joint resolution was ordered to be engrossed and read a third time, was read a third time by title.

The question being put, *viva voce*,

Will the House pass said joint resolution?

The SPEAKER pro tempore, Mr. GUTKNECHT, announced that the yeas had it.

So the joint resolution was passed.

A motion to reconsider the vote whereby said joint resolution was passed was, by unanimous consent, laid on the table.

*Ordered*, That the Clerk request the concurrence of the Senate in said joint resolution.

## ¶38.15 ADJOURNMENT OF THE TWO HOUSES

Mr. ARMEY submitted the following privileged concurrent resolution (H. Con. Res. 157):

*Resolved by the House of Representatives (the Senate concurring)*, That when the House adjourns on the legislative day of Friday, March 29, 1996, it stand adjourned until 12:30 p.m. on Monday, April 15, 1996, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns at the close of business on Friday, March 29, 1996, Saturday, March 30, 1996, or Sunday, March 31, 1996, pursuant to a motion made by the Majority Leader or his designee in accordance with this resolution, it stand recessed or adjourned until noon on Monday, April 15, 1996, or until such time on that day as may be specified by the Majority Leader or his designee in the motion to recess or adjourn, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and Senate, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

When said concurrent resolution was agreed to.

A motion to reconsider the vote whereby said concurrent resolution was agreed to was, by unanimous consent, laid on the table.

*Ordered*, That the Clerk notify the Senate thereof.

## ¶38.16 COMMITTEE ELECTION—MAJORITY

Mr. ARMEY, by direction of the Republican Conference, submitted the following privileged resolution (H. Res. 397):

Resolved, that the following named Member be, and he is hereby, elected to the following standing committee of the House of Representatives:

Committee on Ways and Means: Mr. HAYES of Louisiana, to rank following Mr. PORTMAN of Ohio.

When said resolution was considered and agreed to.

A motion to reconsider the vote whereby said resolution was agreed to was, by unanimous consent, laid on the table.

## ¶38.17 SPEAKER AND MINORITY LEADER TO ACCEPT RESIGNATIONS, APPOINT COMMISSIONS

On motion of Mr. ARMEY, by unanimous consent,

*Ordered*, That, notwithstanding any adjournment of the House until Monday, April 15, 1996, the Speaker and the Minority Leader be authorized to accept resignations and to make appointments authorized by law or by the House.

## ¶38.18 CALENDAR WEDNESDAY BUSINESS DISPENSED WITH

On motion of Mr. ARMEY, by unanimous consent,

*Ordered*, That business in order for consideration on Wednesday, April 17, 1996, under clause 7, rule XXIV, the Calendar Wednesday rule, be dispensed with.

## ¶38.19 DESIGNATION OF SPEAKER PRO TEMPORE TO SIGN ENROLLMENTS

The SPEAKER laid before the House a communication, which was read as follows:

WASHINGTON, DC,  
March 29, 1996.

I hereby designate the Honorable BILL EMERSON to act as Speaker pro tempore to sign enrolled bills and joint resolutions through Monday, April 15, 1996.

NEWT GINGRICH,

*Speaker of the House of Representatives.*

By unanimous consent, the designation was accepted.

## ¶38.20 SUBPOENA

The SPEAKER pro tempore, Mr. GUTKNECHT, laid before the House the following communication from Mr. BENTSEN:

HOUSE OF REPRESENTATIVES,  
Washington, DC, March 26, 1996.

Hon. NEWT GINGRICH,

*Speaker of the House, House of Representatives, The Capitol, Washington, DC.*

DEAR MR. SPEAKER: This is to formally notify you pursuant to Rule L (50) of the Rules of the House that a member of my staff has been served with a subpoena issued by the United States District Court for the District of Columbia. This subpoena relates to her employment by a former Member of the House.

After consultation with the General Counsel, I have determined that compliance with the subpoena is consistent with the privileges and procedures of the House.

With kindest personal regards,

Sincerely,

KENNETH E. BENTSEN, Jr.,

*Member of Congress.*

## ¶38.21 BRITISH-AMERICAN INTERPARLIAMENTARY GROUP

The SPEAKER pro tempore, Mr. GUTKNECHT, by unanimous consent, announced that pursuant to section 168(b) of Public Law 102-138, the Speaker appointed to the British-American Interparliamentary Group, on the part of the House, the following Members: Messrs. CLINGER, Vice Chair, BROWNBAC, EMERSON, LINDER, Ms. MOLINARI, Mr. PETRI, and Ms. PRYCE.

## ¶38.22 FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.J. Res. 170. Joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes; and

H. Con. Res. 157. Concurrent resolution providing for an adjournment or recess of the two Houses.

The message also announced that pursuant to Public Law 103-432, upon