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ANNOUNCEMENT BY THE SPEAKER
PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD). Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Record votes on postponed questions will be taken later today.

□ 1030

MULTIDISTRICT LITIGATION
RESTORATION ACT OF 2004

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1768) 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 for other purposes, as amended.

The Clerk read as follows:

H.R. 1768

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Multidistrict Litigation Restoration Act of 2004".

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. TECHNICAL AMENDMENT TO MULTIPARTY, MULTIFORM TRIAL JURISDICTION ACT OF 2002.

Section 1407 of title 28, United States Code, as amended by section 2 of this Act, is further amended by adding at the end the following:

"(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."

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 amendment made by section 3 shall be effective as if enacted in section 11020(b) of the Multiparty, Multiforum Trial Jurisdiction Act of 2002 (Public Law 107-273; 116 Stat. 1826 et seq.).

The SPEAKER pro tempore (Mr. LAHOOD). Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentlewoman from Texas (Ms. JACKSON-LEE) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 1768, the bill, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this legislation addresses two important issues in the world of complex multidistrict litigation. First, the bill reverses the effect of the 1998 Supreme Court decision in the so-called "Lexecon" case. For 30 years prior to the Lexecon decision, a Federal judicial entity, the Multidistrict Litigation Panel, selected the one U.S. district court that was best suited to handle pretrial matters in complex multidistrict cases filed in State and Federal district courts around the

country. The district courts selected, called the "transferee" court, would then invoke a separate general venue statute to retain all the cases for trial matters. This situation promoted judicial administrative efficiency, then produced results that were more uniformly fair to the litigants.

In the 1998 Lexecon decision, the Supreme Court ruled that the statute empowering the MDLP to operate did not authorize a transferee court to retain cases after the pretrial matters were concluded. The bill amends the Federal multidistrict litigation statute by explicitly allowing a transferee court to retain jurisdiction over referred cases for trial, for the purposes of determining liability and punitive damages, or to refer them to other districts as it sees fit. It simply responds to the Court's admonition that Congress amend the statute to allow the MDLP and the affected transferee courts to act as they had done without incident for 30 years prior to Lexecon.

Second, the passage of H.R. 1768 ensures that a special "disaster" litigation statute enacted last term will operate as Congress intended. Among other prescribed conditions, this new law creates original jurisdiction for U.S. district courts to adjudicate cases in which the accident has led to 75 deaths. This provision, now codified as a part of the Department of Justice authorization act from the 107th Congress, contemplates that the Lexecon problem is solved.

In other words, the new disaster litigation law only creates original jurisdiction for a U.S. district court to accept these cases and qualify as a transferee court under the multidistrict litigation statute. But the transferee court still cannot retain consolidated cases for the determination of liability and punitive damages which effectively guts the statute. In this sense, the Lexecon fix set forth in H.R. 1768, its freestanding merits aside, also functions as a technical correction to the recently enacted disaster litigation statute.

In sum, this legislation speaks to process, fairness, and judicial efficiency. It will not interfere with jury verdicts or compensation rates for litigators.

I urge my colleagues to join me in a bipartisan effort to support this bill.

Mr. Speaker, I reserve the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume.

Let me first of all, Mr. Speaker, say that there is good news for those victims who had been victimized by catastrophic injuries and catastrophic accidents such as airplane crashes, terrorist actions, and others because we have been able to provide for an opportunity for those cases to remain in their jurisdiction of the incident or the jurisdiction that is accommodating to those plaintiffs; and I applaud that relief that was given by the exclusion