

VICH, who laid before the House the following communication:

WASHINGTON, DC,
December 6, 1995.

I hereby designate the Honorable GEORGE P. RADANOVICH to act as Speaker pro tempore on this day.

NEWT GINGRICH,
Speaker of the House of Representatives.

¶157.2 APPROVAL OF THE JOURNAL

The SPEAKER pro tempore, Mr. RADANOVICH, announced he had examined and approved the Journal of the proceedings of Tuesday, December 5, 1995.

Pursuant to clause 1, rule I, the Journal was approved.

¶157.3 COMMUNICATION

1781. A communication from the President of the United States, transmitting an updated report concerning the use of United States aircraft in support of United Nations and North Atlantic Treaty Organization [NATO] efforts in the former Yugoslavia (H. Doc. No. 104-143); to the Committee on International Relations and ordered to be printed.

¶157.4 MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate had passed without amendment a bill of the House of the following title:

H.R. 2204. An Act to extend and reauthorize the Defense Production Act of 1950, and for other purposes.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 1058) "An Act to reform Federal securities litigation, and for other purposes."

¶157.5 COMMITTEES AND SUBCOMMITTEES TO SIT

On motion of Mr. DREIER, by unanimous consent, the following committees and their subcommittees were granted permission to sit today during the 5-minute rule: the Committee on Agriculture, the Committee on Commerce, the Committee on Economic and Educational Opportunities, the Committee on Government Reform and Oversight, the Committee on International Relations, the Committee on National Security, the Committee on Resources, and the Committee on Science.

¶157.6 WAIVING POINTS OF ORDER AGAINST THE CONFERENCE REPORT ON H.R. 1058

Mr. DREIER, by direction of the Committee on Rules, called up the following resolution (H. Res. 290):

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 1058) to reform Federal securities litigation, and for other purposes. All points of order against the conference report and against its consideration are waived.

When said resolution was considered. After debate,

On motion of Mr. DREIER, the previous question was ordered on the resolution to its adoption or rejection.

The question being put, viva voce, Will the House agree to said resolution?

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

Mr. DINGELL 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	318
Nays	97
Answered present	1

¶157.7 [Roll No. 838] YEAS—318

Allard	Dornan	Istook
Archer	Doyle	Jackson-Lee
Armye	Dreier	Jacobs
Bachus	Duncan	Johnson (CT)
Baesler	Dunn	Johnson, Sam
Baker (CA)	Durbin	Jones
Baker (LA)	Ehlers	Kasich
Baldacci	Ehrlich	Kelly
Ballenger	Emerson	Kennedy (MA)
Barcia	English	Kennedy (RI)
Barrett (NE)	Ensign	Kennelly
Bartlett	Eshoo	Kim
Barton	Everett	King
Bass	Farr	Kingston
Bateman	Fawell	Klecza
Bentsen	Fazio	Klug
Bereuter	Fields (TX)	Knollenberg
Bevill	Flanagan	Kolbe
Bilbray	Foley	LaFalce
Bilirakis	Forbes	LaHood
Bishop	Fox	Lantos
Biley	Frank (MA)	Largent
Blute	Franks (CT)	Latham
Boehlert	Franks (NJ)	LaTourette
Boehner	Frelinghuysen	Lazio
Bonilla	Frisa	Leach
Boucher	Frost	Levin
Brewster	Funderburk	Lewis (CA)
Browder	Furse	Lewis (KY)
Brown (CA)	Galleghy	Lightfoot
Brown (FL)	Ganske	Lincoln
Brown (OH)	Gejdenson	Linder
Brownback	Gekas	Livingston
Bryant (TN)	Geren	LoBiondo
Bunn	Gibbons	Lofgren
Bunning	Gilchrest	Longley
Burr	Gillmor	Lucas
Burton	Gilman	Maloney
Buyer	Gonzalez	Manton
Callahan	Goodlatte	Manzullo
Calvert	Goodling	Martini
Camp	Gordon	Matsui
Canady	Goss	McCarthy
Cardin	Graham	McCollum
Castle	Green	McCrery
Chabot	Greenwood	McDade
Chambliss	Gunderson	McHugh
Chenoweth	Gutierrez	McInnis
Christensen	Gutknecht	McIntosh
Chrysler	Hall (OH)	McKeon
Clement	Hall (TX)	McNulty
Clinger	Hamilton	Meehan
Coble	Hancock	Metcalf
Coburn	Hansen	Meyers
Collins (GA)	Harman	Mica
Combest	Hastert	Miller (FL)
Condit	Hastings (WA)	Minge
Cooley	Hayes	Molinari
Cox	Hayworth	Montgomery
Crane	Hefley	Moorhead
Crapo	Hefner	Moran
Creameans	Heineman	Morella
Cubin	Herger	Murtha
Cunningham	Hilleary	Myers
Danner	Hobson	Myrick
Davis	Hoekstra	Neal
de la Garza	Hoke	Nethercutt
Deal	Holden	Neumann
DeLauro	Horn	Ney
DeLay	Hostettler	Norwood
Deutsch	Houghton	Nussle
Diaz-Balart	Hoyer	Ortiz
Dickey	Hutchinson	Orton
Dooley	Hyde	Oxley
Doolittle	Inglis	Packard

Pallone	Salmon	Tate
Parker	Sanford	Tauzin
Paxon	Saxton	Taylor (NC)
Payne (VA)	Scarborough	Thomas
Pelosi	Schaefer	Thornberry
Peterson (MN)	Schiff	Thornton
Petri	Schumer	Tiahrt
Pickett	Seastrand	Torkildsen
Pombo	Sensenbrenner	Towns
Porter	Shadegg	Traficant
Portman	Shaw	Upton
Poshard	Shays	Vento
Pryce	Shuster	Visclosky
Quillen	Sisisky	Vucanovich
Quinn	Skaggs	Walker
Radanovich	Skeen	Walsh
Ramstad	Skelton	Wamp
Reed	Slaughter	Ward
Regula	Smith (MI)	Watts (OK)
Richardson	Smith (NJ)	Weldon (FL)
Riggs	Smith (TX)	Weldon (PA)
Roberts	Smith (WA)	Weller
Roemer	Solomon	Whitfield
Rogers	Souder	Wicker
Rohrabacher	Spence	Wolf
Rose	Spratt	Wyden
Roth	Stearns	Wynn
Roukema	Stenholm	Young (AK)
Royce	Stockman	Young (FL)
Rush	Stump	Zeliff
Sabo	Talent	Zimmer

NAYS—97

Abercrombie	Ford	Pastor
Ackerman	Gephardt	Payne (NJ)
Andrews	Hastings (FL)	Peterson (FL)
Barrett (WI)	Hilliard	Pomeroy
Becerra	Jefferson	Rahall
Beilenson	Johnson (SD)	Rangel
Berman	Johnson, E. B.	Rivers
Bonior	Johnston	Roybal-Allard
Borski	Kanjorski	Sanders
Bryant (TX)	Kaptur	Sawyer
Clay	Kilde	Schroeder
Clayton	Klink	Scott
Clyburn	Lewis (GA)	Serrano
Coleman	Lipinski	Stark
Collins (IL)	Luther	Stokes
Collins (MI)	Markey	Studds
Conyers	Martinez	Stupak
Costello	Mascara	Tanner
Coyne	McDermott	Taylor (MS)
Cramer	McHale	Thompson
Dellums	McKinney	Thurman
Dicks	Meek	Torres
Dingell	Menendez	Torricelli
Dixon	Mfume	Velazquez
Doggett	Miller (CA)	Waters
Edwards	Mink	Watt (NC)
Engel	Moakley	Waxman
Evans	Mollohan	Williams
Fattah	Nadler	Wise
Fields (LA)	Oberstar	Woolsey
Filner	Obey	Yates
Flake	Olver	
Foglietta	Owens	

ANSWERED "PRESENT"—1

Lowe

NOT VOTING—16

Barr	Hinchey	Volkmer
Bono	Hunter	Waldholtz
Chapman	Laughlin	White
DeFazio	Ros-Lehtinen	Wilson
Ewing	Tejeda	
Fowler	Tucker	

So the resolution was agreed to.

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

¶157.8 WAIVING REQUIREMENT OF CLAUSE 4(B), RULE XI

On motion of Mr. DREIER, by unanimous consent,

Ordered, That the resolution (H. Res. 260) waiving a requirement of clause 4(b) of rule XI with respect to consideration of certain resolutions reported from the Committee on Rules, be laid on the table.

157.9 SECURITIES LITIGATION

Mr. BLILEY called up the following conference report (Rept. No. 104-369):

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 1058), to reform Federal securities litigation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Private Securities Litigation Reform Act of 1995”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—REDUCTION OF ABUSIVE LITIGATION

Sec. 101. Private securities litigation reform.

Sec. 102. Safe harbor for forward-looking statements.

Sec. 103. Elimination of certain abusive practices.

Sec. 104. Authority of Commission to prosecute aiding and abetting.

Sec. 105. Loss causation.

Sec. 106. Study and report on protections for senior citizens and qualified retirement plans.

Sec. 107. Amendment to Racketeer Influenced and Corrupt Organizations Act.

Sec. 108. Applicability.

TITLE II—REDUCTION OF COERCIVE SETTLEMENTS

Sec. 201. Proportionate liability.

Sec. 203. Applicability.

Sec. 204. Rule of construction.

TITLE III—AUDITOR DISCLOSURE OF CORPORATE FRAUD

Sec. 301. Fraud detection and disclosure.

TITLE I—REDUCTION OF ABUSIVE LITIGATION

SEC. 101. PRIVATE SECURITIES LITIGATION REFORM.

(a) **SECURITIES ACT OF 1933.**—Title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by adding at the end the following new section:

“SEC. 27. PRIVATE SECURITIES LITIGATION.

“(a) **PRIVATE CLASS ACTIONS.**—

“(1) **IN GENERAL.**—The provisions of this subsection shall apply to each private action arising under this title that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.

“(2) **CERTIFICATION FILED WITH COMPLAINT.**—

“(A) **IN GENERAL.**—Each plaintiff seeking to serve as a representative party on behalf of a class shall provide a sworn certification, which shall be personally signed by such plaintiff and filed with the complaint, that—

“(i) states that the plaintiff has reviewed the complaint and authorized its filing;

“(ii) states that the plaintiff did not purchase the security that is the subject of the complaint at the direction of plaintiff’s counsel or in order to participate in any private action arising under this title;

“(iii) states that the plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary;

“(iv) sets forth all of the transactions of the plaintiff in the security that is the sub-

ject of the complaint during the class period specified in the complaint;

“(v) identifies any other action under this title, filed during the 3-year period preceding the date on which the certification is signed by the plaintiff, in which the plaintiff has sought to serve, or served, as a representative party on behalf of a class; and

“(vi) states that the plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond the plaintiff’s pro rata share of any recovery, except as ordered or approved by the court in accordance with paragraph (4).

“(B) **NONWAIVER OF ATTORNEY-CLIENT PRIVILEGE.**—The certification filed pursuant to subparagraph (A) shall not be construed to be a waiver of the attorney-client privilege.

“(3) **APPOINTMENT OF LEAD PLAINTIFF.**—

“(A) **EARLY NOTICE TO CLASS MEMBERS.**—

“(i) **IN GENERAL.**—Not later than 20 days after the date on which the complaint is filed, the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class—

“(I) of the pendency of the action, the claims asserted therein, and the purported class period; and

“(II) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.

“(i) **MULTIPLE ACTIONS.**—If more than one action on behalf of a class asserting substantially the same claim or claims arising under this title is filed, only the plaintiff or plaintiffs in the first filed action shall be required to cause notice to be published in accordance with clause (i).

“(iii) **ADDITIONAL NOTICES MAY BE REQUIRED UNDER FEDERAL RULES.**—Notice required under clause (i) shall be in addition to any notice required pursuant to the Federal Rules of Civil Procedure.

“(B) **APPOINTMENT OF LEAD PLAINTIFF.**—

“(i) **IN GENERAL.**—Not later than 90 days after the date on which a notice is published under subparagraph (A)(i), the court shall consider any motion made by a purported class member in response to the notice, including any motion by a class member who is not individually named as a plaintiff in the complaint or complaints, and shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (hereafter in this paragraph referred to as the ‘most adequate plaintiff’) in accordance with this subparagraph.

“(ii) **CONSOLIDATED ACTIONS.**—If more than one action on behalf of a class asserting substantially the same claim or claims arising under this title has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination required by clause (i) until after the decision on the motion to consolidate is rendered. As soon as practicable after such decision is rendered, the court shall appoint the most adequate plaintiff as lead plaintiff for the consolidated actions in accordance with this subparagraph.

“(iii) **REBUTTABLE PRESUMPTION.**—

“(I) **IN GENERAL.**—Subject to subclause (II), for purposes of clause (i), the court shall adopt a presumption that the most adequate plaintiff in any private action arising under this title is the person or group of persons that—

“(aa) has either filed the complaint or made a motion in response to a notice under subparagraph (A)(i);

“(bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and

“(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

“(II) **REBUTTAL EVIDENCE.**—The presumption described in subclause (I) may be rebutted only upon proof by a member of the purported plaintiff class that the presumptively most adequate plaintiff—

“(aa) will not fairly and adequately protect the interests of the class; or

“(bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

“(iv) **DISCOVERY.**—For purposes of this subparagraph, discovery relating to whether a member or members of the purported plaintiff class is the most adequate plaintiff may be conducted by a plaintiff only if the plaintiff first demonstrates a reasonable basis for a finding that the presumptively most adequate plaintiff is incapable of adequately representing the class.

“(v) **SELECTION OF LEAD COUNSEL.**—The most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.

“(vi) **RESTRICTIONS ON PROFESSIONAL FEES AND EXPENSES.**—Except as the court may otherwise permit, consistent with the purposes of this section, a person may be a lead plaintiff, or an officer, director, or fiduciary of a lead plaintiff, in no more than 5 securities class actions brought as plaintiff class actions pursuant to the Federal Rules of Civil Procedure during any 3-year period.

“(4) **RECOVERY BY PLAINTIFFS.**—The share of any final judgment or of any settlement that is awarded to a representative party serving on behalf of a class shall be equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class. Nothing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of the class.

“(5) **RESTRICTIONS ON SETTLEMENTS UNDER SEAL.**—The terms and provisions of any settlement agreement of a class action shall not be filed under seal, except that on motion of any party to the settlement, the court may order filing under seal for those portions of a settlement agreement as to which good cause is shown for such filing under seal. For purposes of this paragraph, good cause shall exist only if publication of a term or provision of a settlement agreement would cause direct and substantial harm to any party.

“(6) **RESTRICTIONS ON PAYMENT OF ATTORNEYS’ FEES AND EXPENSES.**—Total attorneys’ fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class.

“(7) **DISCLOSURE OF SETTLEMENT TERMS TO CLASS MEMBERS.**—Any proposed or final settlement agreement that is published or otherwise disseminated to the class shall include each of the following statements, along with a cover page summarizing the information contained in such statements:

“(A) **STATEMENT OF PLAINTIFF RECOVERY.**—The amount of the settlement proposed to be distributed to the parties to the action, determined in the aggregate and on an average per share basis.

“(B) **STATEMENT OF POTENTIAL OUTCOME OF CASE.**—

“(i) **AGREEMENT ON AMOUNT OF DAMAGES.**—If the settling parties agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title, a statement