

PROVIDING FOR CONSIDERATION OF H.R. 1115, CLASS
ACTION FAIRNESS ACT OF 2003

JUNE 11, 2003.—Referred to the House Calendar and ordered to be printed

Ms. PRYCE of Ohio, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 269]

The Committee on Rules, having had under consideration House Resolution 269, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 1115, the Class Action Fairness Act of 2003, under a structured rule. The rule provides one hour of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary.

The rule provides that the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read. The rule waives all points of order against the amendment in the nature of a substitute recommended by the Committee on the Judiciary. The rule makes in order only those amendments printed in this report, and provides that those amendments may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole. The rule waives all points of order against the amendments printed in this report.

The rule provides one motion to recommit with or without instructions.

COMMITTEE VOTES

Pursuant to clause 3(b) of House rule XIII the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee Record Vote No. 105

Date: June 11, 2003.

Measure: H.R. 1115—Class Action Fairness Act of 2003.

Motion by: Mr. Frost.

Summary of motion: To report an open rule.

Results: Defeated 4 to 7.

Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Frost—Yea; Slaughter—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee Record Vote No. 106

Date: June 11, 2003.

Measure: H.R. 1115—Class Action Fairness Act of 2003.

Motion by: Mrs. Slaughter.

Summary of motion: To make in order the amendment offered by Representative Delahunt, which strikes section 6 of the bill which provides for: (a) the immediate appeal of district court rulings granting or denying a motion for class certification; and (b) a stay of discovery and other proceedings while the appeal is pending.

Results: Defeated 4 to 7.

Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Frost—Yea; Slaughter—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee Record Vote No. 107

Date: June 11, 2003.

Measure: H.R. 1115—Class Action Fairness Act of 2003.

Motion by: Mr. Hastings of Florida.

Summary of motion: To make in order the amendment offered by Representative Conyers, which strikes section 8 of H.R. 1115 and adds a provision to change the effective date of the bill to on or after the date of enactment.

Results: Defeated 4 to 8.

Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; Slaughter—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

SUMMARY OF AMENDMENTS MADE IN ORDER UNDER THE RULE

1. Sensenbrenner/Boucher/Goodlatte/Moran (VA)/Dooley/Stenholm/Terry: Slightly broadens the category of class action cases that would remain in state court in two ways. First, this amendment raises the aggregate amount in controversy required for federal court jurisdiction from \$2 million to \$5 million. Second, it allow federal courts discretion to return intrastate class actions in which local law governs to state courts after weighting five factors to determine if the case is appropriately of a local character. This

discretion would come into play when between one-third and two-thirds of the plaintiffs are citizens of the same state as the primary defendants. If less than one-third are citizens of the same state, the case would automatically be eligible for federal court jurisdiction under the new diversity rules in this bill. Likewise, if more than two-thirds are citizens of the same state, the case would not be subject to the new rules in this bill and would remain in state court. (10 minutes)

2. Jackson-Lee: Prevents domestic corporations from not being subject to the jurisdiction of U.S. Federal Courts, and liability in class action lawsuits filed in Federal Courts, through mergers or repatriations with foreign companies. (10 minutes)

3. Lofgren/Linda Sanchez: Preserves the ability of local prosecutors to enforce state antitrust and consumer protection laws in state courts. (10 minutes)

4. Sandlin/Conyers: Amendment in the Nature of a Substitute. Strikes everything after the enacting clause and inserts the following:

Section 1 of the amendment contains a short title, reference, and table of contents.

Section 2 of the amendment establishes improved procedures for certain class actions, including provisions for the use of coupon settlements, court approval of settlements, sealing of class action documents, and interlocutory appeals.

Section 3 of the amendment enacts the recommendations of the United States Judicial Conference with respect to notice to class members.

Section 4 of the amendment establishes a state court multi-district litigation panel for class actions. The panel allows for the consolidation of class actions pending in different state courts for pretrial proceedings.

Section 5 of the amendment authorizes the National Center for State Courts to develop and implement a procedure by which state courts or the state court multi-district litigation panel may transfer certain class actions to federal court. (20 minutes)

TEXT OF AMENDMENTS MADE IN ORDER UNDER THE RULE

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SENSENBRENNER OF WISCONSIN, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 1332(d) of title 28, United States Code, as proposed to be inserted by section 4(a)(2) of the bill—

(1) in paragraph (2), strike “\$2,000,000” and insert “\$5,000,000”;

(2) redesignate paragraphs (4) through (9) as paragraphs (5) through (10), respectively;

(3) strike paragraph (3) and insert the following:

“(3) A district court may, in the interests of justice, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of the following factors:

“(A) Whether the claims asserted involve matters of national or interstate interest.

“(B) Whether the claims asserted will be governed by laws other than those of the State in which the action was originally filed.

“(C) In the case of a class action originally filed in a State court, whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction.

“(D) Whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States.

“(E) Whether 1 or more class actions asserting the same or similar claims on behalf of the same or other persons have been or may be filed.

“(4) Paragraph (2) shall not apply to any class action in which—

“(A) two-thirds or more of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed;

“(B) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

“(C) the number of members of all proposed plaintiff classes in the aggregate is less than 100.”;

(4) in paragraph (5), as so redesignated, strike “\$2,000,000” and insert “\$5,000,000”; and

(5) in paragraph (10), as so redesignated—

(A) in the third sentence, strike “paragraphs (3) and (6)” and insert “paragraph (7)”; and

(B) in the last sentence, strike “(6)” and insert “(7)”.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JACKSON-LEE OF TEXAS, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 1332(d) of title 28, United States Code, as proposed to be inserted by section 4(a)(2) of the bill—

(1) in paragraph (9), strike the quotation marks and second period at the end; and

(2) add after paragraph (9) the following:

“(10)(A) For purposes of this subsection and section 1453 of this title, a foreign corporation which acquires a domestic corporation in a corporate repatriation transaction shall be treated as being incorporated in the State under whose laws the acquired domestic corporation was organized.

“(B) In this paragraph, the term ‘corporate repatriation transaction’ means any transaction in which—

“(i) a foreign corporation acquires substantially all of the properties held by a domestic corporation;

“(ii) shareholders of the domestic corporation, upon such acquisition, are the beneficial owners of securities in the foreign corporation that are entitled to 50 percent or more of the votes on any issue requiring shareholder approval; and

“(iii) the foreign corporation does not have substantial business activities (when compared to the total business activities

of the corporate affiliated group) in the foreign country in which the foreign corporation is organized.”.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LOFGREN OF CALIFORNIA, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 1332(d)(9) of title 28, United States Code, as proposed to be inserted by section 4(a)(2) of the bill—

- (1) in the first sentence, strike “if—” and all that follows through “(B) monetary relief” and insert “if monetary relief—”;
- (2) strike “The provisions of paragraphs (3) and (6)” and all that follows through “subparagraph (A).”; and
- (3) in the last sentence, strike “subparagraph (B)” and insert “this paragraph”.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SANDLIN OF TEXAS, OR HIS DESIGNEE, DEBATABLE FOR 20 MINUTES

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Class Action Improvement Act of 2003”.

(b) **REFERENCE.**—Whenever in this Act reference is made to an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 28, United States Code.

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

- Sec. 1. Short title; reference; table of contents.
- Sec. 2. Improved procedures for certain interstate class actions.
- Sec. 3. Establishment of State Court Multidistrict Litigation Panel.
- Sec. 4. Establishment of procedure for transferring certain actions to Federal court.
- Sec. 5. Best practices study.

SEC. 2. IMPROVED PROCEDURES FOR CERTAIN CLASS ACTIONS.

(a) **IN GENERAL.**—Part V is amended by inserting after chapter 113 the following:

“CHAPTER 114—CLASS ACTIONS

“Sec.

- “1711. Coupons and other noncash settlements.
- “1712. Protection against loss by class member.
- “1713. Protection against discrimination based on geographic location.
- “1714. Additional requirements.
- “1715. Protecting the integrity of the courts.
- “1716. Interlocutory appeals.
- “1717. Definitions.”.

“§ 1711. Coupons and other noncash settlements

“(a) **CONTINGENT FEES.**—If a proposed settlement in a class action provides for an award of a noncash benefit to a class member, and the attorney’s fee to be paid to class counsel is based upon a portion of the recovery, then the attorney’s fee shall be based on the value of the noncash benefit that is redeemed.

“(b) **OTHER ATTORNEY’S FEE AWARDS.**—If a proposed settlement in a class action includes a noncash benefit to a class member, and a portion of the recovery is not used to determine the attorney’s fee to be paid to class counsel, then the attorney’s fee shall be based

upon the actual amount of time class counsel expended working on the action. Any attorney's fee under this subsection shall be subject to approval by the court. Nothing in this subsection shall be construed to prohibit application of a lodestar with a multiplier method of determining attorney's fees whenever appropriate under applicable law.

“(c) SETTLEMENT VALUATION EXPERTISE.—In a class action involving the awarding of noncash benefits, the court may in its discretion, upon the motion of a party, receive expert testimony from a witness qualified to provide information on the actual value of the settlement.

“§ 1712. Protection against loss by class members

“The court may approve a proposed settlement under which any class member is obligated to pay sums to class counsel that would result in a net loss to the class member only if the court first makes a written finding that nonmonetary benefits to the class member outweigh the monetary loss.

“§ 1713. Protection against discrimination based on geographic location

“The court may not approve a proposed settlement that provides for the payment of greater sums to some class members than to others solely on the basis that the class members to whom the greater sums are to be paid are located in closer geographic proximity to the court.

“§ 1714. Additional requirements

“(a) SETTLEMENTS.—The court may not approve a proposed settlement of a class action unless the court determines that—

“(1) the settlement is fair, reasonable, and adequate to the plaintiff class; and

“(2) the settlement applies only to claims with respect to which the plaintiff class was authorized to represent class members.

“(b) NOTICE TO DEFENDANTS.—The court in a class action shall require that, before the class is certified, defendants receive notice of the action and be given an opportunity to respond to the complaint.

“(c) BLOCKING REMOVAL.—A defendant in a class action may not elect to block removal of the action to Federal court that is sought by other defendants if the court finds that plaintiffs named the defendant solely for purposes of blocking such removal.

“§ 1715. Protecting the integrity of the courts

“(a) OPEN RECORDS.—No order, opinion, or record of the court in a class action, including a record obtained through discovery, whether or not formally filed with the court, may be sealed or made subject to a protective order unless the court finds—

“(1) that the sealing or protective order is narrowly tailored and necessary to protect the confidentiality of a particular trade or business secret of one or more of the settling parties and is in the public interest; or

“(2) that—

“(A) the sealing or protective order is narrowly tailored, consistent with the protection of public health and safety, and is in the public interest; and

“(B) if the action by the court would prevent the disclosure of information, disclosing the information is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of such information.

“(b) **DESTRUCTION OF DOCUMENTS PROHIBITED.**—All parties filing or receiving service of a class action shall maintain all documents, including those in electronic format, related to the subject matter of the class action. Any person who knowingly alters, destroys, mutilates, conceals, or falsifies any record, document, or tangible object with the intent to impede, obstruct, or influence the outcome of a class action shall be fined not more than \$5,000 for each record, document, or object destroyed, imprisoned not more than 5 years, or both.

“§ 1716. Interlocutory appeals

“A court of appeals may in its discretion permit an appeal from an order of a district court granting or denying class action certification under Rule 23 of the Federal Rules of Civil Procedure if application is made to the court within 10 days after entry of the order. An appeal does not stay proceedings in the district court unless the district court or the court of appeals so orders.

“§ 1717. Definitions

“In this chapter—

“(1) **CLASS ACTION.**—The term ‘class action’ means—

“(A) any civil action filed in a district court of the United States pursuant to Rule 23 of the Federal Rules of Civil Procedure; and

“(B) any civil action that is removed to a district court of the United States that was originally filed pursuant to a State statute or rule of judicial procedure authorizing an action to be brought by one or more representatives on behalf of a class;

“(2) **CLASS COUNSEL.**—The term ‘class counsel’ means the persons who serve as the attorneys for the class members in a proposed or certified class action.

“(3) **CLASS MEMBERS.**—The term ‘class members’ means the persons who fall within the definition of the proposed or certified class in a class action.

“(4) **PROPOSED SETTLEMENT.**—The term ‘proposed settlement’ means an agreement that resolves any or all claims in a class action, that is subject to court approval, and that, if approved, would be binding on each class member, except to the extent that a class member has requested to be excluded from the class action.

(b) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of chapters for part V is amended by inserting after the item relating to chapter 113 the following:

“114. Class Actions 1711”.

SEC. 3. ENACTMENT OF JUDICIAL CONFERENCE RECOMMENDATIONS.

Notwithstanding any other provision of law, the amendments to Rule 23 of the Federal Rules of Civil Procedure, relating to notice to members of a class, which are embraced by the order entered by the Supreme Court of the United States on March 27, 2003, shall take effect on the date of the enactment of this Act or on December 1, 2003 (as specified in that order), whichever occurs first.

SEC. 4. ESTABLISHMENT OF STATE COURT MULTIDISTRICT LITIGATION PANEL.

(a) **CREATION OF MULTIDISTRICT LITIGATION PANEL.**—The National Center for State Courts is authorized to develop and implement, in coordination with the Conference of Chief Judges, a State court multidistrict litigation panel for class actions, to be called the “State Court Panel on Multidistrict Litigation”, in accordance with the following:

(1) **CONSOLIDATION OF CLASS ACTIONS.**—The SCPML shall allow State court judges, or parties with class actions pending in State courts, to seek to consolidate within one State court for pretrial proceedings related class actions pending in different States. No pending class action may be consolidated without the approval of the State court judge handling the pending action.

(2) **FOR PRETRIAL PROCEEDINGS.**—When class actions involving one or more common questions of fact are pending in the courts of different States, such actions may be transferred, with permission of the court, to any of these State courts for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the SCPML upon its determination that transfers for such proceedings will be for the convenience of the parties and witnesses and will promote the just and efficient conduct of such actions. Each action so transferred shall be remanded by the SCPML at or before the conclusion of such pretrial proceedings to the State court from which it was transferred unless it has been previously terminated, except that the SCPML may separate any claim, cross-claim, counterclaim, or third-party claim and remand any such claim before the remainder of the action is remanded.

(3) **JUDICIAL ASSIGNMENTS.**—Coordinated or consolidated pretrial proceedings under paragraph (2) shall be conducted by a judge or judges to whom such actions are assigned by the SCPML. With the consent of the transferee court or courts, such actions may be assigned by the SCPML to a judge or judges from any relevant State court. The judge or judges to whom such actions are assigned and the members of the SCPML may exercise the powers of a trial court judge of any of the relevant State courts for the purpose of conducting pretrial depositions in such coordinated or consolidated pretrial proceedings.

(4) **COMPOSITION OF SCPML.**—The SCPML shall consist of nine judges designated from time to time by the CCJ, no two of whom shall be from the same State. The concurrence of five members shall be necessary to any action by the SCPML. The members of the SCPML shall each serve for a term of three years. The CCJ is urged to develop a system to ensure that

States from varying regions and States of different sizes are equitably represented on the SCPML.

(5) ESTABLISHMENT OF RULES.—The SCPML may prescribe procedural rules for the conduct of its business not inconsistent with Federal law and the Federal Rules of Civil Procedure, including rules establishing procedures for initiating the transfer of a class action under this section, providing notice to all affected parties, determining whether such transfer shall be made, issuing orders either directing or denying such transfer, and providing notice of and appealing any order of the SCPML under this section.

(b) AUTHORIZATION.—There are authorized to be appropriated to the National Center for State Courts for the establishment and administration of the State Court Panel on Multidistrict Litigation \$1,000,000 for fiscal year 2004 and such sums as may be necessary for fiscal year 2005 and thereafter.

(c) DEFINITIONS.—In this section:

(1) CLASS ACTION.—The term “class action” means any civil action that—

(A) is brought in a State court pursuant to a State statute or rule of judicial procedure authorizing an action be brought by one or more representatives on behalf of a class; and

(B) is not removed to a court of the United States.

(2) CCJ.—The term “CCJ” means the Conference of Chief Justices.

(3) NCSC.—The term “NCSC” means the National Centers for State Courts.

(4) SCPML.—The term “SCPML” means the State Court Panel on Multidistrict Litigation established pursuant to subsection (b).

SEC. 5. ESTABLISHMENT OF PROCEDURE FOR TRANSFERRING CERTAIN ACTIONS TO FEDERAL COURT.

(a) ESTABLISHMENT OF PROCEDURE.—The National Center for State Courts is authorized to develop and implement, in coordination with the Conference of Chief Judges, a procedure by which the applicable State court or the SCMPL shall have the authority to transfer a class action to the appropriate Federal court if the matter in controversy of the civil action exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which—

(1) any member of a class of plaintiffs is a citizen of a State different from any defendant;

(2) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

(3) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

(b) DISCRETION TO DECLINE TO TRANSFER JURISDICTION.—The applicable State court or the SCMPL may, in the interests of justice, decline to transfer jurisdiction under subsection (a) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which

the action was originally filed, based on consideration of the following factors:

(A) Whether the claims asserted involve matters of national or interstate interest.

(B) Whether the claims asserted will be governed by laws other than those of the State in which the action was originally filed.

(C) Whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction.

(D) Whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States.

(E) Whether one or more class actions asserting the same or similar claims on behalf of the same or other persons have been or may be filed.

(c) **CASES IN WHICH JURISDICTION MAY NOT BE TRANSFERRED.**—The applicable State court or the SCMPL shall not transfer jurisdiction under subsection (a) over a class action in which—

(A) two-thirds or more of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed;

(B) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

(C) the number of members of all proposed plaintiff classes in the aggregate is less than 100.

(d) **JURISDICTION OF FEDERAL COURTS.**—Any Federal court to which a class action is transferred under subsection (a) shall have, and exercise, jurisdiction of the case.

(e) **DEFINITIONS.**—In this section, the terms “class action” and “SCMPL” have the meanings given those terms in section 4.

SEC. 6. BEST PRACTICES STUDY.

The National Center for State Courts is authorized and requested to—

(1) conduct a study for the purpose of identifying problems that arise in the litigation of State class actions;

(2) develop recommendations on ways to address the problems so identified; and

(3) report to the Congress, within 1 year after the date of the enactment of this Act, on the results of such study and recommendations.