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*Multiparty, Multiforum Trial Jurisdiction Act of 2002, P.L.
107-273*

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Abstract. Congress enacted the Multiparty, Multiforum Trial Jurisdiction Act of 2002 as section 11020 of the 21st Century Department of Justice Appropriations Authorization Act, P.L. 107-273, H.R. 2215. The Act allows the consolidation of causes of action growing out of a single accident that involves the deaths of at least 75 individuals that might otherwise have been scattered in state and federal courts throughout the nation. Its provisions were gleaned almost entirely from section 3 of H.R. 860 the Multidistrict, Multiparty, Multiforum Trial Jurisdiction Act of 2001. H.R. 860 addressed two areas of concern. Both were designed to save the courts and litigants time and money. One was concerned with the consolidation of state and federal cases arising out of the same major accident. It dealt with the difficulties associated with avoiding multiple trials involving the same issues and many of the same parties. The other, omitted from the Act, involved the consolidation of federal (but not state) cases involving essentially the same issues and parties (but not limited to a major accident). It dealt with the question of who should decide where cases, transferred to a single court for pre-trial purposes, should ultimately be tried.

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Multiparty, Multiform Trial Jurisdiction Act of 2002, P.L. 107-273

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Summary

Congress enacted the Multiparty, Multiform Trial Jurisdiction Act of 2002 as section 11020 of the 21st Century Department of Justice Appropriations Authorization Act, P.L. 107-273, H.R. 2215. The Act allows the consolidation of causes of action growing out of a single accident that involves the deaths of at least 75 individuals that might otherwise have been scattered in state and federal courts throughout the nation.

Its provisions were gleaned almost entirely from section 3 of H.R. 860 the Multidistrict, Multiparty, Multiform Trial Jurisdiction Act of 2001. H.R. 860 addressed two areas of concern. Both were designed to save the courts and litigants time and money. One was concerned with the consolidation of state and federal cases arising out of the same major accident. It dealt with the difficulties associated with avoiding multiple trials involving the same issues and many of the same parties. The other, omitted from the Act, involved the consolidation of federal (but not state) cases involving essentially the same issues and parties (but not limited to a major accident). It dealt with the question of who should decide where cases, transferred to a single court for pre-trial purposes, should ultimately be tried.

Act Summary¹

The Act may be cited as the “Multiparty, Multiform Trial Jurisdiction Act of 2002.”

Section 11020(b). Multiparty, Multiform Jurisdiction of District Courts.

The Act amends Chapter 85 of title 28 of the United States Code by adding a new section (Section 1369. Multiparty, multiform jurisdiction) which in subsection (a) bestows “original jurisdiction” on a federal district court involving “any civil action involving minimal diversity between adverse parties that arises from a single accident, where at least 75 ... persons have died ... if (1) a defendant resides in a State and a substantial part of the accident took place in another State or other location, regardless of whether the defendant is also a resident of the State where a substantial part of the accident took place; (2) any two defendants reside in different States regardless of whether such defendants are also residents of the same State or States; or (3) substantial parts of the accident took place in different States.”

Subsection (b) (Limitation of Jurisdiction of District Courts) of the new section 1369 creates an exception to the minimum diversity rule by providing that a district court may not hear any case in which “(1) [a] substantial majority of all plaintiffs are citizens of a single State of which the primary defendants are also citizens;² and (2) the claims asserted will be governed primarily by the laws of that [same] State.” In these situations, only State courts may have jurisdiction.

Subsection (c) (Special Rules and Definitions). The following special rules and definitions are provided:

- (1) minimal diversity exists between adverse parties if any party is a citizen of a State and any adverse party is a citizen of another State, a citizen or subject of a foreign state, or a foreign as defined in section 1603(a) of this title;
- (2) a corporation is deemed to be a citizen of any State, and a citizen or subject of any foreign state, in which it is incorporated or has its principal place of

¹ H.R. 860 and section 11020 of H.R. 2215 are essentially the same with the following exceptions: (1) Section 11020 creates a new section 1369 of Title 28 of the U.S. Code which confers original jurisdiction upon the federal district courts of any civil action involving minimal diversity between adverse parties arising from a single accident where at least 75 (*rather than 25*) persons have died and (2) Section 11020 would appear to have eliminated the minimal amount of damages required for federal court jurisdiction which must exceed \$150,000.00 per person under H.R. 860.

² One reason opponents may have objected to the expansion of the district courts’ jurisdiction in H.R. 860, presumably, may have been because the terms “substantial majority” and “primary defendant” are not defined. However, according to the House Report, “[n]o hearings on the bill were held, given the ample legislative history that preceded it from the 95th Congress through the 106th.” H.Rept. 107-14, at 5 and 41. Provisions comparable to section 11020 passed the House in both the 105th and 106th Congresses, H.R. 1252 (105th Cong.), 144 Cong. Rec. H2286 (daily ed. April 23, 1998); H.R. 2112 (106th Cong.), 145 Cong. Rec. H8109 (daily ed. Sept. 13, 1999).

business, and is deemed to be a resident of any State in which it is incorporated or licensed to do business or is doing business;

(3) injury means (A) physical harm to a natural person; and (B) physical damage to or destruction of tangible property, but only if physical harm ... exists;

(4) ... accident means a sudden accident, or a natural event culminating in an accident, that results in death or injury incurred at a discrete location by at least 75 natural persons; and

(5) the term state includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Subsection (d) (Intervening Parties) of the new section 1369 permits any person in any action brought in the federal district court to intervene as a party plaintiff and file a claim arising from the accident.

Subsection (e) (Notification of Judicial Panel on Multidistrict Litigation). A federal district court in which an action is pending under the provisions of the Act must promptly notify the judicial panel on multidistrict litigation (MDLP) of the pendency of the action.

The Act amends the general federal venue statute, 28 USC 1391, by providing that any civil action brought under the statute may be brought in any federal district court in which any defendant resides or in which a substantial part of the accident giving rise to the action took place.

Section 11020 (b)(3) (Removal of Actions). The Act amends 28 USC 1441 to permit a defendant in a civil action in a state court to remove the case to federal court if: (A) the action could have been brought in federal court under the Act; or (B) the defendant is a party to litigation that could have been brought, in whole or in part, in federal court under the Act and that arises from the same accident as the action in state court.

The new section 1441(e)(2-5), "...also sets forth the procedure for removal, along with the terms by which an action is remanded back to state court for determination of damages, including appellate procedures governing liability."³ These paragraphs further provide that "[a]ny decision under 1369(e) concerning remand for the 1369 determination of damages is not reviewable by appeal or otherwise under new paragraph (6)" regarding the authority of the district court to transfer or dismiss an action on the ground of inconvenient forum.⁴

The Act applies with respect to any cause of action where "the accident giving rise to the cause of action which occurred on or after the 90th day after the date of enactment of [the] Act."

³ H.Rept. 107-685 at 202.

⁴ H.Rept. 107-685 at 202.

Section 11020(b)(4) (Service of Process) will vest federal district courts with nation-wide service of process authority (world-wide authority where applicable law permits) when the Act supplies the basis for its jurisdiction in whole or in part.⁵

Comparison with H.R. 860

The Act's treatment of major accident cases differs from that of H.R. 860 in three respects. First, it is limited to accidents involving the death or injury of 75 individuals rather than 25 casualties that served as a threshold for H.R. 860. Second, it drops H.R. 860's requirement that each injured plaintiff have sustained damages of more than \$150,000. Third, it makes no mention of amendments to 28 U.S.C. 1407, under which H.R. 860 would direct a transfer from one federal district court to another of cases arising under the Act.

In this last regard, H.R. 860 would have added a new subsection (j)(1) to 1407 which would have allowed the transferee court to retain jurisdiction over the case for determination of liability and punitive damages. The transferee court would remand the case to the district court from which it was transferred, or to the state court from which the case was removed, for the determination of damages, other than punitive damages, unless the transferee court found, for the convenience of parties and witnesses and in the interest of justice, that the action should be retained for the determination of damages.

Brief Legislative History

The proposals in H.R. 860 date back several years.⁶ The precursor (H.R. 2112) of H.R. 860 in the 106th Congress was introduced by Representative Sensenbrenner on July 9, 1999. It was reported out of the Committee on the Judiciary on July 30, 1999, H.Rept. 106-276, 106th Cong., 1st Sess. (1998), and passed the House by voice on October 21, 1999. The Senate passed H.R. 2112 stripped of all but the transfer provisions on October 27, 1999.⁷ Although the House passed an identical bill (H.R. 5562) to the one passed by the Senate (H.R. 2112), the 106th Congress adjourned without final action on either measure.

The changes made in H.R. 860 which were not a part of H.R. 2112 as passed by the House include: (1) a plaintiff must allege a minimum of \$150,000.00 in damages which is increased from \$75,000.00 to file in the U.S. district court; (2) an exception to the minimum diversity rule is created whereby a U.S. district court may not hear a case if a majority for the plaintiffs and the primary defendants are citizens of the same State and claims are governed by the laws of that State; and (3) the choice of law section was

⁵ 28 U.S.C. 1785.

⁶ *E.g.*, H.R. 4159 (98th Cong.) (transferee concern); H.R. 4315 (99th Cong.) (major accident concern); H.Rept. 102-373 (Multiparty, Multiforum Jurisdiction Act of 1991).

⁷ See CRS Report RS20382, *Multidistrict Jurisdiction Act of 1999*. The transfer provisions had been part of a more ambitious jurisdiction bill, S. 248 introduced by Senate Judiciary Chairman Orrin Hatch, which saw no further action, *see generally*, CRS Report RS20112, *Judicial Improvement Act of 1999, S. 248, 106th Congress*.

stricken which gave district court judges considerable authority to select the relevant law that would apply in a particular case.

On July 23, 2001, H.R. 2215 passed in the House by voice vote⁸ and in the Senate with amendments by unanimous consent on December 20, 2001.⁹ The differences between H.R. 860 and the current amendments found in H.R. 2215 (the Department of Justice Authorization bill) were made in conference and set forth in subsection 11020 of the conference report. Subsection 11020 creates a new section 1369 of Title 28 of the U.S. Code which confers original jurisdiction upon the federal district courts of any civil action involving minimal diversity between adverse parties arising from a single accident where at least 75 (rather than 25) persons have died. The other difference would appear to be the elimination of the minimal amount of damages required which was \$150,000.00 per person under H.R. 860. The conference report¹⁰ was agreed to in the House by a vote of 400-4 on September 26, 2002¹¹ and in the Senate by unanimous consent on Oct. 3, 2002.¹² It was signed by the President on November 2, 2002 and became P.L. 107-273.

⁸ 147 Cong.Rec. H4384-4389 (daily ed. July 23, 2001).

⁹ 147 Cong.Rec. S14065-14075 (daily ed. Dec. 20, 2001).

¹⁰ Conf.Rept. H.Rept. 107-685 (text of report: 148 Cong.Rec. H6586-6649 (daily ed. Sept. 25, 2002)).

¹¹ 148 Cong.Rec. H6743-6751 (daily ed. Sept. 26, 2002).

¹² 148 Cong.Rec. S9870-9892 (daily ed. Oct. 3, 2002).