

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 720) TO AMEND RULE 11 OF THE FEDERAL RULES OF CIVIL PROCEDURE TO IMPROVE ATTORNEY ACCOUNTABILITY, AND FOR OTHER PURPOSES, AND PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 985) TO AMEND THE PROCEDURES USED IN FEDERAL COURT CLASS ACTIONS AND MULTIDISTRICT LITIGATION PROCEEDINGS TO ASSURE FAIRER, MORE EFFICIENT OUTCOMES FOR CLAIMANTS AND DEFENDANTS, AND FOR OTHER PURPOSES

MARCH 8, 2017.—Referred to the House Calendar and ordered to be printed

Mr. COLLINS of Georgia, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 180]

The Committee on Rules, having had under consideration House Resolution 180, 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. 720, the Law-suit Abuse Reduction Act of 2017, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on the Judiciary. The resolution waives all points of order against consideration of the bill. The resolution provides that the bill shall be considered as read. The resolution waives all points of order against provisions in the bill. The resolution makes in order only those amendments printed in part A of this report. Each such amendment 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 division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments printed in part A of this report. The resolution provides one motion to recommit with or without instructions.

Section 2 of the resolution provides for consideration of H.R. 985, the Fairness in Class Action Litigation Act of 2017, under a struc-

tured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on the Judiciary. The resolution waives all points of order against consideration of the bill. The resolution makes in order as original text for the purpose of amendment an amendment in the nature of a substitute consisting of the text of Rules Committee Print 115-5 and provides that it shall be considered as read. The resolution waives all points of order against that amendment in the nature of a substitute. The resolution makes in order only those further amendments printed in part B of this report. Each such amendment 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 division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments printed in part B of this report. The resolution provides for one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

Although the resolution waives all points of order against consideration of H.R. 720, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against provisions in H.R. 720, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendments to H.R. 720 printed in part A of this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against consideration of H.R. 985, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

The waiver of all points of order against the amendment in the nature of a substitute to H.R. 985 made in order as original text includes a waiver of clause 7 of rule XVI, which requires that no motion or proposition on a subject different from that under consideration shall be admitted under color of amendment.

Although the resolution waives all points of order against the amendments to H.R. 985 printed in part B of this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

COMMITTEE VOTES

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. 32

Motion by Mr. Hastings of Florida to make in order and provide the appropriate waivers to amendment #12 to H.R. 985, offered by Rep. Cicilline (RI), which exempts service members, veterans, and

their families from the information production requirements under title II of the bill. Defeated: 4–8

Majority Members	Vote	Minority Members	Vote
Mr. Cole	Nay	Ms. Slaughter	Yea
Mr. Woodall	Nay	Mr. McGovern	Yea
Mr. Burgess	Nay	Mr. Hastings of Florida	Yea
Mr. Collins	Nay	Mr. Polis	Yea
Mr. Byrne	Nay		
Mr. Newhouse	Nay		
Mr. Buck	Nay		
Ms. Cheney	Nay		
Mr. Sessions, Chairman	Nay		

Rules Committee record vote No. 33

Motion by Mr. Polis to make in order and provide the appropriate waivers to amendment #6 to H.R. 985, offered by Rep. Moore (WI), which exempts gender discrimination and sexual harassment claims from the bill's class action provisions. Defeated: 4–8

Majority Members	Vote	Minority Members	Vote
Mr. Cole	Nay	Ms. Slaughter	Yea
Mr. Woodall	Nay	Mr. McGovern	Yea
Mr. Burgess	Nay	Mr. Hastings of Florida	Yea
Mr. Collins	Nay	Mr. Polis	Yea
Mr. Byrne	Nay		
Mr. Newhouse	Nay		
Mr. Buck	Nay		
Ms. Cheney	Nay		
Mr. Sessions, Chairman	Nay		

SUMMARY OF THE AMENDMENTS TO H.R 720 IN PART A MADE IN ORDER

1. Soto (FL): Reinstates the FRCP 11(c)(2) safe harbor provision to allow parties to avoid penalties by withdrawing or correcting the claims within 14 days from when the alleged violation of rule 11(b) becomes known, anytime up until the end of the discovery period. (10 minutes)

2. Jackson Lee (TX): Strikes provision mandating the award of reasonable attorney's fees and costs, restoring judicial discretion to award such fees and costs, when warranted. (10 minutes)

3. Conyers (MI): Exempts from the bill civil actions alleging any violation of a constitutional or civil right (10 minutes)

4. Jeffries (NY): Exempts actions pertaining to whistleblowers (10 minutes)

SUMMARY OF THE AMENDMENTS TO H.R. 985 IN PART B MADE IN ORDER

1. Goodlatte (VA): MANAGER'S Strikes the prohibition on the use of the same class counsel if the named plaintiff is a present or former client, or has a contractual relationship with, the class counsel. Carves out private securities litigation class actions from the conflict of interest and stay of discovery sections, gives federal courts 90 days to review the sufficiency of the allegations verification submissions made in the section on multi-district litigation, and makes other technical, conforming, and clarifying changes. (10 minutes)

2. Deutch (FL): Strikes the provision on conflicts of interest. (10 minutes)
3. Deutch (FL): Strikes the fee determination based on equitable relief provision. (10 minutes)
4. Soto (FL): Strikes section 1721 to allow discovery to proceed while motions are pending. (10 minutes)
5. Johnson, Hank (GA): Exempts civil actions alleging fraud. (10 minutes)
6. Conyers (MI): Exempts civil rights actions from the bill's class action provisions. (10 minutes)
7. Jackson Lee (TX): Replaces the substantive text of the bill with a requirement that the bankruptcy asbestos trust report quarterly an aggregate list of demands received and payments made. (10 minutes)
8. Espaillat (NY): Exempts a claimant who is or has been living in public housing or any dwelling unit for which rental assistance provided under section 8. (10 minutes)

PART A—TEXT OF AMENDMENTS TO H.R. 720 MADE IN ORDER

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

Page 3, strike line 11 and all that follows through line 13, and insert the following:

(2) in paragraph (2)—

(A) by inserting after “be presented to the court if” the following: “discovery has not been completed and if” ; and

(B) by striking “within 21 days” and inserting “within 14 days”; and

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

Page 3, beginning on line 19, strike “shall consist of an order to pay” and all that follows through “reasonable expenses incurred” on line 20, and insert “may consist of an order to pay the reasonable expenses incurred by the party or parties”.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CONYERS JR. OF MICHIGAN OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Add, at the end of the bill, the following:

SEC. 3. PROTECTING ACTIONS PERTAINING TO CONSTITUTIONAL CLAIMS OR CIVIL RIGHTS.

Nothing in this Act, or the amendments made by this Act, shall be construed to apply to actions alleging any violation of a right protected by the Constitution or any civil right protected by law.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JEFFRIES OF NEW YORK OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Add, at the end of the bill, the following:

SEC. 3. PROTECTING ACTIONS PERTAINING TO WHISTLEBLOWERS.

Nothing in this Act, or the amendments made by this Act, shall be construed to apply to actions brought by an individual, or individuals, under Federal whistleblower laws, Federal anti-retaliation laws, or any Federal laws which protect reporting government misconduct or malfeasance.

PART B—TEXT OF AMENDMENTS TO H.R. 985 MADE IN ORDER

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

Page 4, line 12, strike “of,” and all that follows through line 15, and insert “or employee of”.

Page 4, insert after line 19 the following:

“(d) EXCEPTION.—This section shall not apply to a private action brought as a class action that is subject to section 27(a) of the Securities Act of 1933 (15 U.S.C. 77z–1(a)) or section 21D(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–4(a)).”.

Page 8, line 14, add at the end the following: “This section shall not apply to a private action brought as a class action that is subject to section 27(a) of the Securities Act of 1933 (15 U.S.C. 77z–1(a)) or section 21D(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–4(a)).”.

Page 9, line 6, strike “amended—” and all that follows through line 12 and inserting the following: “amended by inserting after subsection (e) the following:”.

Page 9, line 13, strike “(d)” and insert “(f)”.

Page 9, line 16, insert “commenced in a State court” before “in which”.

Page 10, line 2, strike “defendants” and insert “plaintiffs”.

Page 10, line 3, strike “plaintiffs” and insert “defendants”.

Page 10, line 9, strike “The court” and insert “Except as provided in paragraph (4), the court”.

Page 10, line 14, insert after “section 1332(a).” the following:

“(4) The court shall retain jurisdiction over a claim that does not satisfy the jurisdictional requirements of section 1332(a) if—

“(A) the claim is so related to the claims that satisfy the jurisdictional requirements of section 1332(a) that they form part of the same case or controversy under Article III of the United States Constitution; and

“(B) the plaintiff consents to the removal of the claim.”.

Page 11, line 7, strike “30 days” and insert “90 days”.

Page 11, line 19, strike “any trial in any civil action” and insert “a trial in a civil action”.

Page 11, line 21, strike “to the civil action” and insert “to that civil action”.

Page 11, line 21, strike “to trial of” and all that follows through “to be tried” on line 22.

Page 12, line 4, insert after “provided that” the following: “the order is applicable to one or more civil actions seeking redress for personal injury and that”.

Page 12, line 8, strike “1447(e)” and insert “1447(d)”.

Page 12, strike line 15, and all that follows through “requirement.” on line 25, and insert the following:

“(1) ENSURING PROPER RECOVERY FOR PLAINTIFFS.—A plaintiff who asserts personal injury claims in any civil action transferred to or directly filed in coordinated or consolidated pretrial proceedings conducted pursuant to subsection (b) shall receive not less than 80 percent of any monetary recovery obtained for those claims by settlement, judgment, or otherwise, subject to the satisfaction of any liens for medical services provided to the plaintiff related to those claims. The judge or judges to whom the coordinated or consolidated pretrial proceedings have been assigned shall have jurisdiction over any disputes regarding compliance with this requirement.”.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DEUTCH OF FLORIDA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 3, strike line 22, and insert the following: “In a class action”.

Page 4, strike line 9, and all that follows through line 19.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DEUTCH OF FLORIDA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 6, strike line 1 and all that follows through line 8.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SOTO OF FLORIDA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 8, strike line 7 and all that follows though line 14 (and amend the amendment to the table of contents on page 9 after line 3 accordingly).

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JOHNSON OF GEORGIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 8, line 21, insert after “Civil Procedure.” the following (and amend the amendment to the table of contents on page 9 after line 3 accordingly):

“§ 1724. Applicability

“Sections 1716 through 1723 shall not apply in the case of any civil action alleging fraud.”.

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CONYERS JR. OF MICHIGAN OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 8, line 25, insert after “Civil Procedure.” the following (and amend the amendment to the table of contents on page 9 after line 3 accordingly):

“§ 1724. Applicability

“Sections 1716 through 1723 shall not apply in the case of any civil action alleging a violation of a civil right.”.

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

Beginning on page 13, strike line 19 and all that follows through line 15 on page 14, and insert the following:

“(8) A trust described in paragraph (2) shall file with the bankruptcy court, not later than 60 days after the end of every quarter, a report that shall be made available on the court’s public docket and with respect to each such reporting period contains an aggregate list of demands received and an aggregate list of payments made.”.

8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ESPAILLAT OF NEW YORK OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 13, line 21, insert “subject to subparagraph (C),” after “(A)”.

Page 14, line 6, strike “and” at the end.

Page 14, line 7, insert “subject to subparagraph (C),” after “(B)”.

Page 14, line 15, strike the close quotation marks and the period at the end, and insert “; and”.

Page 14, after line 15, insert the following:

“(C) not comply with subparagraphs (A) and (B) with respect to such claimant who is or has been living in public housing (as such term is defined in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b))) or any dwelling unit for which rental assistance is provided under section 8 of such Act (42 U.S.C. 1437f).”.