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MULTIDISTRICT LITIGATION IN AVIATION ACCIDENT CASES

GEORGE E. FARRELL*

IN 1961 a crisis occurred in the federal courts when multiple anti-trust suits were brought against the electric equipment industry.¹ There were 25,623 separate claims for relief in 1,912 civil actions filed in thirty-five federal district courts involving these anti-trust suits. Because of the congestion to the court system caused by these suits, experienced judges and members of Congress recognized the need for a new approach to this type of massive litigation. Consequently, section 1407 of Title 28 was enacted. This statute created the Judicial Panel on Multidistrict Litigation and empowered it to transfer civil actions to other districts for coordinated or consolidated pretrial proceedings when the transfer would promote the just and efficient conduct of the actions and serve the convenience of the parties and witnesses.²

The technique developed in the electrical cases was thought to be usable in other potential multidistrict litigations, including those cases arising from air disasters. Accordingly, actions arising from

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¹ Address by Chief Justice Warren, American Law Institute, May 16, 1967, reported in THE MANUAL FOR COMPLEX AND MULTIDISTRICT LITIGATION at 6 (rev. ed. 1970) [herein after referred to as MANUAL].

² Subsection (a), 28 U.S.C. § 1407 (1970) provides: "When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the Judicial Panel on Multidistrict Litigation authorized by this Section upon its determination that transfers of such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions. Each action so transferred shall be remanded by the Panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred unless it shall have been previously terminated: *Provided, however,* That the panel may separate any claim, cross-claim, counter-claim, or third-party claim and remand any of such claims before the remainder of the action is remanded."

air crashes are routinely consolidated for pretrial proceedings in accordance with section 1407.

I. SHOULD SECTION 1407 APPLY TO AVIATION DISASTER CASES

In his tribute, in recognition of the extraordinary effort on the part of the Coordinating Committee for Multiple Litigation and the participating judges in the electrical equipment civil anti-trust litigation, Chief Justice Warren commented:

If it had not been for the monumental effort of the nine judges on the Committee of the Judicial Conference and the remarkable cooperation of the thirty-five district judges before whom these cases were pending, the district court calendars throughout the country could well have broken down.³

The electrical anti-trust litigation was indeed a tremendous undertaking with remarkable results. It is questionable, however, whether the consolidated pretrial proceedings, which were so beneficial to the anti-trust suits, will be equally appropriate to litigation arising from air disasters. The legislative history of section 1407 indicates that Congress expected that pretrial transfers would be ordered only when significant economy and efficiency in judicial administration would be obtained.⁴ Although actions arising from aviation accidents involve common questions of fact, the litigation is seldom "complex"⁵ since general tort principles, procedures and remedies are involved. Accordingly, it is doubtful whether the transfer of cases that are not complex would enhance the convenience of the parties and witnesses, or promote judicial efficiency. In some instances the litigation has been made complex by the courts and overzealous attorneys attempting to follow the recommendations made in the Manual for Complex and Multidistrict Litigation.

As further evidence that aviation accident litigation might not be appropriate for consolidated pretrial proceedings, experience indicates that litigation arising from air disasters has not been a burden on the courts or judicial administration. At this writing, there have

³ See note 1 *supra*.

⁴ See H.R. REP. No. 1130, 90th Cong., 2d Sess. (1968).

⁵ See MANUAL at 26, wherein "complex litigation" is defined as "one or more related cases which present unusual problems and which require extraordinary treatment, including but not limited to the cases designated as 'protracted' and 'big'."

been only twenty-two aviation accidents considered by the Panel.⁶ Each accident has involved few cases and even fewer trials have resulted. Pretrial procedures are generally routine and the preliminary information, such as facts surrounding the accident, the witnesses involved, the applicable technical data, flight data and cockpit recorder read-outs, air traffic control and radio transmissions are all covered by the investigation of the National Transportation Safety Board or the Federal Aviation Administration.⁷

Moreover, consolidation has imposed a financial burden on plaintiffs in the aviation disaster cases by increasing the time and cost of preparation. The apparent necessity to gear the proceedings to the slowest common denominator is one of the reasons why trial preparation time following consolidation under section 1407 has been unacceptably long; more than two years.⁸ In addition, con-

⁶ *In re* Air Crash Disaster at Greater Cincinnati Airport (Constance, Ky.) on Nov. 8, 1965, Docket No. M.D.L.—8A (J.P.M.L.); *In re* Air Crash Disaster at Greater Cincinnati Airport on November 20, 1967 (Constance, Ky.), Docket No. M.D.L.—8B (J.P.M.L.); *In re* Air Crash Disaster at Ardmore, Okla., Docket No. M.D.L.—11 (J.P.M.L.); *In re* Mid-Air Collision Near Hendersonville, N.C., Docket No. M.D.L.—13 (J.P.M.L.); *In re* Air Crash Disaster at Hong Kong on June 30, 1967, Docket No. M.D.L.—15 (J.P.M.L.); *In re* Air Crash Disaster at Falls City, Neb. on August 6, 1966, Docket No. M.D.L.—17 (J.P.M.L.); *In re* Mid-Air Collision Near Fairland, Ind., Docket No. M.D.L.—30 (J.P.M.L.); *In re* Air Disaster at Santa Monica Bay, California, Docket No. M.D.L.—34 (J.P.M.L.); *In re* Air Crash Disaster Near Dayton, Ohio, Docket No. M.D.L.—38 (J.P.M.L.); *In re* Air Crash Disaster at Bradford, Penn., Docket No. M.D.L.—42A (J.P.M.L.) (Dec. 12, 1968); *In re* Air Crash Disaster at Bradford, Penn., Docket No. M.D.L.—42B (J.P.M.L.) (Jan. 6, 1969); *In re* Air Crash Disaster Near Hanover, N.H., Docket No. M.D.L.—43 (J.P.M.L.); *In re* San Juan, P.R. Air Crash Disaster, Docket No. M.D.L.—47 (J.P.M.L.); *In re* Air Crash Disaster at Maracaibo, Venezuela, Docket No. M.D.L.—48 (J.P.M.L.); *In re* Air Crash Disaster at New Orleans, La. (Moisant Field), Docket No. M.D.L.—64 (J.P.M.L.); *In re* Air Crash Disaster at San Antonio, Venezuela, Docket No. M.D.L.—72 (J.P.M.L.); *In re* Air Crash Disaster at Las Vegas, Nev., Docket No. M.D.L.—80 (J.P.M.L.); *In re* Air Crash Disaster at Mandeville, La., Docket No. M.D.L.—84 (J.P.M.L.); *In re* Air Crash Disaster Near Denver, Colo., Docket No. M.D.L.—88 (J.P.M.L.); *In re* Air Crash Disaster at Huntington, W.Va., Docket No. M.D.L.—94 (J.P.M.L.); *In re* Air Crash Disaster at Anchorage, Alaska, Docket No. M.D.L.—95 (J.P.M.L.); *In re* Air Crash Disaster at Tweed-New Haven Airport, Docket No. M.D.L.—96 (J.P.M.L.).

⁷ Accidents involving civil aircraft are investigated by the National Transportation Safety Board, and the facts, conditions, and circumstances of each accident and the probable cause thereof, is reported. The report is made public in such form and manner as is deemed by the NTSB to be in the public interest. The Federal Aviation Administration is delegated the investigative authority for some accidents. Federal Aviation Act of 1958, § 701, 49 U.S.C. § 1441 (1970).

⁸ Some of the actions consolidated by the orders of the Panel listed below are not yet terminated: *In re* Air Crash Disaster at Greater Cincinnati Airport on Nov. 20, 1967, 298 F. Supp. 353 (J.P.M.L. 1967); *In re* Mid-Air Collision Near

solidation has increased the workload of the courts by requiring unnecessary supervision of the cases. Further, consolidation unduly favors the defendants by delaying trial or settlement.

II. CONSOLIDATION CRITERIA

In 1967, when preparing section 1407(a), Congress contemplated that not all cases would be transferred for consolidation simply because they involved common questions of fact since it was doubted that transfer would enhance the convenience of parties and witnesses or promote judicial efficiency. Once the decision to transfer was made, Congress contemplated that a number of facts should be considered in the selection of a transferee district including the state of its docket, the availability of counsel and sufficient courtroom facilities.⁹ Only on three occasions has the Panel felt that the factors did not warrant consolidation and thus denied the transfer of the aviation cases.¹⁰

It has been customary to consolidate the anti-trust and other complex litigation in the larger districts while the aviation cases have been consolidated in the districts where the crash occurred, which typically were smaller districts.¹¹ A consequence of this consolidation of aviation litigation in smaller districts has been the substantial increase in the case load of those districts, resulting in delay in trial preparation.¹² Section 1407(a) prescribes that actions may be transferred to "any" district,¹³ but the Panel has apparently established its own precedence, and in at least one opinion has cited its previous consistency as support for its ruling that cases arising from an Indiana accident should be consolidated in Indianapolis.¹⁴

Hendersonville, N.C., 297 F. Supp. 1039 (J.P.M.L. 1967); and *In re Air Crash Disaster Near Fairland, Ind.*, 309 F. Supp. 261 (J.P.M.L. 1970).

⁹ See note 4 *supra*, at 1901.

¹⁰ *In re Air Crash Disaster at Falls City, Neb.*, 298 F. Supp. 1323 (J.P.M.L. 1969); *In re Air Disasters, Bradford, Pa.*, Docket Nos. M.D.L.—42 A and B, Not Reported (J.P.M.L. Hearing, September 25, 1970).

¹¹ For example, the Panel reported that the type of litigation transferred during 1970 to districts with five or more judges included nineteen of twenty anti-trust, patent and SEC groups of multidistrict litigation and only two of ten groups of cases arising from common disasters; See also Peterson & McDermott, *Multidistrict Litigation*, 56 A.B.A.J. 737, 741 (1970).

¹² Report of J.P.M.L., October 1970.

¹³ See note 2 *supra*.

¹⁴ *In re Air Crash Disaster at Fairland, Ind.*, 309 F. Supp. 621 (J.P.M.L. 1970), when the Panel stated: "We have consistently held that the district en-

If the location of the transferee court has marginal transportation facilities, however, then travel time alone can add months to pre-trial proceedings by hampering the availability of attorneys and witnesses. In addition, if the physical facilities of the small district are inadequate, the practice of the Panel in transferring aviation disaster cases to the situs of the crash could result in uncooperative witnesses and angry attorneys. More realistic considerations for selection of the transferee forum would be: a central geographic location; an adequate transportation facilities; an adequate court staff; an adequacy of judges, both in number and familiarity with the issues; an adequate number of clerks and clerical personnel; the availability of experienced reporter personnel; adequate documentary reproduction facilities; adequate facilities for the taking of depositions and storage of documents in the courthouse; convenience for the attorneys involved; and adequate hotel and restaurant facilities.

Subsection (a) of section 1407 provides that an action will not be transferred unless the Panel determines that it will be for "the convenience of the parties and witnesses" and will promote "the just and efficient conduct" of the action transferred.¹⁵ Although the "convenience of parties and witnesses" appears to be an admirable criterium for transfer, as a practical matter it is seldom a consideration. Primarily the attorneys, and not the parties, participate in the pretrial phase of the lawsuit; rarely are there eyewitnesses to an air crash. The witnesses testifying in aviation accident litigation are airline employees, the employees of the aircraft manufacturer and technical personnel employed by the United States. Interestingly, the final draft of section 1407 did not contain the terms "for the convenience of the parties."¹⁶ In the pretrial stages of this type of litigation, more fruitful considerations should be given to the convenience of the courts and the attorneys since they are the main participants in pretrial proceedings.

compassing the situs of the crash is generally the most appropriate transferee district for litigation of this type."

¹⁵ 28 U.S.C. § 1407(a) (1970).

¹⁶ See *Hearings on S. 3815 before Subcomm. on Improvements in Judicial Machinery, of Senate Comm. on Judiciary*, 89th Cong., 2d Sess., 101, 104, 134 (1967). The inclusion of the terms "for the convenience of parties" was recommended by a subcommittee witness who also happened to have been defense counsel for one of the electrical equipment manufacturers.

Judicial efficiency and the just and efficient conduct of actions that are transferred are not promoted by the consolidation of only two or three cases with common questions of fact that are pending in different districts.¹⁷ Taken to its extreme, however, consolidation has even been ordered when the five victims of the crash were all represented by the same attorney;¹⁸ consideration is even being given to the consolidation of a common air disaster in which there are only two actions pending.¹⁹ Neither the convenience of parties and witnesses, nor judicial efficiency, will be enhanced by consolidation of these cases.

When consolidation is opposed by all the parties, it should not be required. Occasionally, however, the Panel has taken the opposite position when plaintiffs and defendants agreed that consolidation was not required, but when the parties failed to show that they would be inconvenienced by transfer.²⁰

III. CONDUCT OF PRETRIAL PROCEEDINGS

Despite the theoretical uniformity provided by the Federal Rules of Civil Procedure, in practice each district has its own discovery methods.²¹ Thus if the litigation is truly multidistrict then pretrial proceedings in the transferee court should conform to practice in the various districts. In addition, other discovery practices should be followed to provide for complete and meaningful discovery. It is important that the court allow liberal discovery. Moreover, the transferee court should require that all requested documents be produced, subject only to in-camera inspection in the event of objec-

¹⁷ See note 4 *supra*. See also note 17 *supra*, at 129.

¹⁸ *In re* Air Crash Disaster at San Antonio, Venezuela, Docket No. M.D.L.—72 (J.P.M.L. 1971) (unreported case).

¹⁹ *In re* Air Crash Disaster at Huntington, W. Va., Docket No. M.D.L.—94 (J.P.M.L.) (no opinion at this writing).

²⁰ *In re* Air Crash Disaster at New Orleans, La. (Moisant Field), Docket No. M.D.L.—64 (J.P.M.L. 1971) (unreported case).

²¹ For example, at the first pretrial hearing after transfer of the Fairland, Indiana air disaster litigation, the defendants were ordered to produce all liability documents that they considered relevant; in the Fairland, Indiana litigation the production of the cockpit voice recorder tape was excluded, whereas it was ordered produced by the court in the Hendersonville, North Carolina litigation; further, in the Hendersonville, North Carolina litigation the accident coordinators' reports were excluded, whereas in the Puerto Rico air disaster litigation such documents were ordered produced; See also United States District Court for New Hampshire Ruling on Government's Objections to Production of Documents, dated December 28, 1970.

tion. At the time of production, the documents should also be marked for identification and a representation should be made by the party producing the document that it is genuine as of the date of the accident and whether it was kept in the regular course of business. In the deposition phase of the pretrial proceedings, the transferee court should require that deposition questions be answered, subject only to the objection provisions of the Federal Rules.²²

Presently, the Manual procedures are not readily adaptable to aviation accident litigation. An attempt by the transferee court to follow the Manual unduly complicates the pretrial proceedings in litigation, which itself is not complicated. Most of the preliminary procedures that are designed to provide the names and location of witnesses, location and custodian of documents and information of the transaction upon which the claims for relief are based, are duplicative and time consuming since this information is already available to the litigants through the NTSB or FAA investigations and hearings. Consequently, discovery on the merits of the litigation can, and should, begin immediately upon commencement of the proceedings.

The procedures of multidistrict litigation also provide for the appointment of liaison counsel,²³ time restrictions,²⁴ provisions for "tag-along" and "catch-up" cases,²⁵ and together with the recommendations of the Manual and court interpretations, can unduly restrict the attorney in the representation of his client. If carried to their extreme, these procedures may deny a client the representation of his choice. Passage of section 1407 contemplated

²² FED. R. CIV. P. 30(a) provides that in a deposition upon oral examination: "Evidence objected to shall be taken subject to the objections." Federal rule 32(d) provides that all objections to testimony taken by oral deposition are reserved to time of trial except those with respect to form.

²³ MANUAL Part I § 1.9.

²⁴ For example, the transferee courts routinely establish completion dates for certain phases of pretrial proceedings; this is not objectionable when the time permitted is commensurate with the complexity of the proceeding involved.

²⁵ By orders filed February 25, 1971, and March 8, 1971, the United States District Court for the Eastern District of Kentucky, in consolidated litigation arising from the TWA accident at Cincinnati, ordered that it was "unnecessary" for certain "catch up" cases to engage in discovery proceedings, and no repetitive discovery would be permitted, which effectively precluded participation in any pretrial proceedings.

centralized management of the litigation with court supervision²⁶ and not court take-over.

With more liberal pretrial procedures and attorney cooperation assured by positive and standardized court direction, even the most complicated aircraft accident case should be prepared for trial in a maximum of six months.²⁷

IV. TRIAL IN THE TRANSFEREE COURT

As proposed to Congress, section 1407 was designed to only affect the pretrial stages in multidistrict litigation. By limiting the application of section 1407 to "pretrial proceedings" the intention was to restrict the consolidation simply to the practice and procedure that precedes the trial of an action. Moreover, these procedures generally involved deposition and discovery, and would be governed by Federal Rules 16²⁸ and 26²⁹ through 37.³⁰ Consequently, Congress intended that section 1407(a) would require the transferred cases to be remanded to the originating district at the close of coordinated pretrial proceedings; the statute's language did not, therefore, include the trial of cases in the consolidated proceedings.³¹ Section 1407(a) requires the Panel to remand each action at the conclusion of the pretrial proceedings, unless the law suit was previously terminated.³² Notwithstanding the clarity of the statute's language, one transferee court has conducted a trial on the issue of liability alone and another transferee court has conducted a trial of certain selected cases for all purposes.

For example, the United States District Court for New Hampshire ordered, pursuant to sections 1404(a) and 1406(a), that the

²⁶ See note 4 *supra*.

²⁷ At the first pretrial hearing in actions transferred to Indianapolis, Indiana, see note 12 *supra*, a proposed discovery schedule was presented to the court. Since it was a mid-air collision, the cause of the accident was known, and less extensive discovery was required. Although not accepted by the court, it is believed that the content and time sequences are valid. The schedule submitted would permit complete preparation for trial in six months from the first pretrial meeting, including discovery of documents, depositions (twelve technical witnesses), interrogatories and requests for admissions.

²⁸ FED. R. CIV. P. 16.

²⁹ FED. R. CIV. P. 26.

³⁰ FED. R. CIV. P. 37.

³¹ See note 4 *supra*, at 1900-01; See note 17 *supra*, at 21.

³² See note 2 *supra*.

cases before it for pretrial proceedings be consolidated for trial on the issue of liability.³³ Also in another situation, the trial of selected cases was ordered both on the issues of liability and damages.³⁴

Conducting a trial on consolidated cases is objectionable for several reasons. First, the trial of liability is not a pretrial procedure pursuant to section 1407, nor is it authorized by sections 1404(a) or 1406(a). Second, separate trials on liability and damages may violate the guarantee of trial by jury³⁵ as well as rule 42(b)³⁶ and section 2072 of Title 28.³⁷ The typical aviation case does not have the complexity to warrant the pretrial judge to handle the trial on liability simply because of his knowledge of the case. Moreover, separate trials on liability and damages do not reduce the case load in the judicial system. Thus consolidation for any reason other than pretrial is unnecessary.

The Second Circuit in *Pfizer, Inc. v. Lord*³⁸ considered the power of the transferee court to transfer to itself for all purposes, sua sponte, the cases previously consolidated for pretrial. The Second Circuit pointed out that the only power given the Panel is under section 1407.³⁹ Moreover, section 1407 seems to limit the discretion and power of the transferee court to order transfer under section 1404(a). Thus it would seem that the transferee court would have no greater authority than the Panel with respect to those particular actions consolidated by the Panel. Further support for the argu-

³³ U.S. Dist. Court for New Hampshire, Order and Memorandum, filed June 3, 1971.

³⁴ U.S. Dist. Court for the Southern District of Indiana, Entry dated Nov. 4, 1971.

³⁵ U.S. CONST. amend. VII.

³⁶ FED. R. CIV. P. 42(b) provides that separate trials may be ordered under certain circumstances, "always preserving inviolate the right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by statute of the United States."

³⁷ 28 U.S.C. § 2072 (1970) provides that the Supreme Court shall have the power to prescribe general rules of practice, etc., but "such rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as at common law and as declared by the Seventh Amendment to the Constitution." See *In re Air Crash Disaster at Greater Cincinnati Airport (TWA)* 298 F. Supp. 353 (J.P.M.L. 1968) wherein the Panel refused to sever the issue of damages prior to transfer for determination by the transferor court; *United Airlines, Inc. v. Weiner*, 286 F.2d 302 (9th Cir. 1961), *cert. denied*, 366 U.S. 924 (1961) wherein it was held that the issues of liability and damages could not be separated when questions of exemplary damages were involved.

³⁸ 447 F.2d 122 (2d Cir. 1971).

³⁹ *Id.* at 124.

ment that section 1407 cases are to be remanded to the transfer court is seen in the rejection of an amendment that would have added a section 1408 to give the Panel the power to transfer for all purposes.⁴⁰

Another way the remand provision of section 1407 can be circumvented is when the transferee court schedules an immediate trial at the close of the pretrial proceedings.⁴¹ Accordingly, this practice could collaterally estop litigation in the transferor district that could not be brought in the transferee district because of jurisdictional considerations. The scheduling of an immediate trial would also effectively exclude the participation of other parties to the litigation and effectively determine all cases by the transferee court in complete disregard of the statute. The procedure is getting through the backdoor what could not be obtained through the front door.

Finally, the apparent intention of the courts to terminate multi-district litigation in the transferee district deprives the litigants of the traditional privileges of selecting where, when and how to enforce their substantive rights or assert their defenses. Neither is *Van Dusen v. Barrack*⁴² a cure-all. In *Van Dusen*, the Court held that the transferee court must apply the same substantive law to the case as the transferor court would apply. Choice of law has tremendous effect on damages and the litigants' choice of forum should not be denied.

V. SHOULD THE PANEL BE A COURT? OR IS IT?

Since the Panel is given explicit judicial powers under section 1407, it is obvious that it is more than an administrative body.

⁴⁰ See *Hearings on S. 961 before Subcomm. on Improvements in Judicial Machinery of Senate Comm. on Judiciary*, 91st Cong., 1st Sess. 207 (1969). Section 2 of S. 961 would have amended Ch. 87, Title 28, U.S. CODE, by adding Section 1408, giving J.P.M.L. authority to transfer for pretrial and trial.

⁴¹ See note 31 *supra*.

⁴² 376 U.S. 612 (1964). See also U.S. District Court for New Hampshire, Order and Memorandum Opinion, filed June 3, 1971, wherein the court noted, "Moreover, the interest of justice, in my opinion, requires that the plaintiffs from other jurisdictions must not be compelled to litigate the issue of damages in a state which has a \$60,000 death limit in wrongful death actions. While . . . the New Hampshire death limitation would not apply to those cases originating in other districts (unless that state's conflict of laws rule so dictates), it would be naive and unrealistic to assume that New Hampshire jurors would not be aware of the death award limitations."

While it may not directly supervise pretrial proceedings in the transferee court, the Panel nevertheless "retains an active interest in and responsibility for ensuring that the transferred litigation is processed efficiently, expeditiously and economically."⁴³ In addition, the Panel has obtained periodic status reports from the transferee judges and has brought them together to discuss their mutual problems with members of the Panel and with the editors of the Manual. Although these procedures are apparently the result of cooperation by the transferee judges, the broad authority given to the Panel by section 1407(f) to prescribe rules for the conduct of "its business" could be interpreted as authority to supervise transferee courts in the conduct of pretrial proceedings.

The Panel denies that it has appellate authority over the transferee court, and has stated that "[s]ection 1407 does not authorize the Panel to act as an appellate forum for every litigant disgruntled by the rulings of a transferee judge."⁴⁴ The Seventh Circuit also seemed reluctant to consider the appeal of a ruling by a transferee judge in *Allegheny v. LeMay*.⁴⁵ The court pointed out that the basis for jurisdiction to consider the lower court ruling would be found either in Rule 54(b)⁴⁶ or in section 1292(b) of Title 28. Accordingly, if the appeal is based upon a ruling that is not a final judgment, or if the district judge declines to certify the opinion for immediate appeal, then the litigant has little if any opportunity for further remedy. As the court stated in *LeMay*,⁴⁷ the courts of appeal have not shown any interest thus far in utilizing mandamus to compel certification by a district court judge.

From the meetings with transferee judges and the status reports submitted, the Panel has the greatest awareness of the problems and progress of the transferred cases and would be in the best position to insure uniformity by timely and informed rulings on disagreements that arise during the pretrial proceedings in multidistrict litigation. If the Panel were acknowledged to be a "complex and multidistrict litigation" court, then it could provide the necessary uniformity through close and continuous supervision of the transferee

⁴³ See note 2 *supra*.

⁴⁴ *Leslie Plumbing v. Crane J.P.M.L.* Opinion and Order, Oct. 20, 1971.

⁴⁵ ___ F.2d ___ (7th Cir. 1971).

⁴⁶ FED. R. CIV. P. 54(b).

⁴⁷ See note 45 *supra*.

court and could therefore provide appellate direction over interlocutory rulings on matters pertaining to pretrial proceedings. Thus these procedures, if implemented, would be a substantial contribution to judicial efficiency.

VI. CONCLUSION AND RECOMMENDATION

In conclusion, the following recommendations concerning multi-district litigation arising from aircraft disaster cases are respectfully submitted:

1. Give stability to section 1407 by following legislative intent, or amend the statute;
2. Do not consolidate merely because the cases arise from airplane crashes;
3. Permit lawyers to control litigation;
4. If consolidation is necessary, choose a district that has adequate court and logistical facilities;
5. Institute a workable pretrial schedule for aviation cases by revising the Manual to include an aviation subsection; and,
6. Give the Panel court status and appellate review authority over pretrial proceedings.