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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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LEXECON INC. ET AL. v. MILBERG WEISS BERSHAD
HYNES & LERACH ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 96–1482. Argued November 10, 1997— Decided March 3, 1998

Petitioners, a law and economics consulting firm and one of its principals (collectively, Lexecon), were defendants in a class action brought against Charles Keating and the American Continental Corporation in connection with the failure of Lincoln Savings and Loan. It and other actions arising out of that failure were transferred for pretrial proceedings to the District of Arizona under 28 U. S. C. §1407(a), which authorizes the Judicial Panel on Multidistrict Litigation to transfer civil actions with common issues of fact “to any district for coordinated or consolidated pretrial proceedings,” but provides that the Panel “shall” remand any such action to the original district “at or before the conclusion of such pretrial proceedings.” Before the pretrial proceedings ended, the plaintiffs and Lexecon reached a “resolution,” and the claims against Lexecon were dismissed. Subsequently, Lexecon brought this diversity action in the Northern District of Illinois against respondent law firms (hereinafter Milberg and Cotchett), claiming several torts, including defamation, arising from the firms’ conduct as counsel for the class action plaintiffs. Milberg and Cotchett moved for, and the Panel ordered, a §1407(a) transfer to the District of Arizona. After the remaining parties to the Lincoln Savings litigation reached a final settlement, Lexecon moved the Arizona District Court to refer the case back to the Panel for remand to the Northern District of Illinois. The law firms filed a countermotion requesting the Arizona District Court to invoke §1404(a) to “transfer” the case to itself for trial. With only the defamation claim against Milberg remaining after a summary judgment ruling, the court assigned the case to itself for trial and denied Lexecon’s motion to request the Panel to remand. The Ninth Circuit then denied Lexecon’s

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petition for mandamus, refusing to vacate the self-assignment order and require remand because Lexecon would have the opportunity to obtain relief from the transfer order on direct appeal. After Milberg won a judgment on the defamation claim, Lexecon again appealed the transfer order. The Ninth Circuit affirmed on the ground that permitting the transferee court to assign a case to itself upon completion of its pretrial work was not only consistent with the statutory language but conducive to efficiency.

Held: A district court conducting pretrial proceedings pursuant to §1407(a) has no authority to invoke §1404(a) to assign a transferred case to itself for trial. Pp. 5–17.

(a) Two sources of ostensible authority for Milberg’s espousal of self-assignment authority are that the Panel has explicitly authorized such assignments in Panel Rule 14(b), which it issued in reliance on its rulemaking authority; and that §1407(a)’s limitations on a transferee court’s authority to the conduct of “coordinated or consolidated” proceedings and to “pretrial proceedings” raise no obvious bar to a transferee’s retention of a case under §1404. Beyond this point, however, the textual pointers reverse direction, for §1407 not only authorizes the Panel to transfer for coordinated or consolidated pretrial proceedings, but obligates the Panel to remand any pending case to its originating court when, at the latest, those pretrial proceedings end. The Panel’s remand instruction comes in terms of the mandatory “shall,” which normally creates an obligation impervious to judicial discretion. *Anderson v. Yungkau*, 329 U. S. 482, 485. Reading the statute whole, this Court has to give effect to this plain command, see *Estate of Cowart v. Nicklos Drilling Co.*, 505 U. S. 469, 476, even if that will reverse the longstanding practice under the statute and the rule, see *Metropolitan Stevedore Co. v. Rambo*, 521 U. S. ___, ___. Pp. 5–10.

(b) None of Milberg’s additional arguments based on the statute’s language and legislative history can unsettle §1407’s straightforward language imposing the Panel’s responsibility to remand, which bars recognizing any self-assignment power in a transferee court and consequently entails the invalidity of the Panel’s Rule 14(b). Pp. 10–14.

(c) Milberg errs in arguing that a remedy for Lexecon can be omitted under the harmless error doctrine. That §1407’s strict remand requirement creates an interest too substantial to be left without a remedy is attested by a congressional judgment that no discretion is to be left to a court faced with an objection to a statutory violation. The §1407 mandate would lose all meaning if a party who continuously objected to an uncorrected categorical violation of the mandate could obtain no relief at the end of the day. *Caterpillar Inc. v. Lewis*, 519 U. S. ___, distinguished. Pp. 14–17.

Cite as: ____ U. S. ____ (1998)

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102 F. 3d 1524, reversed and remanded.

SOUTER, J., delivered the opinion of the Court, which was unanimous except insofar as SCALIA, J., did not join Part II–C.