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Diversity jurisdiction refers to the Federal court's jurisdiction over cases involving a controversy between citizens of different States or between citizens of a State and of a foreign nation. A plaintiff may initiate a civil suit in either a State or Federal court if certain requirements are met, and a defendant being sued in a State court other than one in his home State may remove the action to the Federal court in the State where the action was initiated. Trial lawyers favor Federal courts over State courts in diversity cases because of fears that the State courts may be prejudiced against nonresidents and because of beliefs that the cases are Federal in nature, Federal court systems are superior, and State dockets are more crowded. Of 10 attorneys questioned concerning the objectivity of State courts, the following were expressed: six thought the State court was adequate, one believed there was prejudice, and seven thought there might be prejudice. Data are not available to determine whether State court systems can handle additional diversity cases that would result from elimination or restriction of Federal jurisdiction, but an ongoing research project may provide information in this area. (HTW)

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-189861

February 28, 1978

The Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

On November 21, 1977, we briefed your Committee on the results of our work concerning Federal diversity jurisdiction. Our work was conducted at the Federal district courts in Minneapolis and St. Paul, Minnesota, and the Hennepin County, Minnesota, district court.

At the conclusion of the November briefing, we were asked to provide a summary of the results to your Committee for its use during future deliberations on the Federal diversity issue. We trust that the enclosure, coupled with our letter dated October 5, 1977, providing comments on H.R. 761 and two related bills, H.R. 7243 and H.R. 5546, is responsive to the Committee's request.

If we can be of further assistance, please let us know.

Sincerely yours,

P. F. Kelly

Deputy Comptroller General
of the United States

Enclosure

GGD-78-38
(18839)

ENCLOSURE I

SUMMARY OF FACTS DEVELOPED ON FEDERAL DIVERSITY JURISDICTION

The House Judiciary Committee requested that our review of Federal diversity jurisdiction develop information to address the following three questions.

--Why do trial lawyers favor the Federal courts over State courts? (See p. 2.)

--How objective are State courts when diversity cases are tried before them? (See p. 7.)

--Can State courts assume the diversity caseload now handled by Federal courts? (See p. 8.)

Diversity jurisdiction refers to the Federal court's jurisdiction over cases involving a controversy between citizens of different States or between citizens of a State and citizens of a foreign nation. Under current procedures a plaintiff in such a case may initiate a civil suit arising under State law in either a State or Federal court--provided the matter in controversy meets certain requirements. Correspondingly, a defendant being sued in State court other than one in his home State is permitted to remove that action to the Federal court in the State where the action was initiated.

Although court records were not conducive to comprehensively addressing the Committee's questions, we obtained information which sheds some light on them. This information, summarized below, is based on (1) opinions of 18 attorneys (14 plaintiff and 4 defense attorneys) who invoked Federal jurisdiction in 19 diversity cases filed during 1974 in the Federal district courts in Minneapolis and St. Paul, Minnesota, (2) opinions of six attorneys (all plaintiff attorneys) who did not invoke Federal jurisdiction in six diversity cases filed during 1974 in the Hennepin County district court, part of the Minnesota State court system, (3) court records, (4) work being performed by the National Center for State Courts and the Federal Judicial Center, and (5) views of well-known authorities on diversity jurisdiction.

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FACTORS INFLUENCING THE SELECTION OF FEDERAL JURISDICTION

Historically, several reasons have been given for supporting the option to invoke Federal jurisdiction in diversity cases. The fear that State courts would be prejudiced against nonresidents is perhaps the most frequently cited. Other reasons cited for maintaining such an option include:

--Diversity cases are properly Federal in nature since they involve citizens of different States. Hence, these cases deserve a hearing at an independent tribunal to which all parties concerned owe their allegiance.

--Federal court systems employ better judges, juries, and procedural methods, therefore, they should be utilized wherever possible so that the highest quality justice possible is attained.

--Trial lawyers and litigants have greater opportunity to obtain the most advantageous hearing for their cases.

--State court dockets are more crowded than Federal court dockets.

In interviews of the 18 attorneys who had invoked Federal jurisdiction in 19 diversity cases, the attorneys most frequently (in 15 cases) cited a preference for Federal judges, juries, or procedures as being a factor in their decision to invoke Federal jurisdiction. Often the attorneys had multiple reasons for their choice. The attorneys in the remaining four cases cited reasons other than a preference for Federal courts as factors influencing their choice of Federal jurisdiction. The following summarizes the reasoning of the 18 attorneys.

Preference for Federal court judges

In 10 of the 19 diversity disputes brought to Federal court, the attorneys noted a greater confidence in the judicial temperament and independence of the Federal judge as a reason for invoking Federal jurisdiction. The following examples indicate the lawyers' reasons for preferring Federal judges:

--They are of a higher caliber. The prestige and salaries of the Federal judgeship tend to attract better qualified individuals.

--They are more experienced and more liberal in product liability cases.

--They are more proficient in cases involving international law.

--They are more capable of dealing with complex disputes than are State judges.

Preference for Federal court juries

Closely related to the greater confidence in Federal judges is the preference for a Federal jury. This was cited in 6 of the 19 cases discussed with the attorneys. Rural area attorneys were more sensitive to this issue than were the metropolitan area attorneys. The objection to State court juries is that they are sometimes drawn from a geographical area which is not diverse enough to provide assurance that unbiased jurors are available. For example:

--A rural area attorney, representing an individual who had been injured in an accident involving a motor vehicle and a train, initiated the action in the Federal court because the State court which would have had venue was located in a predominantly agricultural area. The attorney suggested that jury members from this area may have been sympathetic to the railroad because of their economic dependence on it and their fear that a large award could encourage additional railway track abandonments. Federal court, on the other hand, provides a broader based jury which, in the attorney's opinion, was more likely to be unbiased.

--An attorney representing individuals who were being sued by a local farm cooperative removed the case to Federal court because he believed that a State court jury would be largely composed of individuals closely associated with the cooperative. However, this attorney noted that rural juries do try to be very fair, even when prominent local interests are involved. Further, he said it is "hard to tell whether prejudice is a factor" in such cases, because an attorney cannot

ethically question jurors about their reasons for reaching a verdict.

--A metropolitan area attorney stated that Federal courts draw a jury from a broader population base than State courts do. He said Federal juries produce a fairer verdict more often than do State juries.

Preference for Federal court procedures

Half of the 18 attorneys indicated that Federal court pretrial and discovery procedures were either more modern or more effective than corresponding State procedures. Examples of representative attorney opinions are:

--The Federal court assigns each civil case to a specific judge. Once assigned to a case, that judge normally retains responsibility for the case through its disposition. The State court assigns judges to a case on an "as needed" basis. Unlike the Federal procedure, no single State judge has overall responsibility for the case. For example, one judge may hold the pretrial motion and another may hold the trial.

--Federal courts have better staff and procedures than the State courts have.

--Federal pretrial procedures facilitate out-of-court settlement.

--Broader discovery and rules of evidence (relating to admissibility) in the Federal court permit the plaintiff greater access to the defendant's records, which is a particularly effective device when opposing large corporations. These broader procedures permit the Federal courts to root out the truth more convincingly. For example, superior Federal procedures have forced a defendant to produce "very damaging documents" which directly "led to an acceptable offer of compromise" from the defendant.

Not all of the attorneys agreed with these opinions. A metropolitan area attorney, noting his service as a State court law clerk, said that he respected State judges more than he did Federal judges. He said that the Federal judges try to prejudice the juries

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by commenting on the evidence. He thinks this gives Federal judges too much influence over juries.

Likewise, a rural area attorney asserted that State courts are objective forums and that prejudice against nonresidents is not a factor in State court decisions. In one case, the attorney was unable to get jurisdiction over the defendants in his home State court system and, therefore, invoked Federal jurisdiction in the defendant's Federal court. However, he said he only resorts to the Federal court when compelled. He prefers his State court system because it is more convenient.

Another attorney noted that if he has an option he would bring a case to State court because he is "more familiar" with State court procedures.

Federal court calendar

In 7 of the 15 cases originally brought to Federal court by the plaintiff's attorney, the time-to-trial was cited as a factor influencing the attorney's decision to invoke Federal jurisdiction. The time-to-trial is often a critical concern of the plaintiff who has suffered a civil wrong and needs a timely settlement to meet his obligations. Under current law, the plaintiff attorney can "shop" for the most expeditious forum. Where Federal court calendars are less congested than the corresponding State calendars, the Federal court may be more attractive to the plaintiff. On the other hand, where Federal court delays become more severe than those being experienced by the State courts, the Federal calendar may become less attractive, and a greater proportion of diversity suits might originate in State courts. Selected comments that illustrate this situation follow.

--In 1974, when the case in question was filed, the plaintiff attorney believed he could generally get to trial quicker in Federal court; now this attorney believes that State courts are less congested and that if he were filing the case today, he "may well have brought this case to State court."

--"The Federal calendar was less congested when this case was filed."

--"When [this] case arose [1974] the Federal calendar was very short, around 9 months. Now, of course, it is a couple of years."

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A defendant's attorney, who had removed a case from State court to Federal court, said that the Federal court calendar in Minnesota currently operates more slowly than the State court calendar; thus when the defense desires to slow down a case, it can merely remove the case to Federal court.

Geographical convenience factors

Another commonly cited factor for invoking Federal jurisdiction in diversity disputes was geographical convenience. This was noted by 7 of the 18 attorneys who had sought Federal jurisdiction. Selected comments follow.

--A plaintiff's attorney said that the current diversity laws permitted him to bring the action in a nearby Federal court instead of in a rural county of his State where the cause of action occurred.

--Likewise, a defendant's attorney said that he removed an action brought in the plaintiff's rural State court to the more convenient metropolitan county where the Federal court was located.

--A plaintiff's attorney said the only reason he invoked Federal jurisdiction in his case was for the geographic convenience of his Minnesota client. In this case, the cause of action occurred in Ohio and the defendant was a Washington corporation. Since the attorney understood that Minnesota State courts lacked jurisdiction, he invoked Federal jurisdiction in Minnesota so that his client would not have to take the action in Ohio courts.

Other reasons for invoking Federal jurisdiction

Two attorneys noted as a factor in their decision to invoke Federal jurisdiction the potential to consolidate their actions with related ones which were already filed in the Federal court. One of the attorneys explained that the defendant was already involved in extensive litigation in Federal court. As a result, the attorney thought that his client's case might be facilitated if consolidated with the previously filed cases, so he also filed in Federal court.

Another attorney said he invoked Federal jurisdiction as a defensive mechanism. Had the case been started in State court, it would have given the defendant's attorney an opportunity to complicate and slow down the proceedings by removing this case to Federal court.

Four attorneys believed that their cases involved a Federal question which would make the Federal forum more appropriate. Nevertheless, the court records classified the four cases as diversity cases, rather than Federal question cases.

A California attorney, considered to be an authority on diversity jurisdiction, said that if diversity of citizenship jurisdiction were curtailed, many cases currently classified as diversity of citizenship disputes could also be modified to include Federal questions. Therefore, even complete abolition of diversity jurisdiction may not reduce Federal court cases as much as the caseload statistics imply.

Finally, in 3 of 19 cases, avoidance of potential bias was a factor in the selection of Federal jurisdiction. Two of the cases were discussed on pages 3 and 4 of this report. In the other case, an attorney representing a large national corporation which had been sued in a rural Minnesota State court said that the corporate counsel believed that the corporation would more likely receive "fairer treatment in the city as opposed to the rural area." This attorney also commented that the rural area had a reputation of not being "a place for outsiders."

Due to the lack of adequate documentation in this area and the limited scope of our work, we cannot draw any conclusions about factors influencing an attorney's choice of a forum or the degree to which fear of prejudice in the State courts affects this choice. Generally, in cases in which State courts were alleged to be prejudicial, the bias was based on the fact that one of the litigants was not a local resident rather than the fact that one of the litigants was not a State resident. In most of the cases, however, the fear of prejudice against a nonresident litigant was not a factor in the attorney's choice of the Federal court.

OBJECTIVITY OF STATE COURTS WHEN TRYING DIVERSITY CASES

Some diversity cases are tried in State courts. Among these are all diversity cases in which the Federal district courts lack jurisdiction, such as when the amount at issue is under $10,000.

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And some diversity cases are handled in a State court even though they could have been initiated in a Federal district court or removed to a Federal court.

Any conclusions about the objectivity of the State courts would have to be based on the opinions, beliefs, or perceptions of the attorneys and other parties involved in the cases. Their views, however, might depend on whether they had won or lost the issue, or on other factors, such as whether the attorney was in favor of retaining Federal diversity jurisdiction. The following are the beliefs of the 18 attorneys who invoked Federal jurisdiction in their cases and of the 6 attorneys who did not.

Six of the 18 attorneys, representing either the plaintiff in actions brought in Federal court or the defendants who had removed cases from State to Federal court, said that the State court was adequate or comparable to the Federal court. Only one of the 18 attorneys believed there was prejudice against a nonresident party in one of his diversity cases handled in State court. According to the attorney, he was representing local taxpayers in a suit against an insurance company. The attorney said that even though he won the case, he felt that the liability of the insurance company was dubious and that the verdict may have been influenced by the jurors' own interests. However, 7 of the 18 attorneys said that such prejudice was conceivable. One attorney said that although he had not witnessed prejudice against a nonresident, he still recognized it as a real possibility.

The six attorneys who did not invoke Federal jurisdiction believed the State court was adequate or comparable to the Federal court. However, some of the attorneys said they had experienced problems or felt there was a potential for problems or bias with the State courts.

CAPABILITY OF STATE COURTS TO HANDLE ADDITIONAL CASES

The Conference of Chief Justices of the various State supreme courts in August 1977 adopted a resolution that expressed the State courts' ability and willingness to provide needed relief to the Federal court system in such areas as diversity jurisdiction which is presently exercised by the Federal courts. They indicated, however, that Federal funding may be required to do this.

Some of the State court chief justices expressed concern in published articles about the condition of their judiciary systems. They mentioned such things as burgeoning caseloads, increased backlogs, trial delays, and the litigation explosion and its effects. One chief justice cited a 30 percent caseload increase in the trial courts and an almost 100 percent increase in filings in the appellate courts since 1972. He indicated that the system was already operating at maximum capacity, and he urged legislative support for additional judicial positions, judicial impact consideration, and programs for alternative methods of dispute resolution.

When asked whether the State court system could absorb the Federal diversity jurisdiction caseload, practicing attorneys in Minnesota had differing opinions. Some attorneys felt that the State court system could absorb the load, others indicated that the metropolitan area courts were congested but the courts in the rural areas were not. However, because these attorneys were all from the same general area and were few in number, their comments may not be representative.

Can State court systems handle the additional cases that would result if Federal diversity jurisdiction were eliminated or restricted, as provided by legislation now under consideration? Data necessary to answer this question is not readily available. However, the following ongoing research project will provide information on problems that may be encountered in this area.

The National Center for State Courts--a nonprofit organization dedicated to the modernization of court operations and the improvement of justice at the State and local levels--has a research project underway which is developing a national program to collect and report reliable and comparable caseload statistics. These statistics are needed to assess the capability of the State court systems to handle additional caseloads. This project--the National Court Statistics Project--has received funding from the Law Enforcement Assistance Administration. Project effort to date has included the collection of data, such as annual reports from the various State court systems. The project's initial report is now being drafted, although difficulty is being encountered because the data that was obtained is not comparable and needs qualification. One project official said there was almost no uniformity in what was reported, how cases were counted, and whether cases were counted. He also said questions arose regardint the accuracy and validity of the data being reported to them. In fact, project officials did not believe their report, once issued, would be of much use in responding to the capability issue.