DIVERSITY JURISDICTION IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO: A POLICY RECOMMENDATION FOR MODIFICATION OR ABOLITION

ARTICLE

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I. Introduction

Jurisdiction refers to the court's power or legal authority to hear and decide a case.[1] But, in order for the court to make a legally valid decision, courts must have both subject matter jurisdiction and personal jurisdiction.[2] Personal jurisdiction refers to the power the court has over the parties involved in

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[1] *Erickson v. U.S.,* 264 U.S. 246 (1924).

[2] *Ruhrgas A.G. v. Marathon Oil Co., et al*., 526 U.S. 574 (1999).

the suit.[3] Subject matter jurisdiction is the authority of a court to hear and decide particular types of "cases and controversies".[4]

Subject matter jurisdiction can be general or limited.[5] A court has general subject matter jurisdiction when the court can hear all cases, over disputes of every type.[6] In contrast, when a court, like the district court, has limited subject matter jurisdiction, its power to adjudicate has been limited to only certain types of controversies.[7] This limited type of jurisdiction is the one the federal judiciary has.

Federal courts' limited jurisdiction derives from the U.S. Constitution, particularly Article III, which provides the federal judicial power with limited jurisdiction to hear certain type of cases.[8] These constitutional provisions are sufficient to give the Supreme Court "self executing" jurisdiction within the limits established, and without any need of statutory authority.[9] But a lower courts' jurisdiction must be defined by Congress,[10] by statute, as part of the exercise of their constitutional power permitting lower court creation.[11] A congressional jurisdictional grant cannot be in conflict with the Constitution. The power granted cannot be in excess of the enumerated provisions of Article III.[12]

Subject matter jurisdiction is confined to cases in which the powers of the federal government must be vindicated and enforced and to those where disputes between citizens of different states must be resolved.[13] The first category is referred to as "Federal Question Jurisdiction" and the second, "Diversity Jurisdiction".[14]

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[3] *International Shoe v. Washington*, 326 U.S. 310 (1945).

[4] *Muskrat v. U.S.,* 219 U.S. 346 (1911).

[5] *See generally* Erwin Chemerinsky, *Federal Jurisdiction* 265 (5th ed., Aspen Publishers 2007).

[6] *See generally* William M. Hart & Roderick D. Blanchard, *Litigation and Trial Practice* 52 (6th ed. Thompson Learning 2007).

[7] *See, e.g., Kokkonen v. Guardian Life Insurance Co.,* 511 U.S. 375 (1994).

[8] The Constitution provides:

> The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

U.S. Const. art. III, § 3.

[9] *See Sheldon v. Sill*, 49 U.S. 441, 446 (1850).

[10] *Federal Power Commission v. Pacific Power & Light Co*., 307 U.S. 156 (1939).

[11] U.S. Const. art. III, § 1: "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

[12] *See Sheldon*, 49 U.S. at 448.

[13] *See generally* Chemerinsky, *supra* n. 5 at 266.

[14] *See generally* William Burnham, *Introduction to the Law and Legal System of the United States* 186 (4th ed., Thompson West 2006).

Federal Question Jurisdiction is invoked when the Constitution, federal law or treaties of the United States create a civil cause of action[15] or when the plaintiff's right to relief necessarily depends on the resolution of a substantial question of federal law.[16] In order for Diversity Jurisdiction to be raised, the suit must involve a state claim between parties of diverse citizenship and the amount in controversy must exceed $75,000, exclusive of interest and costs.[17]

The diverse citizenship requirement refers to complete diversity, which means that every plaintiff must have different citizenship from every defendant.[18] Citizenship of a natural person will be determined according to the state where the person is domiciled, that is, where the person has established a fixed habitation or abode, intending to remain there permanently or indefinitely.[19] A corporation will be deemed to be a citizen of any state by which it has been incorporated and of the state where it has its principal place of business.[20] Citizenship of parties is determined at the time the complaint is filed.[21]

Diversity Jurisdiction has existed since the adoption of the Judiciary Act of 1789.[22] The traditional view is that diversity jurisdiction was established to provide a forum for the determination of controversies between citizens of different states which would be free from local prejudice, influence or bias.[23] But, commentators

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[15] 28 U.S.C. § 1331: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

[16] *Empire Healthchoice Assurance Inc. v. McVeigh*, 547 U.S. 677 (2006).

[17]Specifically, § 1332 states that:

> [t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between- (1) citizens of different States; (2) citizens of a State and citizens or subjects of a foreign state; (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and (4) a foreign state, defined in section 1603 (a) of this title, as plaintiff and citizens of a State or of different States.

28 U.S.C. § 1332 (a).

[18] *See Strawbridge v. Curtiss*, 7 U.S. 267 (1806).

[19] *Frett-Smith v. Vanterpool*, 511 F.3d 396 (3rd Cir. 2008).

[20] 28 U.S.C. § 1332 (c) (1); *Hertz v. Friend*, 559 U.S. ___ (2010), 130 S. Ct. 1181 (2010). A corporation's "principal place of business" is their headquarters or "nerve center", which is where the company's executives work.

[21] *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567 (2004).

[22] This Act states:

> And be it further enacted, That the circuit courts shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and the United States are plaintiffs, or petitioners; or an alien is a party, or the suit is between a citizen of the State where the suit is brought, and a citizen of another State.

Judiciary Act of 1789, ch. 20, § 11, 1 Stat. 73 (September 24, 1789).

[23] *See generally* Henry J. Friendly, *The Historic Basis of Diversity Jurisdiction*, 41 Harv. L. Rev. 483 (1928); Jerry Goldman & Kenneth S. Marks, *Diversity Jurisdiction and Local Bias: A Preliminary Empirical Inquiry*, 9 J. Legal Stud. 93 (1980); Orie A. Phillips & A. Sherman Christenson, *The Historical and Legal Background of the Diversity Jurisdiction*, 46 A.B.A.J. 959, 963 (1960).

have debated whether diversity jurisdiction should be modified, abolished or retained as it is, as they have questioned its purpose and significance in modern litigation.[24] This paper examines the issues behind some of these arguments, analyzes different diversity cases terminated in the US District Court for the District of Puerto Rico and the United States First Circuit of Appeals and gives a recommendation, tailored to Puerto Rico's particular needs and reality.

II. Caseload Congestion and Forum Shopping

One of the arguments in favor of the abolition of diversity jurisdiction is that it would alleviate the caseload congestion in the federal courts.[25] In Puerto Rico, caseload congestion can be inferred from the reports by the Federal Judiciary Center for 2009, which indicate that the average time between filing and termination of a civil case is approximately 11.9 months.[26] This length of time is proportional to the amount of cases filed. Since 33% of the cases terminated in 2009 were based on Diversity Jurisdiction,[27] any measure taken to reduce the cases that can be filed would alleviate the congestion.

One would think that if this were a real problem, Congress would have taken action. Lower Courts have expressed their dislike of diversity jurisdiction.[28]

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[24] *See generally* Felix Frankfurter, *Distribution of Judicial Power Between United Stated and State Courts*, 13 Cornell L.Q. 499 (1928);); John P. Frank, *The Case for Diversity Jurisdiction*, 16 Harv. J. of Legis. 403 (1979); Kristin Bumiller, *Choice of Forum in Diversity Cases: Analysis of a Survey and Implications for Reform*, 15 Law & Socy. Rev. 749 (1981). In favor of abolition, *see, e.g.,* Thomas D. Rowe, *Abolishing Diversity Jurisdiction: Positive Side Effects and Potential for Further Reforms*, 92 Harv. L. Rev. 963 (1979); Debra Lyn Basset, *The Hidden Bias in Diversity Jurisdiction*, 81 Wash. U. L. Q. 119 (2003). In favor of retention, *see, e.g.* Adrienne J. Marsh, *Diversity Jurisdiction: Scapegoat of Overcrowded Federal Courts*, 48 Brook. L. Rev. 197 (1982); William E. Betz, *For the Retention of Diversity Jurisdiction*, 56 N.Y. St. B. J., 35 (July 1984).

[25] *See* Rowe & Basset, *supra* n. 24.

[26] *U.S. District Courts – Median Time Intervals From Filing to Disposition of Civil Cases Terminated, by District and Method of Disposition, During the 12-Month Period Ending September 30, 2009*, Statistics, Judicial Business of the United States Courts, Judicial Business 2009, Table C-5, Total Cases, http://www.uscourts.gov/Statistics/JudicialBusiness/JudicialBusiness.aspx?doc=/uscourts/Statistics/JudicialBusiness/2009/appendices/C05Sep09.pdf (February 21, 2011).

[27] As part of the research done for the writing of this piece, US District Court for the District of Puerto Rico's Judgement Index Civil Report for 2009 was reviewed, which is available in the Public Access to Court Electronic Records (PACER) website, to registered users. https://ecf.prd.uscourts.gov/cgi-bin/JdgIdxRpt.pl. PACER is an electronic public access service that allows users to obtain case and docket information from Federal Appellate, District and Bankruptcy courts, and the U.S. Party/Case Index via the Internet. Registration to this service can be done at http://pacer.psc.uscourts.gov/psco/cgi-bin/register.pl (February 21, 2011)

[28] *See e.g. Smith v. Metropolitan Property & Liability Insurance Co*., 629 F.2d 757, 761 (2nd Cir. 1980) (Mansfield, J., dissenting) ("When Congress chooses to abolish diversity jurisdiction, as I hope it will, the federal courts will be spared the burdensome task of divining state law in cases like this one (. . .) I deeply deplore the burden placed upon us by the no-longer-warranted or necessary imposition of diversity jurisdiction upon federal courts."); *Atlantic Mutual v. IT Corporation*, 842 F.

But Congress has rejected its complete abolition. Even though since 1887 Congress has restricted parties' access to federal courts,[29] Congress has also expanded it.[30] And recently, in *Exxon Mobil Corp. v. Allapattah Services, Inc.,*[31] the Supreme Court extended federal jurisdiction, by means of its interpretation of the current supplemental jurisdiction statute,[32] to plaintiffs in diversity based

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Supp. 910, 913 (M.D. La. 1994) ("To the extent that diversity jurisdiction continues to exist in federal district courts, the potential for state-federal friction will continue. That is inherent in the exercise of diversity jurisdiction. Many federal judges today are convinced that the time has come to abolish or severely restrict diversity jurisdiction and thus allow the state courts exclusive jurisdiction over state law issues."); *Gold Star Flooring Specialist Inc., v. Manshul Construction Corp.*, (S.D.N.Y. 1995) ("This case could be a poster child for the movement to abolish diversity jurisdiction (. . .) Certainly this is not the type of case that would excite the courts of one state to exhibit prejudice against litigants from another (. . .) [I]t is worthwhile for Congress to consider whether the rationale that justified the creation of diversity jurisdiction is any longer valid and whether it is applicable to litigation such as this."); *Thompson v. Gillen*, 491 F. Supp. 24, 26 n.1 (E.D. Va. 1980) ("This Court will not conceal its disaffection for the notion that federal jurisdiction over disputes between citizens of different States is necessary to protect out-of-State parties from local prejudice. State judges, no less than federal judges are obligated to provide a neutral forum. Moreover, State judges, in comparison to federal judges, are more likely to have competence, experience, and expertise in tort, contract, and real estate litigation; suits of this nature, which often are removable due to diversity, are ordinary grist for the mill of State courts.")

[29] Early restrictions on diversity jurisdiction can be seen in the Act of March 3, 1887, ch. 373, 24 Stat. 552, as amended, and Act of Aug. 13, 1888, ch. 866, 25 Stat 433. Restrictions include raising the jurisdictional amount from an amount in excess of $500, to an amount in excess of $2,000 exclusive of interests and costs and the withdrawal of the right of removal from plaintiffs. The Judicial Code of 1911, Judiciary Act of March 3, 1911, ch. 231, § 24, 36 Stat 1087, 1091, further restricted the diversity cases which could be brought into federal courts, by raising the jurisdictional amount to an amount in excess of $3,000, exclusive interest and costs. This jurisdictional amount was raised again in 1958 to $10,000, 28 U.S.C. § 1332 (1958), to $50,000 in 1988, 28 U.S.C. § 1332 (1988), and finally to the current amount of $75,000 in 1996, 28 U.S.C. § 1332 (1996).

[30] The Federal Interpleader Act of 1917, Act of Feb. 22, 1917, ch. 113, 39 Stat 929, eventually replaced by Act of Jan. 20, 1936, 28 U.S.C. § 1335 (1958), which granted jurisdiction of interpleader suits involving 500 dollars or more when two or more adverse claimants were citizens of different states. This act has been construed as modifying the doctrine of *Strawbridge,* n18*,* in that only minimal diversity is required.

[31] 545 U.S. 546 (2005).

[32] In 1990, Congress passed the Judicial Improvement Act, enacting 28 U.S.C. § 1367, which specifies the instances where district court may exercise supplemental jurisdiction. The current statute states:

> (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties. (b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of

actions whose supplemental claims could have not been allowed earlier.[33]

As a result of this decision, federal district courts can now hear state-based secondary claims between citizens of diverse citizenship, or without regard to diversity so long as a single plaintiff can make out a case of diversity jurisdiction. This is so even when not all of the claimants have claims large enough to satisfy diversity jurisdictional amount requirements. This is the case, as long as at least one of them does satisfy the amount and is geographically diverse.[34] In deciding this

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such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332. (c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if— (1) the claim raises a novel or complex issue of State law, (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction. (d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period. (e) As used in this section, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

28 U.S.C. § 1367.

[33] The Supreme Court specifically concluded that the supplemental jurisdiction authorized for diversity cases extends to claims brought by plaintiffs joined under Rule 20, as in *Rosario*, or by members of a class certified under Rule 23, as in *Exxon*. The Court reasoned that because these claims are not among the claims excluded in §1367 (b), they are within the scope of supplemental jurisdiction authorized by §1367 (a). In respect to Rule 20 plaintiffs, the court noted that the exclusion contained in § 1367 (b) explicitly excludes supplemental jurisdiction over claims against *defendants* joined under Rule 20, but not over claims brought by *plaintiffs* joined under Rule 20, as it had happened in *Rosario*. The Supreme Court also rejected the "indivisibility theory", and determined that this theory is inconsistent with the whole notion of supplemental jurisdiction. This theory presumes that all claims in the complaint must stand or fall as a single. The Court first interpreted the general supplemental jurisdiction grant contained in § 1367 (a). It determined that when a federal court has jurisdiction over a single claim in the complaint, it has "original jurisdiction" over a "civil action", even if the civil action over which it has jurisdiction comprises fewer claims than were included in the complaint. It further clarified, that once a District Court determines it has original jurisdiction over a civil action, it must next inquire whether it has basis for exercising supplemental jurisdiction over the other claims in the action. This second step refers to the supplemental jurisdiction exclusions the same statute provides for. Absent one of the exclusions, the diversity claim is then permitted, even though it does not attain to the jurisdictional amount requirement. Section 1367 (b) excludes from the court's supplemental jurisdiction certain instances specified in the Federal Rules of Civil Procedure: claims asserted by plaintiffs against persons made parties to the lawsuit under Rule 14 (third-party practice), Rule 19 (compulsory joinder), Rule 20 (permissive joinder) and Rule 24 (intervention), and claims asserted by plaintiffs proposed to be joined under Rule 19 or seeking to intervene under Rule 24, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of the diversity statute.

[34] While the ruling in *Exxon* broadens the availability of the federal courts, the ruling has no effect on the well settled rule as to that claims of multiple plaintiffs may not be aggregated to meet the jurisdictional amount. Indeed, the Court's opinion in *Exxon* makes clear that the federal court's supplemental jurisdiction cannot be invoked unless the suit contains at least one claim, than on its own, would be within the original jurisdictional amount of the federal courts.

case, the Supreme Court consolidated the *Exxon* case[35] with *Rosario Ortega v. Star-Kist Foods, Inc*,[36] which was originally brought before the United States District Court for the District of Puerto Rico.[37]

In *Rosario*, the District Court dismissed certain claims applying a "legal certainty test".[38] The First Circuit affirmed dismissal, but analyzed the claims under supplemental jurisdiction. After acknowledging that the question of whether to allow supplemental jurisdiction to the remaining parties' claims had not been answered in the First Circuit, and that other Circuits were divided on this, the First Circuit found no basis for supplemental jurisdiction. The First Circuit relied on *Clark v. Paul Gray, Inc*.[39] The Supreme Court reversed the First Circuit and held that so long as a single plaintiff had properly invoked diversity jurisdiction the remaining plaintiffs could bring their state claims under 28 U.S.C. §1367 invoking supplemental jurisdiction.

Despite the Supreme Court's holding in *Rosario*, the Puerto Rico District did not to follow the Supreme Court's ruling in one subsequent case and dismissed

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[35] The Supreme Court consolidated *Exxon* and *Rosario* to address the difference of opinion between the Courts of Appeals as to the meaning of §1367. The Supreme Court resolved the dispute by holding that when other elements of diversity jurisdiction are present, and at least one plaintiff in an action satisfies the minimum jurisdictional amount requirement to sustain diversity jurisdiction, federal courts may exercise supplemental jurisdiction under §1367 over state claims involving the same case or controversy. This is true even if those claims would not individually satisfy the requisite statutory amount. The Court therefore reversed the First Circuit ruling in *Rosario,* remanding it to District Court for further proceedings, which would have to take in account claims for all parties. The case was later amicably settled and a voluntary dismissal judgment was entered. *See* Docket No. 119, in *Rosario Ortega, et al v. Star Kist Caribe Inc, et al*, No. 00-1475 (D.P.R. filed April 18, 2000).

[36] 370 F.3d 124 (1st Cir. 2004). Appeal from the United States District Court for the District of Puerto Rico.

[37] *Rosario Ortega, et al v. Star Kist Caribe Inc, et al*, No. 00-1475 (D.P.R. filed April 18, 2000). *Rosario,* was a multi party personal injury action. *Rosario*, a minor, cut one of her fingers with a can of Star- Kist tuna. The cut required surgery and it latter led to permanent disability and scarring. Rosario, along with her parents and sister, sued in federal court invoking diversity jurisdiction. They included as one of the defendants a Star Kist branch that did business in Puerto Rico, and after a motion to dismiss for lack of complete diversity, the suit was dismissed without prejudice. Rosario then re-filed the complaint only naming the complete diverse defendant and alleged physical and emotional damages. Her three family members were joined as plaintiffs, and alleged emotional damages, past and future medical expenses. Star Kist moved for summary judgment alleging that none of the plaintiffs could really meet the jurisdictional amount requirement, the Court agreed, and dismissed the case.

[38] *St. Paul Mercury Indemnity v. Red Cab Co*., 303 U.S. 283 (1938) (Once the defendant challenges the amount of damages alleged in the complaint, then the burden shifts to the Plaintiffs to establish facts indicating that, to a legal certainty, the claims involve more than the jurisdictional minimum.)

[39] 306 U.S. 583 (1939). (Where there are multiple plaintiffs in a diversity based suit, each must allege a claim that is in excess of $75,000.00). In this case, numerous plaintiffs filed suit alleging violation of a federal statute. At the time this case was filed in 1939, federal question jurisdiction also had a jurisdictional amount requirement. Only one of the plaintiffs alleged a claim that met the requisite amount and the Court held that only that plaintiff could invoke the District Court's diversity jurisdiction, expressly rejecting the argument that all plaintiffs' claims could be aggregated to meet the required amount. The Court dismissed all other plaintiffs' claims.

claims that met all of the *Rosario* elements. That case was *Oliver, et al., v. K-mart Corp, et al,* [40] a personal injury case very similar to *Rosario.* Plaintiff Oliver, a married woman, was injured when she slipped and fell while shopping at a K-mart store in Puerto Rico. She filed suit against K-mart, invoking diversity jurisdiction, and alleged physical injuries and emotional damages totaling $150,000.00. The Conjugal Partnership was also joined as plaintiff, alleging a claim for $70,000 in lost income. Upon a motion to dismiss filed by defendant K-mart alleging lack of subject matter jurisdiction because the jurisdictional amount requirement was not met, the Court dismissed the Conjugal Partnership claim and sustained Oliver's claims.

Even though the Court included the lost income claim in Oliver's total claim, raising her claim to a total of $220,000.00, it dismissed the Conjugal Partnership claim using the rationale in *Clark*, which was expressly rejected in *Rosario.* The Court dismissed this claim because it did not independently meet the amount in controversy requirement.[41]

In reaching that decision, the Court also considered the decision in *McCulloch v. Vélez*,[42] a case decided by the First Circuit of Appeals in 2004 and before *Rosario. McCulloch*, was also decided according to *Clark*, in that each plaintiff in a suit premised on diversity jurisdiction must independently satisfy the amount in controversy requirement. *Oliver* was not appealed.[43] Had it been, the First Circuit would probably have applied the ruling in *Rosario* and would have vacated and remanded[44] back to District Court.

In other cases, the District Court of Puerto Rico has welcomed diversity cases even though one of the reasons for the filings is the lack of a jury trial in civil cases in Puerto Rico's trial courts.[45] And when deciding as to the value of claims brought, the District Court makes reference to the amounts awarded in Federal Court, not to those awarded by the Puerto Rico's Supreme Court.[46]

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[40] *Oliver, et al., v. K-mart Corp, et al,* No. 08-1660 (D.P.R. filed June 17, 2008).

[41] The Court cited *Zahn v. International Paper Co*., 414 U.S. 291, 294 (1973), which was based in *Clark*. Both *Zahn* and *Clark* were overruled by *Exxon*.

[42] 364 F.3d 1, 3 (1st Cir. 2004).

[43] The case was settled without considering the Conjugal Partnership claim. See *Oliver*, No. 08-1660.

[44] Remanding refers to the act or an instance of sending something back for further action. Black's Law Dictionary (9th ed. 2009). http://web2.westlaw.com/result/default.wl?mt=PuertoRico&origin=Search&tempinfo=BLACKS%7cTEMPLATE%7cDefine%3aInTxt%3dremand%7cQueryTemplate0%7cctn%3dQT_BLACKS&srch=TRUE&utid=3&db=BLACKS&qttab=QT_BLACKS&rlt=CLID_QRYRLT693955149212&method=ConcordTemplate&service=Search&eq=search&rp=%2fSearch%2fdefault.wl&query=CA(REMAND)&vr=2.0&dups=false&action=Search&rltdb=CLID_DB9924534598212&sv=Full&qtrcc=QueryTemplate&fmqv=s&fn=_top&rs=WLW11.01 (February 21, 2011).

[45] P.R. Const. art. II, § 11. (Right to trial by jury is only available in prosecutions for a felony). *See also Balzac v. People of Porto Rico*, 258 U.S. 298 (1922) (Certain provisions of the United States Constitution do not apply to territories not incorporated into the union).

[46] *See Horton v. Liberty Mutual Insurance Co.,* 367 U.S. 348, 352-53 (1961).

The Rules of Decision Act[47] provides that federal courts sitting in diversity must apply state law except where otherwise required by the United States Constitution, the laws of the United States or treaties. This Act was originally interpreted in *Swift v. Tyson,*[48]where it was determined that federal courts sitting in diversity were required to apply state statutory law but not state decisional or case law. The *Swift* doctrine permitted federal judges to displace state jurisprudence with a jurisprudence based on federal general common law in diversity cases. Then, after nearly a hundred years, the *Swift* doctrine was overruled by *Erie Railroad v. Tompkins.*[49]

In *Erie*, plaintiff sued in Federal District Court in New York seeking to recover from injuries he received in Pennsylvania when he was struck by an object protruding from defendant's passing train. Plaintiff Tompkins was walking on a path adjacent to the tracks at the time of the accident. Defendant argued that Pennsylvania common law should be applied, which regarded plaintiff as a trespasser and imposed upon the defendant only the duty to refrain from acts of wanton negligence. Plaintiff argued that under *Swift*, the court was free to disregard Pennsylvania common law. Plaintiff urged the court to apply federal general common law, where defendant only owed a duty of ordinary care. The Supreme Court overruled *Swift* and ruled in favor of defendant. The Court concluded that there is no federal general common law and that the Rules of Decision Act did not distinguish statutory state law from state law that is judicially created. *Erie* established that when the Acts refers to "state law", it includes statutory state law as well as state jurisprudence.

The purpose behind *Erie*, was to prevent "forum shopping"[50] and to promote uniformity. Since the federal forum was available as an alternative forum to completely diverse parties, if a different federal common law was permitted, it would violate the right to equal protection under the law.[51]

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[47] 28 U.S.C. § 1652 states: "The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply."

[48] 41 U.S. 1 (1842).

[49] 304 U.S. 64 (1938).

[50] Forum shopping is a practice where plaintiffs choose the most favorable jurisdiction or court in which a claim might be heard. A plaintiff might engage in forum-shopping, for example, by filing suit in a jurisdiction with a reputation for high jury awards or by filing several similar suits and keeping the one with the preferred judge. Black's Law Dictionary (9th. ed. 2009).
http://web2.westlaw.com/result/default.wl?mt=PuertoRico&origin=Search&tempinfo=BLACKS%7cTEMPLATE%7cDefine%3aInTxt%3d%22forum+shopping%22%7cQueryTemplate0%7cctn%3dQT_BLACKS&srch=TRUE&utid=3&db=BLACKS&qttab=QT_BLACKS&rlt=CLID_QRYRLT3017747598212&method=ConcordTemplate&service=Search&eq=search&rp=%2fSearch%2fdefault.wl&query=CA(%22FORUM+SHOPPING%22)&vr=2.0&dups=false&action=Search&rltdb=CLID_DB9924534598212&sv=Full&qtrcc=QueryTemplate&fmqv=s&fn=_top&rs=WLW11.01 (February 21, 2011).

[51] The Equal Protection Clause is included in Section 1 of the Fourteenth Amendment to the United States Constitution. It states:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce

The *Erie* doctrine was further refined in *Guaranty Trust v. York*.[52] Here, the defendant argued that *Erie* required federal court to apply the state statute of limitations. The result in applying state law would have barred plaintiff's action. Plaintiff argued that federal law should have governed, under which the action would have been timely filed. The Supreme Court decided in favor of defendant, and specified the meaning of *Erie*. The Court held that the outcome of the litigation brought in federal court should be substantially the same as if it would be tried in state court. Under this "outcome determinative test", state law would control if when applying state or federal court the outcome would be different. This test strengthened the uniformity purpose established in *Erie*.

The Supreme Court then added another test step in *Hanna v. Plumer*.[53] In *Hanna*, the plaintiff suffered personal injuries in an automobile accident and brought a federal diversity action against the estate of the alleged tortfeasor. Plaintiff served the administrator of the estate by leaving a copy of the papers at his home, in compliance with Federal Rules of Civil Procedure. The defendant argued that the action could not be maintained because he had not been personally served as required by Massachusetts state law. The Supreme Court held that federal procedural rules, unless found constitutional and invalid under the Rules Enabling Act, are not overridden by state law or policy. This means that *Erie* does not control when there exists an applicable federal rule that conflicts with the state law or policy.

Erie does not control either when federal policy is stronger than the state's policy in enacting its laws. In *Byrd v. Blue Ridge Rural Electric Cooperative, Inc.,*[54] a jury rendered verdict in favor of the plaintiff in a negligence case. On appeal, the defendant argued that plaintiff's claim was covered by workers' compensation, for which South Carolina precluded a jury trial. The Court of Appeals confirmed and applied state law according to the "outcome determinative test" establishes in *Guaranty*. The Supreme Court reversed. The Supreme Court determined that in this case, the "outcome determinative test" could not be applied. The Supreme Court stated that the governmental interests behind the rules also had to be considered. Based in this, the Court concluded that the plaintiff was entitled to a jury trial since the federal policy supporting jury trials was stronger than any policy beneath South Carolina's rule precluding jury trials in such cases.

Even when the Supreme Court has established that federal courts must look to state law to determine the nature and extent of the right to be enforced in a diversity case, it has also contradictorily concluded that the determination of the value of the

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any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

[52] 326 U.S. 99 (1945).

[53] 380 U.S. 460 (1965).

[54] 356 U.S. 525 (1958).

matter in controversy for purposes of federal jurisdiction is a federal question to be decided under federal standards.[55] This has been applied in Puerto Rico Federal District Court as well, even when it is inconsistent with what has been established in *Erie* and its progeny.[56] If federal courts sitting in diversity must prevent forum shopping and promote uniformity, federal courts should also follow state precedent and value the claims sought according to what the state's highest court has already decided.

III. Interpretation of State Law

Another argument in favor of diversity jurisdiction abolition is that diversity jurisdiction promotes misinterpretation of state law in federal courts.[57] But when reviewing the cases decided in the First Circuit of Appeals during 2009, it is found that the majority of those cases do not involve state law issues. Cases decided in 2009 by the First Circuit of Appeals, which originated under diversity jurisdiction in the United District Court for the District of Puerto Rico were mostly tort cases, which under diversity jurisdiction, must be decided according to state law. Only three of those cases raised state law issues.[58] And in those, it cannot be concluded that the federal system was speculating regarding state law[59] or that they were interpreting state law[60] against the policies the state legislature intended to promote.

In *Montalvo v. González,*[61] plaintiff sued on her own behalf and as administrator of the estate of her mother alleging medical malpractice against her mother's medical care providers. Defendants moved for summary judgment alleging suit was time barred according to Puerto Rico law. The issue before the court was as to when the

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[55] *See Horton v. Liberty Mutual Insurance Company*, 367 U.S. 348 (1961).

[56] In *Rosario*, No. 00-1475, the First Circuit reversed the District Court value findings stating "The basic error committed by the district court was to evaluate the amount-in-controversy by reference to amounts that the Supreme Court of Puerto Rico has found reasonable in tort cases". The same was done in *Stewart v. Tupperware Corp*., 356 F.3d 335 (1st Cir. 2004).

[57] *See* Frankfurter & Frank, *supra* n. 24.

[58] Only seven (7) diversity based cases were decided. Cases not addressing state law issues were *Rivera v. HIMA Hospital*, No. 07-2657 (1st Cir. filed Nov. 6, 2007), which raised a forum selection clause issue in a medical malpractice suit, *Martínez Serrano v. Quality Health Services*, No. 08-1127 (1st Cir. filed Jan. 30, 2008), which raised an evidentiary issue regarding exclusion of plaintiff's expert witness testimony, and *Morel v. Daimler Chrysler*, No. 08-1195 (1st Cir. filed Feb. 11, 2008), which raised a procedural issue as to party substitution.

[59] *See Mason v. American Emery Wheel Works,* 241 F.2d 906 (1st Cir. 1957) (Federal Courts can apply the law they think the highest court of a state would apply in a particular case, even when the state's highest court has not expressly ruled on the issue).

[60] *See Erie*, 304 U.S at 72, 73 (Under the Rules of Decision Act, federal district courts sitting in diversity jurisdiction, must apply the law of the states in which they sit, including the judicial doctrine of the state's highest court. Thus, state law to be used in deciding diversity cases encompass state statutory law as well as state common law.).

[61] *Montalvo v. González-Amparo*, No. 05-1665 (D.P.R. filed June 21, 2005).

plaintiff had knowledge of the injury. The District Court, relying on Puerto Rico Supreme Court's decisions, determined that plaintiff had knowledge of the injuries at the time her mother was diagnosed with cancer. Since she had filed suit after the one year statute of limitations had expired, the District Court dismissed her claims. Montalvo appealed[62] and the First Circuit vacated and remanded her suit back to the District Court. The Court of Appeals held that plaintiff's action did not arise when her mother was diagnosed, but when her mother died and that since she had filed suit within a year of her mother's death, her claims were not time barred. The Court of Appeals relied on earlier First Circuit of Appeals decisions,[63] which took into account some of the Puerto Rico Supreme Court's earlier rulings.

In *Rodríguez v Suzuki*,[64] plaintiff sued several defendants in a product liability action. He voluntarily dismissed, and after the statute of limitations had expired, sued Suzuki in a different action. Plaintiff alleged that since Suzuki was a joint and severally liable tortfeasor, the statue of limitations period had been tolled by the previous action against other tortfeasors. Defendant moved for summary judgment alleging that the suit was time barred and the District Court agreed. In deciding for the defendant, the District Court based its decision on the "identicality" requirement established by the Supreme Court of Puerto Rico.[65]

The Court concluded that since Suzuki was not included in the first complaint filed by plaintiff, the "identicality" requirement was not met, and the tolling effect did not apply. Plaintiff appealed, and the First Circuit of Appeals reversed interpreting that the "identicality" requirement under Puerto Rico statute of limitations referred to identical claims, not identical parties.[66]

In *Vernet v. Serrano Torres and ICN Pharmaceuticals, et al*.,[67] plaintiff sued the driver of a car and its employer, after the driver left an employer's party and was involved in a car accident. Plaintiff alleged injuries under Puerto Rico state's law against Serrano in his personal capacity and against Serrano's employer. Claims against Serrano were settled, and ICN moved for summary judgement regarding the remaining claims against them.[68] The District Court dismissed the Article 1802 claim based in the Puerto Rico's Supreme Court decision in *Lopez v. Porrata Doria,*[69] and

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[62] *Montalvo v. González-Amparo*, No. 08-1405 (1st Cir. filed Apr. 23, 2008).

[63] *Correa v. Hospital San Francisco*, 69 F.3d 1184, 1197 (1st Cir. 1995); *Arturet-Velez v. R.J. Reynolds Tobacco Co.,* 429 F.3d 10, 14 (1st Cir. 2005).

[64] *Rodríguez v. Suzuki Motor Corporation, et al*., No. 06-1144 (D.P.R. filed Feb. 6, 2006).

[65] Plaintiff must assert causes of action "identical" to its initial complaint so that the tolling of the statute of limitations applies.

[66] *Rodríguez v. Suzuki Motor Corp., et al.,* No. 07-2662 (1st Cir. filed Nov. 6, 2007).

[67] *Vernet, et al., v. Serrano-Torres, et al.,* No. 00-2559 (D.P.R. filed Dec. 11, 2000).

[68] Claims against ICN Pharmaceuticals were based in Article 1802 and Article 1803 of the Puerto Rico Civil Code, 31 L.P.R.A. §5141 and §5142. Article 1802 imposes responsibility for personal acts and omissions. Article 1803 imposes vicarious liability, for acts and omissions done by others.

[69] 2006 P.R.S.C. 149 (Duty of diligence when providing alcoholic beverages is only extended to public commercial establishments engaged in the sale of alcoholic beverages).

dismissed the Article 1803 claim by concluding that Serrano was not acting within the scope of his employment when the accident occurred. Plaintiff appealed,[70] and the First Circuit of Appeals affirmed the District Court decision regarding the Article 1802 claim, but reversed and remanded the Article 1803 claim. In affirming the Article 1802 District Court's decision, the First Circuit applied *Lopez* textually, as to that the case specifically stated that its holding would be applied only prospectively. Since the accident in *Vernet* occurred before *Lopez*, the case could not be applied. In reversing the Article 1803 District Court's decision, the First Circuit concluded that there were not enough facts to infer the driver was not acting in his employer's benefit. The Court, relying in a previous First Circuit decision,[71] preferred to remand the case to District Court and for the facts to be evaluated in pre trial proceedings.

In neither case the Court of Appeals went further than what the Supreme Court of Puerto Rico had already established, nor questioned our state legislature's purpose in drafting our local law as they did. As to the result of cases once they were remanded, *Montalvo* and *Rodríguez*, were settled.[72] But after eleven years, the *Vernet* case is still open and pending to be resolved in our District Court.[73]

IV. U.S. Court of Appeals for the First Circuit

As part of the research done to supplement this paper, data was collected from a General Search done in the United States Court of Appeals for the First Circuit's Internet site, submitting queries in the "Date Published" field.[74] The table and graphs that follow were done by the author, using calculations also done by the author, taking in account the information gathered throughout several queries made by month, for opinions published between January 1, 2009 and December 31, 2009.

"Table 1" shows appeals' distribution in general terms. The criminal appeals column includes criminal appeals and prisoner petitions. The civil appeals column includes private civil cases and civil cases in which the United States is a party. The last column refers to administrative appeals.[75] Since the United States Court

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[70] *Vernet, et al., v. ICN Pharmaceuticals, et al.,* No. 07-2699 (1st Cir. filed Nov. 14, 2007).

[71] *Borrego v. United States*, 790 F. 2d 5, 7 (1st Cir. 1986) (The fundamental consideration for determination of an employer's liability is whether or not the employee's acts fall within the scope of his employment in the sense that they furthered a desire to serve and benefit the employer's interest, resulting in an economic benefit to the employer.).

[72] For *Montalvo*, *see* Docket No. 474, *Montalvo v. González-Amparo*, No. 05-1665 (D.P.R. filed June 21, 2005). For *Rodríguez, see* Docket No. 50, *Rodríguez v. Suzuki Motor Corporation, et al*., No. 06-1144 (D.P.R. filed Feb. 6, 2006).

[73] *See* Docket Report for *Vernet, et al., v. Serrano-Torres, et al.,* No. 00-2559 (D.P.R. filed Dec. 11, 2000) available at https://ecf.prd.uscourts.gov/cgi-bin/DktRpt.pl?562897158191049-L_452_0-1 (accessed on February 21, 1011).

[74] United States Court of Appeals for the First Circuit, http://www.ca1.uscourts.gov/opinions/ (March 20, 2010).

[75] For the January 1, 2009 until December 31, 2009, administrative appeals found were: Board of Immigration Appeals (BIA), Department of Homeland Security (DHS), Environmental Protection Agency (EPA), Internal Revenue Service (IRS) and National Labor Relations Board (NLRB). http://www.ca1.uscourts.gov/opinions/ (March 20, 2010).

of Appeals for the First Circuit hears appeals from United Stated District Courts located in Massachusetts, Maine, New Hampshire, Puerto Rico and Rhode Island,[76] Criminal and Civil columns were distributed further, taking into account District Court of origin.

TABLE 1
U.S. COURT OF APPEALS FOR THE FIRST CIRCUIT
OPINIONS PUBLISHED IN 2009
TOTAL – 427

	CRIMINAL					CIVIL					OTHER					
	NH	MA	ME	PR	RI	NH	MA	ME	PR	RI	BIA	DC	DHS	EPA	IRS	NLRB
JAN	3	9	3	2	1	0	8	3	2	0	5	0	0	0	0	0
FEB	0	7	1	4	0	3	10	1	3	1	9	0	0	0	0	1
MAR	1	7	6	3	1	0	9	2	4	1	6	0	0	1	1	1
APR	1	6	2	5	1	0	9	1	3	0	5	0	0	0	0	0
MAY	1	4	0	5	1	1	13	1	2	1	7	0	0	0	0	0
JUN	3	4	2	5	3	2	6	1	8	2	9	1	0	0	0	0
JUL	0	3	0	4	1	0	9	1	7	1	7	0	0	0	0	0
AUG	3	7	2	4	0	1	9	2	4	1	9	0	0	0	0	0
SEP	1	4	1	4	1	0	7	0	3	2	6	0	0	0	0	0
OCT	1	0	1	4	0	2	5	4	4	3	2	0	0	0	0	0
NOV	1	3	1	2	1	0	11	1	3	2	6	0	1	0	0	0
DEC	0	4	4	5	0	0	9	0	5	1	3	0	0	0	0	0
	15	58	23	47	10	9	105	17	48	15	74	1	1	1	1	2
	TOTAL CRIMINAL				153 36%	TOTAL CIVIL				194 45%	TOTAL OTHER					80 19%

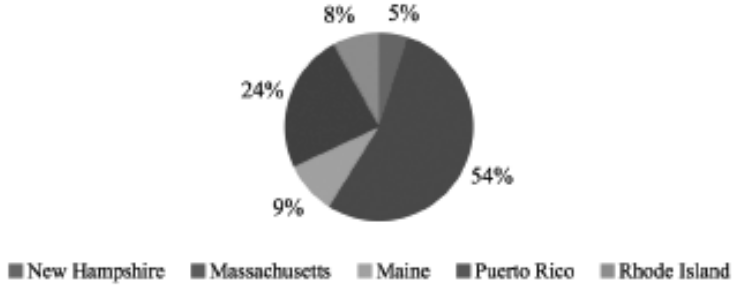
"Table 1" shows that almost half of the appeals (45%) were civil cases, followed by criminal ones which account for 36%. The minority of appeals terminated correspond to administrative ones.

"Graph 1" shows the distribution by District Court of origin, for a total of 194 Civil Appeals terminated in 2009. Massachusetts dominates within the circuit, accounting for approximately half of them (54%). Puerto Rico civil appeals follow, accounting for almost one fourth (24%) of those. The remaining approximate fourth

[76] United States Courts, Court Locator, http://www.uscourts.gov/court_locator.aspx (February 21, 2011).

(22%) include appeals from New Hampshire, Rhode Island and Maine. Appeal proportions by District Court are similar to participation proportion in Circuit according to population statistics for that same period.[77]

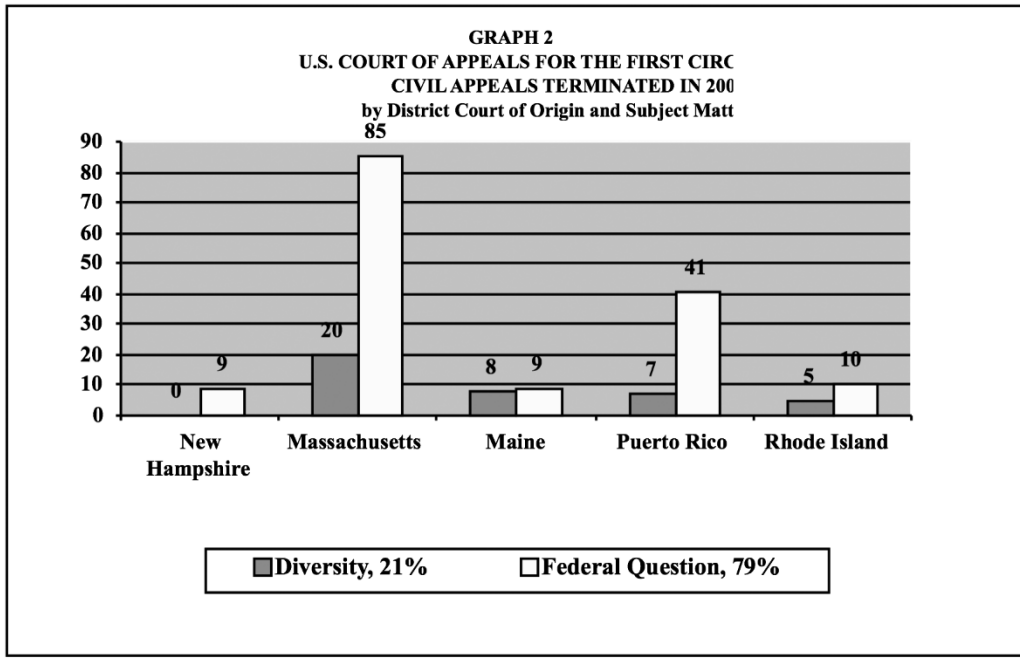
GRAPH 1
U.S. COURT OF APPEALS FOR THE FIRST CIRCUIT
CIVIL APPEALS TERMINATED IN 2009,
by District Court of Origin



Cases that come before the First Circuit involve a wide range of federal questions as well as state law questions raised in diversity cases. "Graph 2" shows the distribution of total appeals according to Subject Matter, where we find that only 21% of the civil appeals involve state law questions under diversity jurisdiction, being the federal question issues the ones that account for the majority of appeals (79%). It is apparent that it cannot be concluded that this trend manifests itself across the Circuit. For example, no diversity based civil appeals originated in New Hampshire (0%), but for Maine civil appeals, almost half (47%) of those originated there did. Only one third of appeals (33%) originated in Rhode Island were diversity based.

Even though Massachusetts and Puerto Rico are the two states that originate the bulk of all appeals, their diversity based appeals proportion are the lowest, being only 20 out of 105 (equivalent to 19%) and 7 out of 48 (equivalent to 15%) respectively. This finding indicates that the majority of issues decided by federal Court of Appeals, at least for the First Circuit, did not involve state law issues.

[77] As calculated by the author, total population for First Circuit District as of July 1, 2009, was approximately 14,256, 960, distributed as follows: Massachusetts: 6,593,587, equivalent to 46%; Puerto Rico: 3,967,288, equivalent to 28%; New Hampshire: 1,324,575, equivalent to 9%; Maine, 1,318,301, equivalent to 9%; Rhode Island, 1,053,209, equivalent to 7%. *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico*, Column B, Population Estimate as of July 1, 2009, http://www.census.gov/popest/states/NST-ann-est.html (February 21, 2011).



V. Conclusion and Recommendation

The power of Congress to confer diversity jurisdiction was based on the desire to assure out-of-state litigants a forum free from the potential local bias and prejudice against them.[78] It was believed that state courts might favor their own citizens giving unjust treatment to citizens of other states. But actual state court prejudice against out-of state litigants have been difficult to prove.[79] Uniformity in the application of state law, prevention of forum shopping and federal caseload congestion are the current concerns of the federal judiciary.

Even though the Puerto Rico District Court and the First Circuit of Appeals have been uniform in their application of Puerto Rico's state law and have been deciding cases as the Puerto Rico's Supreme Court might have, the application result has not been uniform with respect to valuation of claims. It is not uniform either, because in Puerto Rico, there is no right to jury trial in civil cases. For these reasons, plaintiffs still choose federal courts over state courts, even though many of these suits could have been brought in state court. The alternative federal forum ends up promoting the

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[78] *See Burford v. Sun Oil Co.,* 319 U.S. 315, 336 (1943).

[79] *See, e.g.,* Henry J. Friendly, *The Historic Basis of Diversity Jurisdiction*, 41 Harv. L. Rev. 482 (1928); Hessel E. Yntema & George H. Jaffin, *Preliminary Analysis of Concurrent Jurisdiction*, 79 U. Pa. L. Rev. 869 (1931); John P. Frank, *Historical Bases of the Federal Judicial System*, 13 Law & Contemp. Prob. 3 (1948); James William Moore & Donald T. Weckstein , *Diversity Jurisdiction: Past, Present, and Future*, 43 L. Rev. 1 (1964).

same forum shopping the federal systems wants to prevent and aggravating federal caseload congestion. If these suits were barred from federal court, it would alleviate federal caseload congestion and uniform verdicts and valuation of claims would be accomplished.

Access to federal courts because of diversity of citizenship should be limited. It is recommended that diversity suits filed be restricted in a similar way as removal actions are.[80] Just as local defendants are barred from removing into local federal court, it is recommended that local plaintiffs be barred from suing in local federal court when suit is based in diversity jurisdiction. But in order for this limitation to operate and have the desired limiting effect, a modification to the removal statute would also be needed so that suits that can now be removed do not end up in federal court through an alternate path. A two-fold modification is then proposed: one to 28 U.S.C. § 1332 (a) and another for § 1441 (b), to be read as follows:

§ 1332. Diversity of citizenship; amount in controversy; costs:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, *where no plaintiff is a citizen of the State in which such action is brought*, and is between—
>
> (1) citizens of different States;
> (2) citizens of a State and citizens or subjects of a foreign state;
> (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
> (4) a foreign state, defined in section 1603 (a) of this title, as plaintiff and citizens of a State or of different States.
>
> For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

§ 1441. Actions removable generally

> (b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only

[80] *See* 28 U.S.C. § 1441 (When a party has filed a suit in state court, the defendant can, in general terms, transfer the case to federal court if the suit could have been originally filed in federal court, either under federal question or diversity jurisdiction. If a defendant is removing based on diversity jurisdiction, he is restricted to do so by the forum defendant rule, which provides that a case will not be removable, despite complete diversity, when one of the defendants is local.).

> if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought *and only if no plaintiff is a citizen of the State in which such action is brought*.

Out-of-state defendants could not argue violation of the Due Process Clause of the Fourteenth Amendment, since the court would have personal jurisdiction over them through the state's long-arm statute as it would also be required in federal court.[81] The long-arm statute would operate if the defendant has had continuous and systematic contacts with the forum,[82] if he purposefully availed himself to the benefits and protections of the state's laws,[83] and if he committed at least one purposeful act in the forum state which is substantially related to the suit.[84] Since the out-of state-defendant exercised the privilege of conducting activities within the state, he must also respond to a suit brought to enforce the laws of that same state, under the protections and limitations that are found in that state.

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[81] When the defendant is not a resident of the forum state, court's jurisdiction is limited by the Due Process Clause of the Fourteenth Amendment. It requires that in order to subject a defendant to a court's judgement, defendant must have "minimum contacts" with the forum state, such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. Puerto Rico's long arm statute is found in our local Rules of Civil Procedure and it allows courts to exercise jurisdiction over non-resident defendants, if the action arises because the non-resident, personally or through an agent, participated in a tortious act within Puerto Rico. *See,* P.R. R. Civ. P. 4.7 (a) (2). "Minimum contacts" should be established, in order for the long arm statute to operate.

[82] *See U.S. v. Swiss American Bank, Ltd*., 274 F.3d 610 (1st Cir. 2001).

[83] *See International Shoe*, 326 U.S. at 319.

[84] *See e.g., Yahoo! Inc., v. La Ligue Contre le Racisme Et L'Antisemitisme*, 433 F.3d 1210 (9th Cir. 2008).