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DIVERSITY JURISDICTION IN REVERSE DIRECT ACTIONS: SECTION 1332(c) AND THE NEED FOR LEGISLATIVE CLARIFICATION

INTRODUCTION

If any topic in procedural law[1] is incendiary in the debate it sparks, the issue of federal diversity jurisdiction is explosive.[2] The controversy has been fueled further by a split between the Fifth and Sixth Circuit Courts of Appeal on the scope of federal diversity power[3] limitations imposed by the 1964 amendment to section 1332, the diversity statute.[4] The amendment elimi-

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[1] Although categorization of legal aspects as "substantive" or "procedural" is sometimes inadequate or conceptually difficult, such problems do not arise here. "PROCEDURAL LAW. That which prescribes method of enforcing rights or obtaining redress for their invasion; machinery for carrying on a suit." BLACK'S LAW DICTIONARY 1367 (4th ed. rev. 1968).

[2] The arguments concerning diversity jurisdiction are limitless. Those favoring the continuance of such power have developed entirely new justifications for it. "Today the traditional local prejudice basis for diversity is but one, and not the only, nor even the principal, reason for permitting the exercise of diversity jurisdicton." Weckstein, *Citizenship for Purposes of Diversity Jurisdiction,* 26 SW. L.J. 360, 361 (1972) [hereinafter referred to as Weckstein]. Those who would abolish diversity as a basis for federal power are also finding new reasons for doing so. Problems in ascertaining and applying state law correctly are said to "roil the placid assumptions underlying arguments to continue diversity jurisdiction." Hertz, *Misreading the* Erie *Signs: The Downfall of Diversity,* 61 KY. L.J. 861, 862 (1973).

In one scholar's thinking, the attitudes toward diversity held by federal judges are in such conflict that decisions concerning elimination, retention or modification of such power should be made *within each separate federal judicial district,* rather than on a nationwide basis. Shapiro, *Federal Diversity Jurisdiction: A Survey and a Proposal,* 91 HARV. L. REV. 317, 339-40 (1977). *See also, e.g.,* Frank, *Let's Keep Diversity Jurisdiction,* 9 FORUM 157 (1973); Hunter, *Federal Diversity Jurisdiction: The Unnecessary Precaution,* 46 U.M.K.C. L. REV. 347 (1978). "There can be little doubt, however, that diversity jurisdiction will continue to engender controversy for the near future." Weckstein, *supra* note 2, at 382.

[3] For a discussion of the history and the scope of diversity power in general, see C. WRIGHT, HANDBOOK OF THE LAW OF FEDERAL COURTS ch. 4 (3rd ed. 1976).

[4] Act of Aug. 14, 1964, Pub. L. No. 88-439, § 1, 78 Stat. 445 (codified at 28 U.S.C. § 1332(c) (1976)) added the following to the diversity statute:

> *Provided further,* That in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, *such insurer shall be deemed a citizen of the State of which the insured is a citizen,* as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business.

Id. (latter emphasis added).

nates federal subject-matter jurisdiction in many suits between injured parties and liability insurers by including the state in which the *insured* is a citizen as a state of citizenship of the insurer.[5] The circuits agree that the proviso applies to "direct actions," wherein the injured party is plaintiff,[6] but they disagree on the question of whether it applies to "reverse direct actions" initiated by the insurer.[7]

In *Campbell v. Insurance Co. of North America,*[8] the Fifth Circuit held that an action instituted by an insurer to determine liability to the injured defendant was governed by the 1964 amendment and affirmed the district court's dismissal of the action. On similar facts, the Sixth Circuit held in *Aetna Casualty & Surety Insurance Co. v. Greene*[9] that the amendment applies only to actions *against* a liability insurer, and reversed the federal district court's dismissal of a declaratory judgment action brought *by* the liability insurer.[10]

The effect of the Sixth Circuit's holding is to permit an insurer who anticipates an imminent lawsuit and wins the race to the courthouse to choose between a state and a federal forum, while denying the same choice to an injured plaintiff. The Fifth Circuit's interpretation acts to bar reverse direct actions if they would be barred when brought by the injured party. Both circuits obviously cannot be correct. This comment will analyze the legislative history of the 1964 amendment to section 1332, discuss the policies for favoring one mode of statutory interpretation over the other and suggest that Con-

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[5] A corporate insurer will retain its citizenship otherwise imposed on corporations, thereby giving it three states of citizenship in some situations. Thus if an insured citizen of Kentucky injures a co-citizen the availability of an action directly against the tortfeasor's insurer, a Delaware corporation with its principal place of business in New York, will not create diversity jurisdiction for access to federal court, because the insurer also assumes Kentucky citizenship.

[6] This is the typical alignment which would result under a direct action statute. In states without such statutes, the same limitation would apply to suits brought in federal court against both the insured and the insurer, but in which the insured is dropped from the action. O.M. Greene Livestock Co. v. Azalea Meats, Inc., 516 F.2d 509 (5th Cir. 1975).

[7] For the purposes of this comment, a "reverse direct action" is defined as a declaratory judgment brought by the insurer against the injured party for a determination of the liability of the *insured*, who has not been joined in the action.

[8] 552 F.2d 604 (5th Cir. 1977).

[9] 606 F.2d 123 (6th Cir. 1979).

[10] *Id.* at 128.

gress clarify the statutory language in order to accomplish the goal of the proviso: the conservation of federal judicial energy.

I. POLICY JUSTIFICATIONS FOR THE 1964 AMENDMENT

The legislative history of the 1964 amendment to section 1332 reveals that the major purpose of abolishing diversity jurisdiction in most[11] direct action cases was to lighten the caseload per judgeship in the Eastern District of Louisiana,[12] which was "150 percent greater than the national average . . . ."[13] Although both Wisconsin and Louisiana had statutes permitting direct actions against insurers without joinder of the insured,[14] the crowded docket problem existed only in Louisiana.[15] Thus it is not readily apparent that the Louisiana direct action statute was the major cause of the clogged courts; "the most significant factors contributing to the overloading of this Louisiana federal court would appear to be the peculiar Louisiana law under which the reviewing court is not bound, as are the federal courts, by a jury's findings of fact,"[16] and the large number of admiralty claims due to New Orleans' status as the nation's second largest port.[17]

The mere existence of the option to litigate in federal court rather than maintain the same direct action in a state forum scarcely explains a local plaintiff's preference for the federal system. Theoretically, a federal forum would offer a benefit to

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[11] Diversity will continue to exist when both the insured and the insurer are of diverse citizenship from the injured party in the pre-1964 meaning of diversity.

[12] S. REP. No. 1308, 88th Cong., 2d Sess. (1964), *reprinted in* [1964] U.S. CODE CONG. & AD. NEWS 2778 [hereinafter cited as SENATE REPORT].

[13] *Id.* at 2780. In 1971, seven years after the enactment of the 1964 amendment, the caseload in the Eastern District of Louisiana was 372 per judgeship, compared to the national average of 307 per judgeship. Annot., 13 A.L.R. FED. 398, 401 (1972).

[14] Prior to the advent of direct action statutes, the insured was generally held to be an indispensable party to suits involving an adjudication of liability. 20 J. APPLEMAN, INSURANCE LAW AND PRACTICE § 11371, at 168-69 (1963).

[15] "The record indicates that in the State of Wisconsin the filing of suits under the direct action statute of that State has not imposed any undue burden on the Federal district courts therein." SENATE REPORT, *supra* note 12, at 2779.

[16] Weckstein, *The 1964 Diversity Amendment: Congressional Indirect Action Against State "Direct Action" Laws*, 1965 WIS. L. REV. 268, 273. Professor Weckstein critically questions the legislative wisdom of a large-scale solution to such a small-scale problem.

[17] "This maritime growth has *flooded* the local district court with admiralty actions." SENATE REPORT, *supra* note 12, at 2781 (emphasis added).

the "foreign" defendant,[18] thus decreasing its allure for the local plaintiff. In addition, any higher incidence of removal[19] to federal court than existed in Wisconsin must also be explained by Louisiana's appellate procedure. Therefore, although the problem sought to be remedied was not caused soley by the direct action statutes, Congress determined that the virtual abolition of federal power to hear suits brought under those statutes was the solution.

The purpose of this comment is not to criticize the policy considerations which prompted the 1964 amendment but to assess the decisions construing the proviso in light of those considerations. Any interpretation of the diversity statute requires recognition of the congressional intent to free federal courts of cases concerning the liability of an insured to a co-citizen.[20]

II. APPLICATION AND SCOPE OF THE PROVISION

Although the legislative history of the 1964 amendment indicates that it was intended to bar direct actions "on certain tort claims in which both parties are local residents,"[21] the provision applies to some non-tort suits with equal force, most notably to workers' compensation actions,[22] but the effects of

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[18] "The theory upon which jurisdiction is conferred on the courts of the United States, in controversies between citizens of different States, has its foundation in the supposition that, possibly, the state tribunal might not be impartial between their own citizens and foreigners." Pease v. Peck, 59 U.S. (18 How.) 595, 599 (1855).

[19] Removal has, in the past at least, accounted for only a small fraction of the cases in federal court. "In the year ended June 30, 1960, 3700 actions were removed from state court to federal court, as against 55,584 civil actions commenced in federal court." C. WRIGHT, HANDBOOK OF THE LAW OF FEDERAL COURTS 149 n.6 (3rd ed. 1976).

[20] "The committee believes that [such cases] do not come within the spirit or the intent of the basic purpose of the diversity jurisdiction of the federal judicial system." SENATE REPORT, *supra* note 12, at 2784. *See also* the letter from the Director of the Administrative Office of the U.S. Courts to the Chairman of the House Committee on the Judiciary located in SENATE REPORT, *supra* note 12, at 2784:

> Direct action statutes existing in Louisiana, Wisconsin, and possibly other States, have operated to bring into the district courts under the diversity jurisdiction a large number of tort cases involving only local residents, which in other States would be within the exclusive jurisdiction of the State courts. While within the letter of the diversity jurisdiction, it appears that "these direct action cases" are not within its spirit or intent.

Id.

[21] SENATE REPORT, *supra* note 12, at 2778.

[22] *See* Annot., 13 A.L.R. FED. 398, 407 (1972).

the amendment are not applicable to all actions involving an insurer wherein the insured is not a party. Suits to determine coverage or to compel performance on the insurance contract which do not involve an adjudication of the liability of the insured[23] are not the type of suits intended to be governed by the proviso.[24] Action by an insured against the insurer for recovery under an uninsured motorist clause is not a direct action as contemplated by Congress and is unaffected by the amendment.[25] A declaratory judgment which does not concern the issue of liability but only the question of coverage is not a direct action,[26] nor is a suit to enforce the policy once the insured's liability has already been litigated, whether prosecuted by the insured[27] or by the injured party.[28]

The first action instituted *by* an insurer rather than against one in which the 1964 amendment was asserted to destroy diversity was *Government Employees Insurance Co. v. LeBleu.*[29] The district court held that the provision did not apply because of the nature of the question before the court, not because the suit was initiated by the insurer:

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[23] Fiorentino v. Travelers Ins. Co., 448 F. Supp. 1364, 1367 (E.D. Pa. 1978) (suit to compel performance on policy).

[24] "Unless the suit . . . is of such a nature that liability sought to be imposed could be imposed against the insured, this action is not a 'direct action' in the sense used in the proviso of § 1332(c)." Lank v. Fed. Ins. Co., 309 F. Supp. 349, 351 (D. Del. 1970). Although this is a good statement of the general rule, some actions in which the insured could not have been held liable have been held to be governed by the proviso. In Ferrara v. Aetna Cas. & Sur., 436 F. Supp. 929 (W.D. Ark. 1977), the district court dismissed a suit against an insurer because the plaintiff and the insured were co-citizens, despite the insured's statutory immunity from liability because of its status as a charitable organization. The same result was reached in Hernandez v. Travelers Ins. Co., 489 F.2d 721 (5th Cir. 1974), wherein a Texas law immunized employers from workers' compensation liability and required suits only against the insurer. The technical immunity imposed by such statutes should not change the result which Congress sought.

[25] *E.g.*, Inman v. MFA Mut. Ins. Co., 264 F. Supp. 727 (E.D. Ark. 1967).

[26] White v. United States Fidelity and Guar. Co., 356 F.2d 746 (1st Cir. 1966).

[27] Carvin v. Standard Accident Ins. Co., 253 F. Supp. 232 (E.D. Tenn. 1966) (suit by insured tortfeasor for use of injured judgment creditor).

[28] Cunningham v. State Farm Mut. Auto. Ins. Co., 297 F. Supp. 1138 (E.D. Tenn. 1969). *See also* Henderson v. Selective Ins. Co., 369 F.2d 143 (6th Cir. 1966) (alternative holding) (Section 1332(c) did not bar the action because the insured's liability was not in issue and in any event the cause of action arose prior to the effective date of the amendment).

[29] 272 F. Supp. 421 (E.D. La. 1967).

> It should be particularly noted that the insurer here has sued only for a declaration of non-coverage. Had the insurer in this suit also raised the issue of the *liability* of the insured against the injured parties, we might be inclined to accept mover's argument, considering this suit in reality a "direct action against the insurer" and dismissing for lack of diversity under § 1332(c). But a declaratory suit seeking simply a declaration of non-coverage under the policy, whether brought by the insurer, by the insured, *or even by an injured party, is simply not a direct action* . . . .[30]

It was not until ten years later that a federal court actually faced the problem of the reverse direct action hypothesized in *LeBleu.*

III. REVERSE DIRECT ACTIONS

A. *Fifth Circuit Approach:* Campbell v. Insurance Co. of North America[31]

Campbell v. Insurance Co. of North America entered the federal court system as a trial de novo of a workers' compensation award given by the Texas Industrial Accident Board.[32] The district court dismissed the action initiated by the insurer, citing *Hernandez v. Travelers Insurance Co.,*[33] a case which barred a similar suit brought by the injured worker. In both cases, the worker and employer were citizens of Texas. The Fifth Circuit affirmed the *Campbell* dismissal, holding that the action was just as direct as if it were instituted by the claimant, and that "the overall proceeding seen as a whole, is that of a process initiated by the injured workman against the insurer . . . ."[34] The insurer sought a redetermination of the liability which had been found by the Board, thereby bringing the case within the definition of direct actions as it had been consistently applied.[35]

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[30] *Id.* at 430 (emphasis added).

[31] 552 F.2d 604 (5th Cir. 1977).

[32] While labeled an appeal of the award, the action involved relitigating the fact of liability as well as damages.

[33] 489 F.2d 721 (5th Cir. 1974).

[34] 552 F.2d at 605.

[35] *See* note 24 *supra* for a discusson of the criteria to be considered in determining whether a suit is a direct action.

In affirming the dismissal for lack of diversity jurisdiction, the court specifically addressed the prospect of affording different treatment to the insurer who won the race to the courthouse than that available to an injured plaintiff, and concluded that "to accept appellant's contention would be [to] construe the statute so as to provide jurisdiction in federal court for a dissatisfied insurer—since the appeal action is not *against* it—but none for the unhappy claimant. Such a result argues eloquently against the appellant's contention."[36] The result in *Campbell* fulfilled the *LeBleu* prophesy that the reverse direct action in which the insurer attempts to invoke diversity jurisdiction will be governed by the limitation applicable to suits brought by an injured party seeking to litigate the issue of the liability of a co-citizen.[37]

B. *Sixth Circuit Analysis:* Aetna Casualty & Surety Insurance Co. v. Greene[38]

In *Aetna Casualty & Surety Insurance Co. v. Greene,* an insurer brought a declaratory judgment action *against* an injured employee for a determination of liability under a workers' compensation arrangement in Tennessee. The insured employer and the defendant were Tennessee citizens. The plaintiff-insurer was incorporated in Connecticut and also had its principal place of business there.[39]

The district court granted the defendant's dismissal motion on the basis of *Campbell*[40] and the insurer appealed. The Sixth Circuit reversed and held that diversity existed, but admitted that diversity would not exist had the injured party initiated the litigation.[41] The court attempted to distinguish

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[36] 552 F.2d at 605.

[37] *See* text accompanying note 30 *supra* which indicates that the alignment of the parties should not control this question.

[38] 606 F.2d 123 (6th Cir. 1979).

[39] *Id.* at 125.

[40] 552 F.2d 605 (5th Cir. 1977).

[41] The court relied on the wording of the proviso:

> Assuming, for the sake of discusson, that defendant had initiated an action in the district court against Aetna for Workers' Compensation, the provisions of § 1332(c) would now be applicable . . . . However, in the present case, the insurer Aetna is the moving party, and there is *technically* no action, direct or otherwise, *against a liability insurer.*

606 F.2d at 127 (emphasis added).

between the policy justifications for denying federal jurisdiction to an insurer who is an involuntary litigant and those applicable when the insurer brings the suit:

> If, pursuant to § 1332(c), a liability insurer is denied access to the federal courts, the insurer is thereby forced to commence its action in a foreign jurisdiction, namely the local jurisdiction of the injured party. In this forum, the out-of-state insurer may, at least in theory, be subject to local prejudice in favor of the injured resident.[42]

The reasoning behind the court's distinction is elusive. The court noted that because of this theoretical possibility of prejudice in state court in favor of the injured resident "direct actions brought by liability insurers . . . lie squarely within 'the spirit and the intent . . . of the diversity jurisdiction of the Federal judicial system.'"[43] The problem in the court's distinction is that, regardless of whether the out-of-state insurer is an involuntary litigant or a plaintiff, the theoretical prejudice will be operative in favor of the injured local citizen; the particular alignment of the parties is immaterial to this prejudice consideration. Indeed, the out-of-state insurer in the posture of the involuntary litigant needs the protection afforded by "the spirit and intent . . . of the diversity jurisdicton of the Federal judicial system" just as much, if not more than, the out-of-state insurer in the offensive posture. Because the court's justification for its interpretation of section 1332(c) rests on this rather specious distinction,[44] that interpretation is indeed assailable.

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[42] *Id.*

[43] *Id.*

[44] While the Sixth Circuit cited to 1 MOORE'S FEDERAL PRACTICE ¶ 0.71 (2d ed. 1979) in support of its distinction between the insurer as an involuntary litigant and the insurer as a plaintiff, *see* 606 F.2d at 127, there is no reference to such a distinction in that analysis. As to the purpose of diversity jurisdiction, Moore notes, *without reference to the alignment of the parties,* that: "It is the generally accepted view that diversity jurisdiction was established to provide access to a competent and impartial tribunal, free from local prejudice or influence, for the determination of controversies between citizens of different states." 1 MOORE'S FEDERAL PRACTICE ¶ 0.71 [3.-1] (2d ed. 1979). Moore also notes, again without reference to the alignment of the parties, that, "[w]hile local prejudices and state jealousies may be diminishing, it is a fair inference that some litigants still resort to the federal courts because of apprehensions as to the kind of justice which they will receive in the courts of the state of which their adversary is a citizen." *Id.* at 0.71 [3.-2].

IV. RESOLVING THE CONFLICT

This examination of the soundness of the two reverse direct action decisions will apply the policy articulated by Congress by its enactment of the 1964 amendment, the tests utilized in previous decisions for determining whether a suit is a direct action, the principles established for interpreting the diversity statute, and fundamentals of fairness.

A. *Congressional Policy Behind the 1964 Amendment: The Elimination of Diversity Jurisdiction in Cases Involving the Determination of Liability of Co-Citizens*

When Congress passed the diversity-limiting provision, it determined that a federal interest existed in freeing court dockets from cases concerned with establishing the liability of co-citizens.[45] It also abandoned any interest in affording liability insurers access to a federal forum by denying removal in the typical case instituted by the injured party. At issue is whether Congress intended to predicate the abolition of specific cases on the nomenclature of the parties or on the subject of the cases.

It should be emphasized, however, that the position of this comment is that by the 1964 amendment to § 1332 Congress evinced an intention to abandon its interest in protecting the out-of-state insurer from "local prejudice or influence" in direct action law suits, inasmuch as those cases involve a determination of the liability of an insured to a co-citizen and thus fall outside the "spirit and intent" of diversity jurisdiction. The contention is that the logic behind congressional intent to withdraw the protection afforded by diversity jurisdiction in direct action cases is equally applicable to reverse direct action cases since both involve a determination of the liability of an insured to a co-citizen. *See* notes 45-48 *infra* and accompanying text for a more detailed discussion of this contention.

[45] The problem was brought to the attention of Congress by direct action statutes which allowed insurers to be sued without joinder of the co-citizen who would previously have been a necessary party-defendant, and thereby created diversity artificially. "While within the letter of the diversity jurisdiction, it appears that these direct action cases are not within its spirit or intent." SENATE REPORT, *supra* note 12, at 2784. While not specifically mentioning the reverse direct action situation, such cases have the identical potential for violating the purpose of diversity since "all the persons involved in the accident are residents of [the same state]." *Id.* at 2781. Congress thus focused on the fact that the crux of the problem was that the issue to be resolved was the liability of one co-citizen to another, and sought to abolish diversity in such cases. Although the language ultimately adopted refers to suits "against" insurers, there is no indication that Congress intended a different result in reverse direct actions. This author contends that Congress overlooked the possibility of reverse direct actions.

There is no plausible reason for federal interests to differ because of the alignment of the parties. Regardless of which party is labeled as the plaintiff, the issue for resolution is the same: the liability of an insured to a co-citizen. Such actions "do not come within the spirit or the intent of the basic purpose of the diversity jurisdiction of the Federal judicial system."[46] The Sixth Circuit's attempt to distinguish actions brought by insurers on the basis of the risk of prejudice overlooks the fact that Congress has dealt with that issue. The legislative history of the amendment demonstrates that protecting a liability insurer from prejudice is no longer a federal concern.[47]

B. *The Determination of Whether a Suit is a Direct Action*

Prior to *Aetna,*[48] the delineation between suits which were judicially defined as direct actions and those which were not was based on the nature of the question before the court, not on the nomenclature of the parties.[49] Suits to adjudicate the liability of an insured to a citizen of the same state were within the 1964 amendment, whether styled as declaratory judgments or not.[50] Actions which did not address the issue of liability were outside of the provision, even if brought by an injured party seeking recovery against a liability insurer without joinder of the insured.[51] This delineation comports with the congressional intent to apply the provision to cases in which the liability of an insured to a co-citizen is at issue.

C. *Principles Governing the Interpretation of the Diversity Statute*

The court in *Aetna* was especially concerned that the language of the 1964 amendment did not specifically mention that

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[46] SENATE REPORT, *supra* note 12, at 2784.

[47] *See* note 45 *supra* for a discussion of congressional intent as inferred from the applicable legislative history.

[48] 606 F.2d 123 (6th Cir. 1979).

[49] *See generally* Annot., 13 A.L.R. FED. 398 (1972).

[50] Government Employees Ins. Co. v. LeBleu, 272 F. Supp. 421 (E.D. La. 1967) (dicta).

[51] Bourget v. Government Employees Ins. Co., 313 F. Supp. 367 (D. Conn. 1970); Cunningham v. State Farm Mut. Ins. Co., 297 F. Supp. 1138 (E.D. Tenn. 1969) (action on contract after previous adjudication of insured's liability).

it applied to actions initiated *by* insurers.[52] While it is a familiar maxim that the jurisdictional statutes are to be strictly construed,[53] the principle from which the phrase is derived cannot be served by strict construction in reverse direct actions. That principle is to limit federal jurisdiction by the interpretation rather than to enlarge it,[54] in deference to state sovereignty,[55] and "in order to keep [federal courts] free for their distinctive federal business."[56] A broad construction of the 1964 amendment is necessary to limit federal jurisdiction in an area which Congress has determined is not federal business.[57]

D. *A Fairness Analysis*

In *Campbell,*[58] the Fifth Circuit noted that refusing to apply the limiting provision to actions brought by insurers would give insurers a choice of forums while affording no such choice to injured parties.[59] Such unequal treatment does not further the goals of the amendment;[60] the classification of injured persons as the exclusive group to which the law acts as a bar is irrelevant to the objective of the law.

The unfairness of the result in the Sixth Circuit's position in *Aetna,*[61] the court's deviation from the formula established for determining application of the provision,[62] the court's willingness to expand rather than restrict federal jurisdiction,[63] and the court's adherence to a policy which Congress had

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[52] 606 F.2d at 127-28. "No court is allowed to supplement a clear statutory provision such as § 1332(c), even when such supplement would produce beneficial results. To do so would exceed the court's power of statutory interpretation . . . ." *Id.*

[53] Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 377 (1978).

[54] Healy v. Ratta, 292 U.S. 263, 270 (1934).

[55] *Id.*

[56] Indianapolis v. Chase Nat'l Bank, 314 U.S. 63, 76 (1941).

[57] "This Court has given [§ 1332(c)] the broad interpretation it deserves in light of the harm Congress sought to remedy." O.M. Greene Livestock Co. v. Azalea Meats, Inc., 516 F.2d 509, 510 (5th Cir. 1975).

[58] 552 F.2d 604 (5th Cir. 1977).

[59] *Id.* at 605.

[60] *See* notes 45-48 *supra* and accompanying text for a discussion of the purpose of the amendment.

[61] *See* notes 59-61 *supra* and accompanying text for relevant discussion.

[62] *See* notes 49-52 *supra* and accompanying text for relevant discussion.

[63] *See* notes 53-58 *supra* and accompanying text for relevant discussion.

abandoned[64] all indicate that the decision is lacking in sound foundation.

CONCLUSION

Although analysis indicates that the Fifth Circuit made the correct decision in *Campbell,* the split between the circuits is just as damaging to the federal judiciary regardless of which decision was correct. Before more federal judicial energy is wasted resolving this clash, there should be enough legislative energy expended to remove the statutory language which misdirected the Sixth Circuit. Appropriate language would delete the reference to suits "against" insurers and substitute a provision that the Act applies to suits *between* insurers and injured parties wherein the insured's liability is at issue.[65] Such a revision would clarify the original intent of Congress, comport with the judicial definition of direct actions, provide for a logical narrowing of jurisdiction in cases involving identical issues and parties, and afford equal treatment to individuals and insurers. While federal diversity jurisdiction is likely to remain an inflammatory subject even after this particular problem is resolved, a resolution of this issue will serve well by reducing the amount of fuel which feeds the controversy.

Roy D. Wasson

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[64] *See* notes 45-48 *supra* and accompanying text for relevant discussion.

[65] This author proposes the following:

> Provided further, that in any action involving a liability insurer, whether incorporated or unincorporated, in which the liability of an insured to another party is at issue, and to which the insured is not a party, such insurer shall be deemed a citizen of the state in which the insured is a citizen, as well as of any state by which the insured has been incorporated and of the state in which it has its principal place of business. This provision also applies to actions wherein the insured is afforded legal immunity from liability, but the action arises out of a loss for which the insurer has agreed to provide coverage and for which the insured would otherwise be legally liable.