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HOME COURT ADVANTAGE?
AN EMPIRICAL ANALYSIS OF LOCAL BIAS
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ABSTRACT

In granting diversity of citizenship jurisdiction to the federal courts, there is an underlying assumption that federal courts will be less biased toward out-of-state litigants as compared with state courts. While this may be true, the assumption fails to consider an important empirical question: to what extent do federal courts favor home state litigants or disfavor out-of-state litigants when deciding diversity jurisdiction cases? Relying on the Integrated Database (IDB) compiled by the Federal Judicial Center and the Administrative Offices of the U.S. Courts, we present an original, empirical analysis of diversity jurisdiction case outcomes in the U.S. districts courts from 1988 through 2021 to assess whether home state or out-of-state litigant status influences case settlements or case verdicts. The empirical analysis reveals that while diversity jurisdiction cases are more likely to settle than other cases heard in federal courts, these settlements are particularly likely to occur when both parties are out-of-state litigants. In addition, the analysis does not uncover systematic evidence of home state favoritism in judgments for the plaintiff. However, the results provide evidence that corporate litigants—who are most likely to have significant resources and serve as "repeat players" in the judicial system—are most likely to prevail in diversity cases. Given that the empirical results suggest that federal district courts do not systematically advantage or disadvantage litigants based

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upon in-state or out-of-state status, these findings have important implications for litigation strategy and forum selection.

I.   INTRODUCTION

Both the U.S. Constitution[1] and the Judiciary Act of 1789[2] granted diversity jurisdiction to the federal courts. Since that time, diversity jurisdiction has served as an important component of the federal judiciary's caseload for more than two centuries.[3] Although a variety of justifications have been given to support this type of jurisdiction in the federal courts, perhaps the most common rationale is the potential bias against out-of-state litigants within state courts.[4]

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[1]   U.S. CONST. art. III, § 2, cl. 1.

[2]   Judiciary Act of 1789, ch. 20, § 11, 1 Stat. 73, 78–79.

[3]   Indeed, as Professor Larry Kramer observed, "[w]hen the federal courts were created, deciding diversity cases was one of their most important functions," because federal law was still developing and there was "not much need for federal question jurisdiction." Larry Kramer, *Diversity Jurisdiction*, 1990 BYU L. REV. 97, 97 (1990). *See also* Scott Dodson & Philip A. Pucillo, *Joint and Several Jurisdiction*, 65 DUKE L.J. 1323, 1325 (2016).

[4]   Scott Dodson, *Beyond Bias in Diversity Jurisdiction*, 69 DUKE L.J. 267, 268–69 (2019). *See also* Debra Lyn Bassett, *The Hidden Bias in Diversity Jurisdiction*, 81 WASH. U. L.Q. 119, 119–20 (2003).

The assumption is that state judges or juries will be predisposed to favor home state litigants for a variety of reasons.[5] In granting diversity jurisdiction to the federal courts, it is believed that the Framers of the Constitution and the Judiciary Act of 1789 further assumed that federal courts would not be subject to the same level of bias as state courts and, therefore, out-of-state litigants would stand a better chance of receiving a fair judicial proceeding.[6] It is entirely plausible that this assumption is true. However, the arguments that support diversity jurisdiction in the federal courts do not consider the extent to which (if at all) the federal courts already disfavor out-of-state litigants (or, favor home state litigants) in diversity proceedings. To date, no study has empirically and systematically assessed potential case outcome bias in the U.S. district courts. In this article, we seek to address this gap in the scholarly literature by assessing the effects of home state or local bias in federal diversity jurisdiction cases.

Relying on the Integrated Database (IDB) compiled by the Federal Judicial Center and the Administrative Offices of the U.S. Courts,[7] we present an original, empirical analysis of diversity jurisdiction case outcomes in the U.S. districts courts from 1988 through 2021. This extensive database contains virtually every civil case filed in the U.S. district courts during this time frame, and it includes a wide range of variables regarding the nature of the disputed case, the litigants, case outcomes, and more.[8] The breadth of data not only permits empirical analysis of potential "local" biases in federal courts,[9] but it also permits an assessment of how case outcomes vary by origination status and the type of litigant—i.e., individuals, corporations, and foreign governments.

The empirical analysis reveals that while diversity jurisdiction cases are more likely to settle than other cases heard in federal courts, diversity cases are most likely to settle when both parties are out-of-state litigants. In addition, the analysis does not uncover systematic evidence of home state favoritism in judgments for the plaintiff. However, the results provide evidence that corporate litigants—who are most likely to have significant resources and serve as "repeat players" in the judicial system—are most likely to prevail in diversity cases. Overall, the empirical results provide little evidence of home state or local biases in U.S. district court diversity cases, but there is evidence to suggest that the cost

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[5]   Dodson, *supra* note 4, at 268–69.

[6]   *Id.* at 271; Bassett, *supra* note 4, at 119–20.

[7]   *Integrated Database (IDB)*, FED. JUD. CTR., https://www.fjc.gov/research/idb (last visited Oct. 14, 2022) [hereinafter FED. JUD. CTR., *IDB*].

[8]   *Integrated Data Base Civil Documentation,* FED. JUD. CTR., https://www.fjc.gov/sites/default/files/idb/codebooks/Civil%20Codebook%201988%20Forward. pdf (last visited Oct. 14, 2022) [hereinafter FED. JUD. CTR., *IDB Codebook*].

[9]   The terms "home state bias" and "local bias" are used interchangeably throughout this article. These terms refer to a bias against an out-of-state litigant or a preference for an in-state litigant.

of litigation influences the decision to settle these cases, and litigant resources also predict case outcomes.

This article proceeds as follows. In Section II, we provide a review of literature that discusses the rationale for diversity jurisdiction, the potential influence that psychological and cognitive biases have in the legal decision-making process, and the potential influence of litigation costs and resources. In Section III, we discuss the research hypotheses and provide an analysis of IDB descriptive statistics. Section IV presents a detailed statistical analysis of case settlements and judgment outcomes, with the use of t-tests and regression analyses. Section V provides a discussion of this study's implications regarding the selection of judicial forums, litigation strategy, and avenues for future research.

II.   LITERATURE REVIEW

The purpose of this literature review is not to provide a definitive account of how and why legal actors behave as they do to resolve a case; but, instead, the focus here is to provide a theoretical basis as to why it is reasonable to expect that certain considerations would influence the resolution of a case. Specifically, given the objectives of this study, the focus here is on home state or local biases vis-à-vis psychological and extralegal[10] models of judicial behavior and financial/resource considerations in the course of litigating a case. But before proceeding to discuss these issues, it is important to document that the presumption of home state biases is firmly rooted in American law.

A.   *Home State/Local Bias as a Rationale for Diversity Jurisdiction*

Legal scholars have written much about the origins of diversity of citizenship jurisdiction in the federal courts.[11] For that reason, it is not necessary to provide a lengthy discussion of historic events at the time of the Founding, and shortly thereafter, that led to the creation of diversity jurisdiction. Nevertheless, a brief overview of the origins of diversity jurisdiction may be helpful to readers.

Unfortunately, there is little discussion of diversity jurisdiction in the records of the Constitutional Convention of 1787 or the papers of the First

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[10]   By "extralegal" we mean any influence that is not strictly law. As we discuss later, we include the costs of litigation and attorney resources as "extralegal" considerations for the purposes of this analysis.

[11]   *E.g.*, Dodson, *supra* note 4, at 268–83; Bassett, *supra* note 4, at 122–36; Patrick J. Borchers, *The Origins of Diversity Jurisdiction, the Rise of Legal Positivism, and a Brave New World for Erie and Klaxon*, 72 TEX. L. REV. 79, 86–106 (1993); James William Moore & Donald T. Weckstein, *Diversity Jurisdiction: Past, Present, and Future*, 43 TEX. L. REV. 1, 1–10 (1964); Henry J. Friendly, *The Historic Basis of Diversity Jurisdiction*, 41 HARV. L. REV. 483 (1928).

Congress.[12] However, we do know that the Diversity Clause of the Constitution "had its origins in Edmund Randolph's Virginia Plan."[13] That proposal gave "lower federal courts jurisdiction in 'cases in which foreigners or citizens of other States applying to such jurisdictions may be interested.'"[14] While there was some disagreement among members of the Convention regarding the establishment of the lower federal courts as a general matter, the Convention accepted the Diversity Clause "without contest."[15]

Perhaps unsurprisingly, there was disagreement between Federalists and Anti-Federalists as to the wisdom and need for the Diversity Clause during the state ratification debates. Anti-Federalists, such as George Mason and Patrick Henry, argued that diversity jurisdiction could potentially destroy state courts by stripping them of their rightful jurisdiction.[16] Furthermore, they argued that state courts were perfectly capable of resolving disputes between litigants from other states.[17] Federalists, on the other hand, largely embraced the concern that state courts would be biased against out-of-state litigants.[18] And, as Professor Henry Friendly noted in his analysis of the origins of diversity jurisdiction, Federalists were also concerned about bias against creditors in state courts, particularly out-of-state creditors.[19] However, as Professor Scott Dodson observed, "regardless of the true motivations, proponents tended to couch diversity justifications in terms of out-of-state bias, even if that out-of-state bias was thought to be directed at creditors."[20] Ultimately, disagreements surrounding diversity jurisdiction "were minor when compared to the level of controversy over other parts" of the Constitution.[21] Thus, it appears that the Diversity Clause was not a significant obstacle in the ratification process.

When the First Congress met to debate the Judiciary Act of 1789, again the historic record is "sparse" with regard to discussion on diversity

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[12]   *See* 13E CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3601 (3d ed. 2019) (noting that "[n]either the debates of the Constitutional Convention nor the records of the First Congress shed any substantial light on why diversity jurisdiction was granted to the federal courts by the Constitution or why the First Congress exercised its option to vest that jurisdiction in the federal courts."). *See also* Moore & Weckstein, *supra* note 11, at 1–4; Friendly, *supra* note 11, at 484–87.

[13]   Dodson, *supra* note 4, at 271.

[14]   *Id.* at 271–72 (quoting James Madison, Resolutions Proposed by Mr. Randolph in Convention (May 29, 1787), *in* 1 RECORDS OF THE FEDERAL CONVENTION OF 1787, at 20, 22 (Max Farrand ed., 1911)).

[15]   *Id.* at 272–73.

[16]   *Id.* at 273–74.

[17]   *Id.* at 274.

[18]   *Id.* at 275.

[19]   Friendly, *supra* note 11, at 496–97.

[20]   Dodson*, supra* note 4, at 278.

[21]   *Id.* at 279.

jurisdiction.[22] However, the fear of home state biases seemed to be a motivation for its passage. As Professor Friendly observed, the final version of the Judiciary Act of 1789 "gave no jurisdiction in a case where neither party resided in the state where suit was brought. This change was clearly in line with the theory, already orthodox, that the purpose of diversity jurisdiction was to prevent the baneful effects of local prejudice."[23] Indeed, numerous Supreme Court justices throughout history,[24] including Chief Justice John Marshall,[25] Justice Joseph Story,[26] and Justice Felix Frankfurter,[27] have recognized that potential home state biases were actual or proffered reasons for the adoption of diversity jurisdiction in the federal courts.[28]

While this brief overview does not and cannot provide a comprehensive account of the development of diversity jurisdiction within the federal courts, it does provide evidence that the perception of a home state bias in state courts motivated some lawmakers to grant diversity jurisdiction to the federal courts.[29]

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[22]   *Id.* at 280.

[23]   Friendly, *supra* note 11, at 501. *But see* Bassett, *supra* note 4, at 130 (arguing that the "major argument for retaining diversity jurisdiction – the protection of out-of-state litigants from local bias – is not supported by the original constitutional documents. There is no reason to believe that local bias was a reason, much less the reason, behind the creation of diversity jurisdiction. Although it is entirely possible that local bias was never seen as an issue at the time of diversity's creation, the 'local bias' notion subsequently has become bound up in, and indeed integral to, the very idea of diversity jurisdiction.") (citations omitted).

[24]   Dodson, *supra* note 4, at 282 n.77.

[25]   United States v. Deveaux, 9 U.S. (5 Cranch) 61, 87 (1809).

[26]   Martin v. Hunter's Lessee, 14 U.S. (1 Wheat) 304, 347 (1816).

[27]   Burford v. Sun Oil Co., 319 U.S. 315, 336 (1943) (Frankfurter, J., dissenting).

[28]   Dodson*, supra* note 4, at 281–82.

[29]   It is worth noting that the Diversity Clause was not the only constitutional provision that appears to account for home state or local biases. Indeed, the Electoral College, as originally conceived and as amended by the 12th Amendment, also anticipated home state biases. The original configuration of the Electoral College required that "[t]he electors shall . . . vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state as themselves." U.S. CONST. art. II, § 1. As Professor Edward Foley notes, "[t]he intent of this provision was to cause electors to identify a second candidate, with the choice based on the elector's conception of the national interest rather than any parochial concerns." EDWARD B. FOLEY, PRESIDENTIAL ELECTIONS AND MAJORITY RULE: THE RISE, DEMISE, AND POTENTIAL RESTORATION OF THE JEFFERSONIAN ELECTORAL COLLEGE 12 (2020). In addition, the 12th Amendment, which modified the original conception of the Electoral College, required that electors "meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves." U.S. CONST. amend. XII. This "favorite son" clause ensured that candidates from one single state would not have disproportionate control over the executive branch. *See* Sanford Levinson & Ernest A. Young, *Who's Afraid of the Twelfth Amendment*, 29 FLA. ST. U. L. REV. 925, 946, 952 (2002). *See also* Thomas Michael Susman, *State of Inhabitancy of Presidential and Vice-Presidential Candidates and the Electoral College Vote*, 47 TEX. L. REV. 779, 781 (1969). These provisions provide further evidence that, at least to some

B. *Biases and Individual Behavior*

The concern regarding home state or local bias in state courts implicitly, and necessarily, leads to the conclusion that federal courts are preferable in the sense that they are comparatively less biased. As noted in the Introduction section of this article, this may be an accurate assumption for a wide variety of reasons, including difference in judicial selection mechanisms in state and federal courts.[30] However, this raises two important theoretical questions. First, why should one even expect that the *identity* of a person, or group of people, would, as a general matter, influence individual behavior? And second, why should one expect that courts, particularly federal courts, would be biased by the identity of one or more litigants? Fortunately, the social science literature provides a theoretical basis for such behavior. Most notably, this portion of the literature review discusses how social identity theory, which is a psychological theory of individual behavior, could help explain individual behavior. The expectation is that this theory is broadly applicable to individuals – including litigants, jurors, and judges.[31] Then, the theoretical discussion will address how judges, as a special group of actors in the justice system, may be influenced by social identity theory and other extralegal considerations.

1. Social Identity Theory and Local Bias

Social identity theory is a psychological theory of individual and group behavior.[32] Under this framework, one's social identity can influence their behavior.[33] According to this theory, individuals' subjectively-defined social groups function as extensions of their self-concept, such that maintaining status

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degree, home state or local biases were of concern to lawmakers in the early history of the United States.

[30]   Admittedly, this is an empirical question and one that we do not address here; nor do we take a position on this matter. However, the assumption is that state courts will be more sympathetic to local interests and litigants, particularly in those states where judges are elected. Dodson, *supra* note 4, at 293; Howard M. Wasserman, *A Jurisdictional Perspective on New York Times v. Sullivan*, 107 NW. U. L. REV. 901, 906 (2013). This argument does have logical appeal. After all, judges who are subject to election to maintain their position may feel compelled to favor home state interests, otherwise they may risk offending voters. Federal judges, on the other hand, are not subject to election and enjoy Article III protections where they serve "during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office." U.S. CONST. art. III, § 1, cl. 2. Such differences may influence judicial behavior. However, an analysis of this nature is beyond the scope of the current study.

[31]   Although, as discussed later, social identity theory may not have a uniform effect on individuals for a variety of reasons.

[32]   *See* Henri Tajfel & John C. Turner, *An Integrative Theory of Intergroup Conflict, in* THE SOCIAL PSYCHOLOGY OF INTERGROUP RELATIONS (William G. Austin & Stephen Worchel eds., 1979).

[33]   *Id.*

within the in-group—by being aware of and adhering to in-group norms—and a positive image of it provide a psychologically valuable sense of stability and self-esteem.[34] While there are varying definitions of social identity theory, depending on one's academic discipline,[35] the underlying assumption is that "group membership provides an individual with benefits (psychological or material) that affect social behavior. As a result of the group attachment and benefits, individuals usually show favoritism toward their social in-group or, at least, seek outcomes that do not harm their in-group."[36]

There are a wide range of group memberships that have been shown to function as a source of identity and influence one's behavior. These groups include, but are not limited to: gender or sex,[37] race or ethnicity,[38] religious affiliation,[39] political party affiliation,[40] ideological groups,[41] sports teams,[42] and even arbitrary groups.[43] So long as an individual can feel a sense of connection to a group and that connection is part of the individual's self-conception, then it is possible for group membership to influence individual behavior.

But what about geographic identity? Indeed, geographic attachments may also serve as a source of social identity.[44] The renowned political scientist, V.O. Key, first developed what he termed the "friends and neighbors" hypothesis

[34]   *See generally* HENRI TAJFEL, HUMAN GROUPS AND SOCIAL CATEGORIES: STUDIES IN SOCIAL PSYCHOLOGY 251 (1981).

[35]   *See generally* Marilynn B. Brewer, *The Many Faces of Social Identity: Implications for Political Psychology,* 22 POL. PSYCH. 115 (2001).

[36]   Kyle C. Kopko, *Religious Identity and Political Participation in the Mennonite Church USA,* 5 POL. & RELIGION 367, 369 (2012).

[37]   *See* SHAWN MEGHAN BURN, THE SOCIAL PSYCHOLOGY OF GENDER (1996).

[38]   *See* Evelyn M. Simien, *Race, Gender, and Linked Fate,* 35 J. BLACK STUD. 529 (2005). MICHAEL C. DAWSON, BEHIND THE MULE: RACE AND CLASS IN AFRICAN-AMERICAN POLITICS (1995).

[39]   *See* Kopko, *supra* note 36.

[40]   *See* DONALD P. GREEN, BRADLEY PALMQUIST, & ERIC SCHICKLER, PARTISAN HEARTS AND MINDS: POLITICAL PARTIES AND THE SOCIAL IDENTITIES OF VOTERS (2002); Steven Greene, *Social Identity Theory and Party Identification,* 85 SOC. SCI. Q. 136 (2004).

[41]   *See* Christopher J. Devine, *Ideological Social Identity: Psychological Attachment to Ideological In-Groups as a Political Phenomenon and a Behavioral Influence,* 37 POL. BEHAV. 509 (2015).

[42]   *See* Bob Heere & Jeffrey D. James, *Stepping Outside the Lines: Developing a Multi-dimensional Team Identity Scale Based on Social Identity Theory,* 10 SPORT MGMT. REV. 65 (2007); Nyla R. Branscombe & Daniel L. Wann, *The Positive Social and Self Concept Consequences of Sports Team Identification,* 15 J. SPORT & SOC. ISSUES 115 (1991).

[43]   *See* Henri Tajfel, M. G. Billig, R. P. Bundy & Claude Flament, *Social Categorization and Intergroup Behaviour,* 1 EUR. J. SOC. PSYCH. 149 (1971).

[44]   *E.g.,* Anssi Paasi, *Region and Place: Regional Identity in Question,* 27 PROGRESS IN HUM. GEOGRAPHY 475 (2003); Lee Cuba & David M. Hummon, *A Place to Call Home: Identification with Dwelling, Community, and Region,* 34 SOC. Q. 111 (1993).

to explain home state or region biases, at least in the American electoral context.[45] Devine and Kopko succinctly explain the reasons for Key's hypothesis:

> (1) local voters are most familiar with local candidates, thereby reducing their information costs; (2) local candidates are perceived to be knowledgeable about local concerns, and more likely to direct government resources toward addressing those concerns when in office; (3) local voters are more likely to have engaged in interpersonal contact with a local candidate and individuals closely associated with the candidate; and (4) local voters tend to identify more strongly with local candidates, often viewing those candidates as "one of our own."[46]

The "friends and neighbors" hypothesis has found empirical support in a wide range of political contexts, including congressional elections,[47] statewide elections,[48] judicial elections,[49] and even elections outside the United States.[50]

However, not all the elements of Key's "friends and neighbors" hypothesis are applicable in the context of litigation. Clearly, there are differences between decision-making in the electoral context (i.e., who should win the election?) and legal context (i.e., which party should prevail when

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[45] V.O. KEY, JR., SOUTHERN POLITICS IN NATION AND STATE 37 (1949).

[46] CHRISTOPHER J. DEVINE & KYLE C. KOPKO, THE VP ADVANTAGE: HOW RUNNING MATES INFLUENCE HOME STATE VOTING IN PRESIDENTIAL ELECTIONS 57 (2016).

[47] *See generally* FRANK M. BRYAN, POLITICS IN THE RURAL STATES: PEOPLE, PARTIES, AND PROCESSES (1981); Scott A. Kjar & David N. Laband, *On "Home Grown-Ness" in Politics: Evidence from the 1998 Election for Alabama's Third Congressional District*, 112 PUB. CHOICE 143 (2002); Earl Black & Merle Black, *The Wallace Vote in Alabama: A Multiple Regression Analysis*, 35 J. POL. 730 (1973).

[48] *E.g.*, Tom W. Rice & Alisa Macht, *Friends and Neighbors Voting in Statewide General Elections*, 31 AM. J. POL. SCI. 448 (1987).

[49] Larry T. Aspin & William K. Hall, *Friends and Neighbors Voting in Judicial Retention Elections: A Research Note Comparing Trial and Appellate Court Elections*, 42 W. POL. Q. 587 (1989).

[50] DEVINE & KOPKO, *supra* note 46, at 58. In addition, there is some support for home state biases ("advantages") in the context of vice-presidential selection in presidential elections. For example, home state voters tend to rate home state vice presidential candidates, *ceteris paribus*. *Id.* at 101–05. In addition, there is some empirical evidence that vice presidential candidates from sparsely populated states receive an electoral "advantage," but that finding is limited to the use of aggregate data analyses. *See* Christopher J. Devine & Kyle C. Kopko, *The Vice Presidential Home State Advantage Reconsidered: Analyzing the Interactive Effect of Home State Population and Political Experience, 1884–2008*, 41 PRESIDENTIAL STUD. Q. 1 (2011). *But see* Christopher J. Devine & Kyle C. Kopko, *Bringing Voters into the Equation: An Individual-Level Analysis of Vice Presidential Home State Advantage*, 49 PRESIDENTIAL STUD. Q. 827 (2019) (finding that individual-level data analysis does not support findings of a home state advantage among vice presidential candidates from sparsely populated states).

applying the law to the facts of the case?). That said, Key's fourth consideration is most relevant for this analysis because it directly implicates social identity theory.[51] Thus, if individuals (whether attorneys, jurors, or judges) view a home state litigant as "one of our own," that could influence how legal actors think about and treat home state (versus out-of-state) litigants. It may be the case that home state litigants are treated more favorably than litigants who are not from the home state. Indeed, this is the very concern that seems to have motivated diversity jurisdiction within the federal courts.

Although social identity theory is broadly applicable to individual behavior, it may be the case that, in the context of litigation, social identities are mitigated by institutional norms and the culture of law. As Professor Frederick Schauer notes, "there is one form of reasoning . . . that can plausibly be understood to set lawyers apart from others, and it is one that can be described as *second-order reasoning*" (emphasis in original).[52] This is in contrast to "ordinary" or "first-order reasoning," in which individuals simply decide what is best for the situation at hand.[53] Whereas, second-order reasoning requires decision-makers to identify the rule or principles that "will produce better results in a larger number of cases."[54] In other words, second-order reasoning requires the application of a principle that is not intended as a one-off rule to decide a current dispute, but rather it is a broadly applicable principle that can be applied in analogous disputes where the precise facts may vary. One could easily envision how a variety of institutional norms and characteristics in the legal context would encourage second-order reasoning within courts—law school training for attorneys, judges having to write and justify their decisions, jurors having to carefully weigh evidence in light of jury instructions and applicable law, etc. In that sense, social identities may play a diminished role within the context of courts—or maybe not.

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[51] To some extent, the third consideration may be applicable as well. Take, for example, a major corporation that employs a considerable portion of the workforce in a given jurisdiction. It is possible that inhabitants of that jurisdiction will form favorable perceptions of that entity due to repeated contact and a desire to maintain that company's economic impact within the jurisdiction. However, for the sake of the current analysis, we will focus on the psychological attachment of home state litigants.

[52] Frederick Schauer, *Is There a Psychology of Judging?*, in THE PSYCHOLOGY OF JUDICIAL DECISION-MAKING 107 (David E. Klein & Gregory Mitchell eds., 2010) (citing FREDERICK SCHAUER, PLAYING BY THE RULES: A PHILOSOPHICAL EXAMINATION OF RULE-BASED DECISION MAKING IN LAW AND IN LIFE (1991); JOSEPH RAZ, THE AUTHORITY OF LAW: ESSAYS ON LAW AND MORALITY (1979); Frederick Schauer, *The Generality of Law*, 107 W. VA. L. REV. 217 (2004); Cass R. Sunstein & Edna Ullmann-Margalit, *Second-Order Decisions*, 110 ETHICS 5 (1999)).

[53] *Id.* at 108.

[54] *Id.*

2. Social Identities in Courts

While law is, undoubtedly, a major explanatory variable in predicting the behavior of judges and courts,[55] it is not the only explanatory variable for case outcomes. It is important to note that there is a long line of scholarship demonstrating that extralegal considerations and psychological factors help to explain judicial behavior, in particular.[56] And while extralegal considerations are most likely applicable to appellate courts and those circumstances where the application of law is subject to interpretation, extralegal considerations can still influence trial court behavior to some degree. Segal and Spaeth's discussion of attitudes-toward-objects and attitudes-toward-situations provides some clarity on this point:

> [Judicial] behavior may be said to be a function of the interaction between an actor's attitude toward an "object" (i.e., persons, places, institutions, and things) and that actor's attitude toward the situation in which the object is encountered . . . . [A]ttitude situations consist of the "facts," that is, what the attitude object is doing, the legal constitutional context in which the attitude object is acting.[57]

While both types of attitudes can influence legal decisions, it is often the case that the attitude situations, or the legal context, is the guiding influence on court outcomes.[58] In other words, the legal context is often the guiding determinant of case outcomes, rather than the identity of the individual litigants. But that does not mean that attitudes-toward-objects do not affect judicial behavior. As Professor Kopko notes,

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[55]   Perhaps Professor Howard Gillman put it best when discussing the "legal model": "The entire structure of legal education and the nature of the judicial process in the United States is premised on the assumption that, one way or the other, law matters." Howard Gillman, *What's Law Got to Do with It? Judicial Behavioralists Test the "Legal Model" of Judicial Decision Making*, 26 LAW & SOC. INQUIRY 465, 468 (2001).

[56]   *See e.g.*, THE PSYCHOLOGY OF JUDICIAL DECISION-MAKING (David E. Kline & Gregory Mitchell eds., 2010); RICHARD A. POSNER, HOW JUDGES THINK (2008); LAWRENCE BAUM, JUDGES AND THEIR AUDIENCES (2006); JEFFREY A. SEGAL & HAROLD J. SPAETH, THE SUPREME COURT AND THE ATTITUDINAL MODEL REVISITED (2002); LAWRENCE BAUM, THE PUZZLE OF JUDICIAL BEHAVIOR (1997). These are merely a few somewhat recent examples of scholarship that examines extralegal and psychological considerations in judicial behavior.

[57]   Segal & Spaeth, *supra* note 56, at 313. Segal and Spaeth's distinction between attitude objects and attitude situations is based upon Milton Rokeach's attitude theory. MILTON ROKEACH, BELIEFS, ATTITUDES, AND VALUES (1968); *see also* Kyle C. Kopko, *Litigant Partisan Identity and Challenges to Campaign Finance Policies: An Examination of U.S. District Court Decisions, 1971–2007*, 36 JUST. SYS. J. 212, 216 (2015).

[58]   For a discussion of this in numerous contexts, see Kopko, *supra* note 57, at 216–17.

> Undoubtedly, there are many types of groups that could be personally salient to a judge. Perhaps groups based on demographic or immutable characteristics (e.g., gender, race, and age) are examples of groups that are likely to be of importance to a judge; these groups may be part of a judge's self-conception, consistent with social identity theory.[59]

In fact, there are numerous studies in which the social identity of the judge correlates with the identity of a litigant, including findings that female judges are more likely to rule for plaintiffs in sexual harassment cases than male judges,[60] African American judges were more likely to rule in favor of African American plaintiffs than other non-African American judges,[61] and older judges were more likely to rule in favor of plaintiffs in age discrimination cases relative to younger judges.[62] There is even evidence of judicial partisanship (that is, ruling in a manner that benefits one's own political party or harms the opposing political party) in the context of election law cases.[63] Furthermore, attachment to a district court could serve as a source of identity. For example, Professor Jeffrey Budziak finds that courts of appeals judges promoted from district courts were less likely to overturn decisions arising from their former district courts, and they were even less likely to overturn decisions of their former district court

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[59]   *Id.* at 217.

[60]   *See* Christina L. Boyd, Lee Epstein & Andrew D. Martin, *Untangling the Causal Effects of Sex on Judging*, 54 AM. J. POL. SCI. 389 (2010); Jennifer L. Peresie, *Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Courts*, 114 YALE L.J. 1759 (2005); Sean Farhang & Gregory Wawro, *Institutional Dynamics on the U.S. Court of Appeals: Minority Representation Under Panel Decision Making*, 20 J.L. ECON. & ORG. 299 (2004).

[61]   *See* Jason L. Morin, *The Voting Behavior of Minority Judges in the U.S. Courts of Appeals: Does the Race of the Claimant Matter?*, 42 AM. POL. RSCH. 34 (2014).

[62]   *See* Kenneth L. Manning, Bruce A. Carroll & Robert A. Carp, *Does Age Matter? Judicial Decision Making in Age Discrimination Cases*, 85 SOC. SCI. Q. 1 (2004).

[63]   *See e.g.*, GARY W. COX & JONATHAN N. KATZ, ELBRIDGE GERRY'S SALAMANDER: THE ELECTORAL CONSEQUENCES OF THE REAPPORTIONMENT REVOLUTION (2002) (finding that judges were more likely to uphold "one person, one vote" cases if the legislature that enacted them shared the judge's political affiliation); Kopko, *supra* note 57 (finding that judges were more likely to rule against members of the opposing political party when challenging campaign finance laws); Randall D. Lloyd, *Separating Partisanship from Party in Judicial Research: Reapportionment in the U.S. District Courts*, 89 AM. POL. SCI. REV. 413 (1995) (finding that judges were most likely to strike down reapportionment plans enacted by a legislature comprised of unified government of the opposing political party); Mark J. McKenzie, *The Influence of Partisanship, Ideology, and the Law on Redistricting Decisions in the Federal Courts*, 65 POL. RSCH. Q. 799 (2012) (finding judges were likely to strike down redistricting plans if enacted by a legislature controlled by the opposing party); Terri Peretti, *Judicial Partisanship in Voter Identification Litigation*, 15 ELECTION L.J. 214 (2016) (finding partisan behavior among judges deciding voter identification cases). *But see* Kyle C. Kopko, *Partisanship Suppressed: Judicial Decision-Making in Ralph Nader's 2004 Ballot Access Litigation*, 7 ELECTION L.J. 301 (2008) (finding that partisan affiliation did not explain ballot access decision for Ralph Nader in the 2004 presidential election).

colleagues.[64] All of this is to say that while there may be institutional mechanisms and norms that guard against the influence of social identities within courts, clearly legal actors, particularly judges,[65] are not immune from these influences.

3. Home State Considerations in Courts

Previous research has also addressed the influence of home state identities within courts, although with methodological approaches that are distinct from the instant study. One study expressly examines the role of home state identities on judicial behavior among federal judges.[66] In that analysis, Professor Tammy Sarver sampled tort cases from the U.S. Courts of Appeals, from 1960 to 1988.[67] Her empirical analysis found that,

> [N]either variable used to measure whether there exists a bias for the non-diverse (or in-state) party to a diversity suit, Same State and Same Judge, was related in a statistically significant fashion with how each appeals court judge voted in the tort diversity cases included in this analysis. Thus, it seems that the citizenship of neither the litigant nor the federal judge was found to exert any influence on the outcome of a tort diversity case in the courts of appeals.[68]

As an empirical matter, this suggests that U.S. Courts of Appeals judges are not systematically susceptible to home state or local biases when deciding tort cases. But it is important to note that these are appellate judges who are working as part of a panel to resolve a case. The inclusion of other judges of varying backgrounds has been shown to influence the decision-making process.[69]

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[64]   Jeffrey L. Budziak, *Promotion, Social Identity, and Decision Making in the United States Courts of Appeals*, 4 J.L. & CTS. 267, 285 (2016) (finding that "[f]irst, promoted judges are less likely to vote to reverse district court judges than nonpromoted judges, but this effect fades the longer a promoted judge has served on the court of appeals. Second, promoted judges are substantially less likely to vote to reverse a district court judge with whom they once served.").

[65]   The studies presented within this particular section of the literature review focus on judicial behavior, as opposed to attorney or juror behavior. That is for two reasons: First, much of the scholarly literature tends to focus on judges. Second, judges should be the most immune from these influences due to their professional obligations and desire to appear unbiased. It is not unreasonable to suspect that if judges are susceptible, at some level, to the influence of social identities in the decision-making process, so, too, should other legal actors.

[66]   Tammy A. Sarver, *Resolution of Bias: Tort Diversity Cases in the United States Courts of Appeals*, 28 JUST. SYS. J. 183 (2007).

[67]   *Id.* at 188.

[68]   *Id.* at 193.

[69]   *See* Farhang & Wawro, *supra* note 60, at 325 (finding that women judges on an appellate panel "appear to influence their male colleagues, modifying the content of decisions from what is rendered, ceteris paribus, by all-male panels.").

Thus, the inclusion of judges from multiple states could temper a proclivity to favor a home state litigant. It is not clear how trial court judges, who decide cases in relative isolation, may be influenced by home state litigants.

In addition to this study of courts of appeals judges, there has been a body of literature that takes a different approach to measure potential home state biases: surveys of attorneys. While surveys of attorneys are not without their critics,[70] for the purpose of this study, the perception of attorneys in evaluating home state or local biases is not used to prove that such biases influence court outcomes. Instead, evidence of such perceptions could provide insight into attorney strategy within the context of litigation. In other words, if attorneys believe that courts are susceptible to home state biases, perhaps that will affect their likelihood of continuing litigation. This may increase the likelihood of settlement due to potential local bias on the part of judges or juries. But to what extent do attorneys believe home state biases exist? As the following discussion indicates, the perception of a local bias or home state bias varies considerably across time and jurisdiction.

The earliest surveys of attorneys focused on litigators from a specific geographic area. One of the earliest of these empirical studies was published in the *Iowa Law Review* in 1962.[71] Professor Marvin Summer conducted a survey of Wisconsin lawyers to determine what factors influenced their decision to litigate a given case in a federal court versus a state court.[72] The survey instrument allowed respondents to select multiple factors, such as geographic convenience, discovery procedures, and others.[73] Despite the wide range of options and the ability to select more than one response, only 7 of the 82 respondents (or 8.5%) cited "local bias against nonresident client" as a reason for selecting federal courts.[74]

Three years later, a similar survey was fielded in Virginia, which yielded 163 respondents.[75] The results in Virginia were quite different from those of the Wisconsin study. According to the anonymous authors,

> Of the 163 Virginia lawyers who returned questionnaires, 19[%] reported that they "often" encounter local prejudice against out-

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[70]   As Professor Dodson notes, "disclosed perception of bias in surveys proves neither bias nor even, necessarily, actual perception of bias." Dodson, *supra* note 4, at 294 n.142 (citing Erwin Chemerinsky, *Parity Reconsidered: Defining a Role for the Federal Judiciary*, 36 UCLA L. REV. 233, 269 (1988)).

[71]   Marvin R. Summers, *Analysis of Factors That Influence Choice of Forum in Diversity Cases*, 47 IOWA L. REV. 933 (1962).

[72]   *Id.* at 936–37.

[73]   *Id.* at 937–38.

[74]   *Id.* at 938.

[75]   Note, *The Choice Between State and Federal Court in Diversity Cases in Virginia*, 51 VA. L. REV. 178 (1965).

of-state parties. Moreover, 60[%] assigned it as a reason for proceeding in a federal court when representing an out-of-state plaintiff against whom local prejudice is in fact noticed or suspected.[76]

In 1978, Professor Jerry Goldman and Kenneth Marks fielded a survey of attorneys in the Northern District of Illinois, which sampled respondents who filed diversity cases in federal court and those who filed cases in state court, but could have opted to file in federal court due to the amount of damages that were sought.[77] For respondents who litigated in federal court (N=74), the researchers asked them to rank order a list of reasons why they decided to litigate in federal court, and one such reason provided was "local bias against out-of-state residents."[78] The group of attorneys who litigated in state court (N=19) were presented with a hypothetical case scenario, where their hypothetical client was an out-of-state litigant, and then respond if they would have litigated in state or federal court, and why.[79] Among the federal court respondents, 40% of respondents cited local bias as a "relevant" consideration when selecting a forum, but this was ranked as the seventh most popular option out of 14 possible ranks.[80] Among state court respondents, 53% of respondents cited local bias as a relevant consideration in forum selection, and that option was ranked 8.5 (tied for 8th) out of 14 possible ranks.[81]

Also in 1978, Professor Kristin Bumiller expanded her survey frame to include multiple jurisdictions—Central District of California, District of South Carolina, Eastern District of Pennsylvania, and Eastern District of Wisconsin—to understand how local bias may vary by geographic region.[82] This survey employed a similar methodological approach as Goldman and Marks, where samples were drawn from federal and state court litigators and the litigators were asked to rank considerations (among which was local bias).[83] The results

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[76]   *Id.* at 182.

[77]   Jerry Goldman & Kenneth S. Marks, *Diversity Jurisdiction and Local Bias: A Preliminary Empirical Inquiry*, 9 J. LEGAL STUD. 93, 95–96 (1980).

[78]   *Id.* at 96.

[79]   *Id.*

[80]   *Id.* at 98.

[81]   *Id.* at 100.

[82]   Kristin Bumiller, *Choice of Forum in Diversity Cases: Analysis of a Survey and Implications for Reform*, 15 LAW & SOC'Y REV. 749, 752 (1980).

[83]   Bumiller's study, regarding state litigators, varies when compared to Goldman and Marks in that

> [s]tate court attorneys were surveyed only if their case exceeded $10,000 (the jurisdictional minimum for diversity jurisdiction). If the case met the citizenship requirements for diversity, the attorneys were asked to indicate why they chose to litigate in state court. If the case did not meet the citizenship requirement, these attorneys in the state sample were asked to assume their

provided support for geographic variation where more urban districts (Central California and Eastern Pennsylvania) reported lower rates of attorneys citing fear of local bias as a concern.[84] Specifically, in these jurisdictions, 14.6% of California respondents and 18.2% of Pennsylvania respondents rated fear of local bias as "very important" or "important."[85] In the Eastern District of Wisconsin, which Bumiller describes as "a smaller metropolitan area,"[86] 29.5% of respondents cited local bias as an "important" or "very important" consideration.[87] While in South Carolina, which is an example of a rural jurisdiction, 53.3% of respondents cited local bias as an "important" or "very important" consideration.[88]

Using a novel sampling approach, Professor Flango conducted a national study that yielded 1,642 responses from attorneys who litigated cases in federal and/or state courts.[89] Specifically, Professor Flango sampled diversity jurisdiction cases in the federal courts and state court contract and tort cases that met the minimum threshold to qualify for removal to federal court under diversity jurisdiction.[90] Next, surveys were sent to the attorneys who litigated these cases.[91] Because some attorneys litigated both cases that were litigated in the federal courts and state courts, Professor Flango was able to create three comparison groups of attorneys—those who only litigated diversity cases, those that only litigated state cases, and those that litigated in both courts.[92] In assessing the survey results, Professor Flango found:

> . . . that 63% [of] the attorneys in the state sample, 71% of the attorneys in the federal sample, and 59% of the attorneys in both samples consider the fact that their client is a non-resident of the state in which the case is filed to be a significant factor in their choice of forum. The percentages are similar if clients are non-residents of the United States—66% for attorneys in the state sample, 61% for attorneys in the federal sample, and 63% for the attorneys in both samples. The fact that the opposing party

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client was an out-of-state resident and rank the reasons for litigating in state or federal court accordingly.

Id. at 753.

[84]   *Id.* at 758.

[85]   *Id.* at 760.

[86]   *Id.* at 752.

[87]   *Id.* at 758.

[88]   *Id.* at 760.

[89]   Victor E. Flango, *Attorneys' Perspectives on Choice of Forum in Diversity Cases*, 25 Akron L. Rev. 41, 52 (1991).

[90]   *Id.* at 47.

[91]   *Id.*

[92]   *Id.* at 52.

is a non-resident was also considered important by over half of the attorneys in both the state and federal samples.[93]

One of the most recent surveys of attorney attitudes on removal to federal courts was published in The *American University Law Review* in 1992.[94] While diversity jurisdiction cases were included in this study's analysis, this study also included removal cases that presented a federal question.[95] This study relied on responses from 482 plaintiff and defense attorneys,[96] sampled from a pool of cases removed from state court to federal court in 1987.[97] When asked to evaluate the "prevalence of bias against defense clients in state courts," 26.3% of plaintiff attorneys reported bias against the opposing party, while 50.7% of defense attorneys said there was bias against the defendants in state courts.[98]

At the very least, one could conclude that there are a non-trivial number of attorneys who have expressed concern about local biases in diversity of citizenship jurisdiction litigation.

C. *Other Influences of Case Outcomes: The Cost of Litigation and Litigant Resources*

Thus far, the theoretical discussion on determinants of case outcomes has primarily focused on the influence of psychological motivations and social identities. Obviously, these are not the only extralegal considerations.

Litigant resources are an extralegal consideration that can influence case outcomes. Professor Galanter's groundbreaking analysis, which creates a taxonomy of litigants, provides an excellent insight on this matter.[99] In Galanter's article, he posits that well-resourced litigants (or "the haves") are more likely to succeed in litigation than less-resourced litigants (or "the have-nots").[100] The "haves" are often "repeat players"—that is, governments, corporations, etc.— while the "have nots" are often "one-shot" litigants—that is, individuals, small

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[93]   *Id.* at 56. For further discussion on choice of forum, see Victor E. Flango, *Litigant Choice Between State and Federal Courts*, 46 S.C. L. REV. 961 (1995).

[94]   Neal Miller, *An Empirical Study of Forum Choices in Removal Cases Under Diversity and Federal Question Jurisdiction*, 41 AM. U. L. REV. 369 (1992).

[95]   *Id.* at 394, 397–98 (noting that 77.1% of cases that were surveyed among defense attorneys were diversity jurisdiction cases, while the same was true of 71.7% of plaintiffs' attorneys who were surveyed).

[96]   *Id.* at 397.

[97]   *Id.* at 393.

[98]   *Id.* at 409.

[99]   Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95 (1974).

[100]   *Id.* at 149 ("We have discussed the way in which the architecture legal system tends to confer interlocking advantages on ping groups whom we have called the 'haves.'").

businesses, etc.[101] Under this framework, the well-resourced litigants tend to be more successful because, as Songer et al. note:

> . . . they are likely to have favorable law on their side, superior material resources, and better lawyers and because a number of advantages accrue to them as a result of their "repeat player" status. Superior resources allow the "haves" to hire the best available legal representation and to incur legal expenses, such as those associated with extensive discovery and expert witnesses, that may increase the chances of success at trial.[102]

Galanter's findings have been supported, to varying degrees, in numerous legal contexts.[103] These include cases in the U.S. trial courts,[104] the U.S. courts of appeals cases,[105] the U.S. Supreme Court cases,[106] state supreme

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[101]   *See id.* at 97. However, as Galanter notes:

> It is not suggested that RPs [repeat players] are to be equated with "haves" (in terms of power, wealth and status) or OSs [one-shoters] with "have-nots." In the American setting most RPs are larger, richer and more powerful than are most OSs, so these categories overlap, but there are obvious exceptions. RPs may be "have-nots" (alcoholic derelicts) or may act as champions of "have-nots" (as government does from time to time); OSs such as criminal defendants may be wealthy. What this analysis does is to define a position of advantage in the configuration of contending parties and indicate how those with other advantages tend to occupy this position of advantage and to have their other advantages reinforced and augmented thereby.

Id. at 103. Thus, while repeat-players often may have more extensive resources, that will not always be the case. And, conversely, there will be some situations in which one-shot litigants are well-resourced.

[102]   Donald R. Songer, Reginald S. Sheehan & Susan Brodie Haire, *Do the "Haves" Come Out Ahead over Time? Applying Galanter's Framework to Decisions of the U.S. Courts of Appeals, 1925–1988*, 33 Law & Soc'y Rev. 811, 812 (1999).

[103]   *See generally* In Litigation: Do the "Haves" Still Come Out Ahead? (Herbert M. Kritzer & Susan S. Silbey eds., 2003). Although, there are some instances where the "have nots" fare better than the "haves." *See, e.g.*, Peter C. H. Chan, *Do the "Haves" Come Out Ahead in Chinese Grassroots Courts? Rural Land Disputes Between Married-Out Women and Village Collectives*, 71 Hastings L.J. 1 (2019) (finding that rural women married to "outsiders" are more likely to win against village collectives, but at the same time arguing that Galanter's theory is inapplicable in this context).

[104]   *E.g.*, Carroll Seron, Martin Frankel, Gregg Van Ryzin & Jean Kovath, *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35 Law & Soc'y Rev. 419 (2001); Craig Wanner, *The Public Ordering of Private Relations Part One: Initiating Civil Cases in Urban Trial Courts*, 8 Law & Soc'y Rev. 421 (1974).

[105]   Songer, Sheehan & Haire, *supra* note 102.

[106]   Kevin T. McGuire, *Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success*, 57 J. Pol. 187 (1995).

courts,[107] and courts outside the United States.[108] Financial resources and the experience of litigating cases within courts should advantage well-resourced litigants like governments and corporations.

In addition to resources, costs of litigation are another important consideration in determining a case's outcome—particularly in the context of settlement. In this regard, Priest and Kline's seminal work, "The Selection of Disputes for Litigation,"[109] provides a framework by which one can better understand under what conditions litigants will settle a case or proceed to further litigation. Their formal models are useful for the instant analysis because the models emphasize the role of litigant costs, relative to expected success, in explaining the decision to settle. In brief, the formal models predict that when the plaintiff's asking price (i.e., demanded settlement amount) exceeds the defendant's bidding price (i.e., proposed settlement amount), litigation will continue. However, when the plaintiff's settlement price is lower than the defendant's estimated settlement price, the case will settle. This assumes rationality on the part of the litigants, in that that will seek to resolve a case based solely upon economic concerns. Under their framework, Priest and Kline:

> [a]ssume that a particular dispute is randomly drawn from the distribution of disputes . . . and that the characteristics of the dispute have some true value in terms relevant to the legal standard of Y'. The judge or jury need not determine precisely the true Y' of the dispute, but only whether Y' is greater or less than Y^*, the decision standard. Nevertheless, the parties must estimate Y' in order to predict the likelihood of liability should a trial take place.[110]

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[107]   Stanton Wheeler, Bliss Cartwright, Robert A. Kagan & Lawrence M. Friedman, *Do the "Haves" Come Out Ahead? Winning and Losing in State Supreme Courts, 1870–1970*, 21 LAW & SOC'Y REV. 403 (1987).

[108]   John Szmer, Susan W. Johnson & Tammy A. Sarver, *Does the Lawyer Matter? Influencing Outcomes on the Supreme Court of Canada*, 41 LAW & SOC'Y REV. 279 (2007); Burton M. Atkins, *Party Capability Theory as an Explanation for Intervention Behavior in the English Court of Appeal*, 35 AM. J. POL. SCI. 881 (1991).

[109]   George L. Priest & Benjamin Klein, *The Selection of Disputes for Litigation*, 13 J. LEGAL STUD. 1 (1984).

[110]   *Id.* at 9 (citations omitted).

The authors then define $\widehat{Y}'_p$ and $\widehat{Y}'_d$ as the plaintiff's and defendant's respective estimate of the Y value of the dispute using Equations 1 and 2, as presented below.[111]

$$\widehat{Y}'_p = Y' + \epsilon_p \qquad (1)$$

$$\widehat{Y}'_d = Y' + \epsilon_d \qquad (2)$$

As Priest and Kline note, "ϵ_p and ϵ_d are assumed to be independent random variables with zero expectation and identical standard errors, σ_ε."[112] The legal standard estimates derived in Equations 1 and 2 are then used to formulate a likelihood of a plaintiff verdict as represented by Equations 3 and 4.[113]

$$\widehat{P}_p = P\big(\epsilon_p < \widehat{Y}'_p\big) \qquad (3)$$

$$\widehat{P}_d = P\big(\epsilon_d < \widehat{Y}'_d\big) \qquad (4)$$

Here, these equations represented "the probability that the error associated with each party's particular estimate of a liability verdict is less than the estimate" $\widehat{Y}'_p$ and $\widehat{Y}'_d$, respectively.[114] Based upon the expectation of a plaintiff verdict, litigants can then formulate settlement demands and settlement offers by the plaintiff and defendant, respectively. The demands and offers are represented formally in Equations 5 and 6.[115]

$$A = P_p(J) - C_p + S_p \qquad (5)$$

$$B = P_d(J) + C_d - S_d \qquad (6)$$

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[111] *Id.*

[112] *Id.*

[113] *Id.* at 11. Equations 3 and 4 (presented here) are Equations 3a and 3b from Priest and Kline's article. There, the authors also present a conditional probability estimate represented by $\widehat{P}_p = P\big(Y' \geq 0 \mid \widehat{Y}'_p\big)$ and by $\widehat{P}_d = P\big(Y' \geq 0 \mid \widehat{Y}'_d\big)$ to represent the probability of a plaintiff verdict. Priest and Kline note that the equations are equivalent. For the sake of simplicity, we only present one of these equations.

[114] *Id.* at 11.

[115] *Id.* at 12. These are Equations 5a and 5b in the Priest and Kline article.

In these models, A represents the plaintiff's minimum settlement demand or asking price, and B represents the defendant's maximum settlement offer or bidding price. The term J "is the expected judgment should a plaintiff . . . verdict be rendered; C_p and C_d are litigation costs to the plaintiff and defendant, respectively . . .; and S_p and S_d are the respective settlement costs."[116] This also assumes that the expected judgment, as an economic consideration, is the primary determinant of plaintiff's asking price and defendant bid.

Litigation is likely to continue so long as $A > B$. That is, if the plaintiff's asking price exceeds the defendant's bidding price. However, if $A < B$ (i.e., plaintiff's asking price is lower than the defendant's bidding price), then the parties should be more likely to settle. Furthermore, the probability of settlement should increase as A approaches zero from the right, and B approaches positive infinity. In the context of diversity jurisdiction cases, the cost of litigation (C_p and C_d) is likely to be higher, on average, for out-of-state litigants. Based upon Priest and Kline's model, such considerations should drive down the asking price for an out-of-state plaintiff and drive up the bidding price for an out-of-state defendant.

Consider a hypothetical scenario in which the probability of a judgment for the plaintiff is 0.5, with a likely judgment amount of $500,000. Let us assume, also, that the cost of settlement is held constant at $50,000. For in-state litigants, let us further assume that the cost of litigation is $100,000 per litigant, but the costs of litigation increases by 50% (i.e., $50,000) when a litigant is not a home state litigant. These hypothetical additional costs may be associated with travel, the time and effort needed to find local counsel, and other related logistical expenses.[117] Table 1 illustrates the variation in asking price and bidding price, based upon Priest and Klein's formal models, as each litigant's litigation costs increase relative to their home state status.

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[116]   *Id.*

[117]   The monetary figures presented here are purely for illustrative purposes. However, the underlying assumption that out-of-state litigation is, on average, more expensive than in-state litigation is one that we believe to be valid. So long as out-of-state litigation is more expensive than in-state litigation, the relative differences between the plaintiff's asking price and the defendant's bidding price will parallel the findings in Table 1, although the precise differences may vary depending on the actual cost increase of out-of-state litigation. Litigators could insert their own estimates into the Priest and Kline equation to estimate asking and bidding prices.

Table 1: Hypothetical Asking and Bidding Price, by Home State Status

	Both Plaintiff and Defendant Home State Litigants	Only Plaintiff Out-of-State Litigant	Only Defendant Out-of-State Litigant	Both Plaintiff and Defendant Out-of-State Litigants
Asking Price (Plaintiff)	$200,000	$150,000	$200,000	$150,000
Bidding Price (Defendant)	$300,000	$300,000	$350,000	$350,000

In this example, $A < B$ in each scenario, and therefore the case should be likely to settle. And, as litigation costs increase due to a litigant's home state or out-of-state status, that affects both the asking price and the bidding price. The asking price decreases with out-of-state plaintiffs, and the bidding price increases with out-of-state defendants.

Given the assumptions of the Priest and Kline model, diversity jurisdiction cases, in general, should be more likely to settle relative to other cases where, on average, litigants are both from the same state. However, when all litigants are out-of-state litigants, this model predicts a greater likelihood of settlement due to increased litigation costs, on average, for all parties.

III. HYPOTHESES AND DESCRIPTIVE STATISTICS

A. Hypotheses

The empirical analysis presented here assesses two types of outcomes in diversity jurisdiction cases: settlements and verdicts. If a home state or local bias influences the decision-making on the part of legal actors, we should observe a statistical relationship between diversity jurisdiction cases (in general and relative to other types of federal cases) and case settlement. Furthermore, one should also expect that cases with home state litigants are more likely to settle than those with out of state litigants. But, as noted in the literature review, there are alternative extralegal explanations for case outcomes—litigation costs and litigant resources. Thus, there should be a statistical relationship between litigant status as a corporation or foreign government (i.e., litigants that are well-resourced, on average, and likely to be repeat players in the judicial system). However, it is not clear whether these litigants should be more or less likely to settle. On one hand, one could argue that they, particularly corporations, are more likely to settle and resolve cases quickly as part of the "cost of doing business"

within a given industry. On the other hand, as well-resourced litigants, they may be less likely to settle and instead press on with litigation in hopes of resolving the case in some other manner (e.g., a verdict, procedural dismissal, judgment as a matter of law, etc.).[118] In addition, the formal model predictions of Priest and Kline, as evidenced in Table 1, provides a contrary hypothesis to assess. Specifically, under that framework, there will be a relationship between out-of-state litigant status and case settlement due to increased costs. As such, we offer the following hypotheses regarding case settlement to assess the relative influence of home state or local bias and litigation costs/litigant resources:

H_1:	Diversity jurisdiction cases will be more likely to settle than non-diversity jurisdiction cases.
H_2:	Diversity jurisdiction cases involving a home state litigant will be more likely to settle than other diversity jurisdiction cases.
H_3:	Diversity jurisdiction cases involving all out-of-state litigants will be more likely to settle than other diversity jurisdiction cases.
H_4:	There will be a statistical relationship between litigant resources (i.e., corporate or foreign government status) and case settlement.

Hypotheses 1 through 3 are directional in nature, specifying how the status of one variable influences change in another. Hypothesis 4, however, is non-directional and only seeks to test a statistical relationship. While the influence of home state bias and litigation costs/resources are not necessarily in conflict in the sense that both could explain case settlement, these hypotheses—particularly Hypotheses 2 and 3—allow for a direct comparison as to which extralegal consideration (if any) may better explain case settlement outcomes.

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[118]   It is entirely plausible that the decision to settle also is related to the amount of damages or type of relief that is sought. Unfortunately, due to coding inconsistencies within the IDB, we did not have access to reliable data on the amount of damages or type of relief demanded by the plaintiff. For more information, see the IDB codebook. FED. JUD. CTR., *IDB Codebook*, *supra* note 8.

With regard to case verdict outcomes, given the preceding discussion, one may expect a statistical relationship between home state status and judgment for the plaintiff. In addition, given litigation costs/litigation resources, there may also be a statistical relationship between those litigants with significant resources (corporations and foreign governments) and judgment for the plaintiff. Specifically, we posit the following:

H_5:   Diversity jurisdiction cases in which a home state litigant is the plaintiff (defendant) will be more likely to result in a judgment for the plaintiff (defendant).

H_6:   Diversity jurisdiction cases in which a well-resourced litigant (i.e., a corporation or foreign government) is the plaintiff (defendant), will be more likely to result in a judgment for the plaintiff (defendant).

B. Descriptive Statistics

To test these hypotheses, we relied upon data from the Federal Judicial Center's Integrated Database (IDB) of district court cases that were pending or terminated between 1988 and June 30, 2021.[119] This database is updated on a quarterly basis.[120] We relied on the database file downloaded in August 2021. As Table 2 details, there were a total of 9,382,885 case observations in this database. However, not all of these cases were resolved at the time of the file's download, resulting in a universe of 8,777,910 cases[121] that could be used for this analysis.[122] Because the primary dependent variables for this statistical analysis are case outcomes by settlement or by verdict (issued as the result of a bench trial or jury trial), we also have included the number and percentage of each type of case outcome in Table 3.

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[119]   FED. JUD. CTR., *IDB*, *supra* note 7.

[120]   *The Integrated Database: A Research Guide*, FED. JUD. CTR., https://www.fjc.gov/sites/default/files/IDB-Research-Guide.pdf (last visited Oct. 14, 2022).

[121]   These cases will serve as the basis for further statistical calculation (i.e., it will serve as the denominator for percentages), unless otherwise noted.

[122]   Specifically, there were 604,975 cases (or 6.45% of all observations) for which a disposition was missing because the case was still pending.

Table 2: IDB Descriptive Statistics, 1988–2021

Description	N	% of All Cases	% of Terminated Cases
Total Cases in IDB Database (as of August 2021)	9,382,885	100%	-----
Cases Completed/Terminated	8,777,910	93.55%	100%
Diversity Cases Completed/Terminated	2,363,223	25.18%	26.92%
Settled Cases	*980,939*	*10.45%*	*11.17%*
Verdict Cases (Bench or Jury)	*41,898*	*0.44%*	*0.47%*
Diversity Cases Completed/Terminated with Home State Litigants	1,574,923	16.78%	17.94%
Settled Cases	*556,524*	*5.93%*	*6.34%*
Verdict Cases (Bench or Jury)	*35,987*	*0.38%*	*0.40%*

Note: Verdicts only include those cases that resulted in a ruling for the plaintiff or defendant, as coded in the IDB.

The IDB includes a wide array of variables, primarily based upon cover sheets submitted to the U.S. district courts when initiating a lawsuit.[123] Given the breadth of data contained in the IDB, it is important to provide some descriptive information for context. The IDB includes a variable noting whether a given case was a diversity jurisdiction case.[124] Approximately 27% of cases in the database (N = 2,363,223) involved diversity of citizenship jurisdiction. However, for the purpose of this descriptive analysis, we limit the sample to those cases that involve a home state litigant.[125] As noted in Table 3, this results in 1,574,923 case observations between 1988 and 2021. Of these nearly 1.6 million cases,

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[123] As Professors Eisenberg and Schlanger note:

> For cases with counseled plaintiffs, the case category in the [Integrated Database] is generally based on the JS-44 Civil Cover Sheet, which plaintiffs' lawyers are required to fill out simultaneously with filings. The lawyers check off a simple description of the type of case (unlike in the bankruptcy face-sheet discussed above, which requires filers to complete the more complicated—and error prone—tasks of filling in amounts and summarizing various features of their cases). Pro se plaintiffs do not typically complete the civil cover sheet, and so in pro se cases usually the court clerks seem to fill in this variable based on their own understanding of a case's subject matter.

Theodore Eisenberg & Margo Schlanger, *The Reliability of the Administrative Office of the U.S. Courts Database: An Initial Empirical Analysis*, 78 Notre Dame L. Rev. 1455, 1463 (2003) (citations omitted).

[124] This is the variable "JURIS" within the IDB codebook, which stands for "jurisdiction." Fed. Jud. Ctr., *IDB Codebook*, *supra* note 8.

[125] Diversity cases may include parties where all litigants are out-of-state litigants because 28 U.S.C.A. § 1332(a)(1) only requires that, at least in the domestic context, litigants are "citizens of different States." 28 U.S.C.A. § 1332(a)(1) (West 2022).

home state litigants were plaintiffs in 70.38% of cases (N = 1,108,386) and the defendants in 29.62% of cases (N = 466,537). Thus, plaintiffs were most likely to be the home state litigants.

Table 3: Descriptive Statistics of Diversity Jurisdiction Cases

Description	N (% of Cases with Home State Litigants)
Home State Plaintiffs	1,108,386 (70.38%)
Home State Defendants	466,537 (29.62%)
Total	1,574,923

But the decision to litigate in federal court is not solely at the discretion of the plaintiff. Under 28 U.S.C. § 1441, a defendant (or defendants) could remove a case from state court to federal district court.[126] For this reason, it is important to understand the origin of diversity cases within the federal courts. Of the approximately 1.6 million diversity cases involving a home state litigant, 33.91% of cases (N = 534,104) were removed from state courts before proceedings in the federal courts.[127]

Given this descriptive information, it may be helpful to understand which types of cases are commonly filed under a federal court's diversity jurisdiction. Table 4 presents the ten most frequently filed cases, based upon three categories of cases—all diversity jurisdiction cases, diversity cases that resulted in a settlement, and diversity cases that resulted in verdict.

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[126] *Id.* § 1441. It is also important to note that, under 28 U.S.C.A § 1441(b)(2), a case "may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought." *Id.* § 1441(b)(2).

[127] Of all diversity cases involving a home state litigant, 55.26% of cases (N = 870,338) were original actions in the U.S. district courts. The remaining cases (N=170,481) include those that were re-opened, transferred from another jurisdiction, an appeal from a magistrate, multi-district litigation, among other categories. The variable "ORIGIN" in the IDB codebook contains the full classification scheme for this variable. Fed. Jud. Ctr., *IDB Codebook*, *supra* note 8.

***Table 4: Ten Most Common Diversity Jurisdiction Disputes
by Case Outcome, 1988–2021***

Rank	Diversity Cases, All Outcomes		Diversity Cases, Settled		Diversity Cases, Verdicts	
	Nature of Dispute	*Cases, N (% of All Outcomes)*	*Nature of Dispute*	*Cases, N (% of Settled Cases)*	*Nature of Dispute*	*Cases, N (% of Cases with a Verdict)*
1	Contract Actions (Other)	385,946 (24.50%)	Contract Actions (Other)	136,768 (24.57%)	Contract Actions (Other)	9,233 (25.65%)
2	Insurance	227,507 (14.44%)	Insurance	100,165 (18.00%)	Personal Injury (Other)	7,092 (19.70%)
3	Personal Injury (Product Liability)	217,967 (13.84%)	Personal Injury (Other)	75,595 (13.58%)	Insurance	4,610 (12.81%)
4	Personal Injury (Other)	181,614 (11.53%)	Personal Injury (Motor Vehicle)	60,138 (10.81%)	Personal Injury (Motor Vehicle)	4,337 (12.05%)
5	Personal Injury (Motor Vehicle)	111,883 (7.10%)	Personal Injury (Product Liability)	54,770 (9.84%)	Personal Injury (Product Liability)	3,337 (9.27%)
6	Personal Injury (Asbestos)	87,756 (5.57%)	Asbestos Personal Injury (Products Liability)	23,315 (4.19%)	Medical Malpractice	1,665 (4.63%)
7	Foreclosure	60,054 (3.81%)	Health Care / Pharmaceutical	10,820 (1.94%)	Fraud (Other)	769 (2.14%)
8	Healthcare / Pharmaceutical	40,994 (2.60%)	Civil Rights (Jobs / Employment)	10,559 (1.90%)	Personal Property Damage (Other)	614 (1.71%)
9	Fraud (Other)	35,735 (2.27%)	Personal Property Damage (Other)	8,675 (1.56%)	Motor Vehicle Products Liability	499 (1.39%)
10	Civil Rights (Jobs / Employment)	24,409 (1.55%)	Medical Malpractice	7,447 (1.34%)	Asbestos Personal Injury (Products Liability)	417 (1.16%)

These categories of disputes are based upon the "nature of suit" codes within the IDB database. Regardless of the case outcome, there is much overlap in the types of disputes courts are asked to resolve as part of their diversity jurisdiction. For example, contract disputes are the most common actions across these three categories. There is some variation in the ranking for the subsequent categories of disputes, but generally, insurance claims and personal injury cases are quite common. Therefore, it does not appear that there are significant differences in the nature of suits that are litigated in general, settled, or result in a verdict.

IV. RESEARCH METHODS AND RESULTS

Given the breadth of information contained in the IDB, we proceed first by testing hypotheses relating to case settlements, then case verdicts. These variables will serve as the dependent variables for this analysis. They are coded in a binary manner, such that for case settlements 0 = Case Not Settled and 1 = Case Settled, while the case verdict variable is coded such that 0 = Judgment for the Defendant and 1 = Judgment for the Plaintiff.

For each type of analysis, we begin with a series of t-tests to evaluate bivariate relationships between different variables of interest and the dependent variable, which also provides additional context with more descriptive statistics. However, there may be other factors that influence case outcomes and might mediate these relationships (e.g., the nature of the suit, the circuit in which the case was filed, the year in which the case was decided, etc.). For that reason, it is necessary to estimate a series of logistic regression models to predict case settlements and case verdicts. While the t-test analysis sometimes requires limiting the sample of cases (e.g., in some analysis only examining cases that involve a home state litigant), the regression analysis relies on all diversity jurisdiction cases that were terminated (i.e., those cases that involve a home state litigant and those cases where all parties are out-of-state litigants). We now proceed to discuss the t-tests of settlement cases.

A. *T-Tests of Settlement Outcomes*

In Table 5, we present T-Test #1 and #2. The first t-test assesses whether there is a statistically significant difference between diversity jurisdiction cases and all other civil cases decided by the U.S. district courts in the IDB database for the period of analysis, with regard to case settlement. In other words, this tests whether the rate at which diversity cases settle is statistically different than other cases. As T-Test #1 indicates, diversity jurisdiction cases are much more likely to settle compared to other federal cases. Here, 41.50% of all diversity cases resulted in a settlement, versus 19.49% of other cases. This difference is statistically significant at the $p < 0.001$ level. At first glance, this finding provides *some* evidence in support of both the home state bias hypotheses and the

litigation costs/litigant resources hypotheses. After all, most diversity cases involve a home-state litigant, and presumably, on average, diversity cases are more expensive to litigate for the out-of-state party.

However, there is a different pattern beginning to emerge when considering T-Test #2. Here, the results indicate that cases with all out-of-state parties are most likely to settle a case (53.83% of the time) relative to diversity cases that involve a home-state litigant (35.33% of cases). This 18.50% difference is statistically significant at $p < 0.001$. While this is admittedly a basic analysis, it does provide support for Hypothesis 3, consistent with the expectations of the Priest and Kline formal model. In other words, when all parties are out-of-state litigants, the data presented in Table 5 suggests that these parties will be more likely to settle.

Table 5: T-Tests of Settlement Outcomes by Case Type

Statistics	T-Test #1: Diversity vs. Other Cases		T-Test #2: Diversity Cases Only	
	All Diversity Jurisdiction Cases	*All Other Cases*	*Diversity Cases with Home State Litigant*	*Diversity Cases with All Out-of-State Litigants*
Number of Cases Settled	980,939 out of 2,363,223 cases	1,250,559 out of 6,414,687 cases	556,524 out of 1,574,923 cases	424,415 out of 788,300 cases
Percentage of Cases Settled	41.50%	19.49%	35.33%	53.83%
Difference in Percent	22.01%		18.50%	
P-Value	p < 0.001		p < 0.001	

Table 6 builds upon the t-tests in Table 5 by assessing how the type of home state litigant is related to case settlement outcomes. Specifically, these t-tests proceed to test the rate of settlement when a home state litigant is the plaintiff versus cases with all out-of-state litigants (T-Test #1), cases where a home-state litigant is the defendant versus all out-of-state litigant cases (T-Test #2), and comparing cases in which the home-state litigant is the plaintiffs versus cases where the home-state litigant is the defendant (T-Test #3). T-Tests #1 and #2 both result in a higher rate of case settlement when cases involve all out-of-state litigants. Therefore, it seems that the rate of settlement is not substantively different whether the home-state litigant is the plaintiff or defendant, at least in relation to those cases where all litigants are from out-of-state. The differences are statistically significant at $p < 0.001$. This, again, lends supports for Hypothesis 3 and the expectations of the Priest and Kline formal model (i.e., when all parties are out-of-state litigants, they are more likely to settle). But when comparing those cases that involve a home-state litigant (either as a plaintiff or defendant), cases in which the home-state litigant is the plaintiff are slightly more likely to settle relative to cases where the home-state litigant is the defendant (36.20%

versus 33.27%, respectively). This finding also is statistically significant at p < 0.001.

Table 6: T-Tests of Settlement Outcomes by Home State Litigant Type

Statistics	T-Test #1: All Diversity Cases		T-Test #2: All Diversity Cases		T-Test #3: All Diversity Cases	
	Home State Plaintiff vs. Out of State Defendant	*All Out-of-State Litigants*	*Out of State Plaintiff vs. Home State Defendant*	*All Out-Of-State Litigants*	*Home State Plaintiff vs. Out of State Defendant*	*Out of State Plaintiff vs. Home State Defendant*
Number of Cases Settled	401,287 out of 1,108,386 cases	424,415 out of 788,300 cases	155,237 out of 466,537 cases	424,415 out of 788,300 cases	401,287 out of 1,108,386 cases	155,237 out of 466,537 cases
Percentage of Cases Settled	36.20%	53.83%	33.27%	53.83%	36.20%	33.27%
Difference in Percent	17.63%		20.56%		2.93%	
P-Value	p < 0.001		p < 0.001		p < 0.001	

The final set of t-tests for case settlements, presented in Table 7, seeks to address the relationship specified in Hypothesis 4—that status as a well-resourced litigant is statistically related to case settlement outcomes. Specifically, these t-tests assess the rate of settlement when a corporate litigant or a foreign government faces an individual. On average, corporate litigants or foreign governments should have more resources than individuals, which permits this basic test of Hypothesis 4. As indicated in T-Test #1, when a diversity case involves a corporate litigant versus an individual litigant (regardless of whether either party is the plaintiff or defendant), there is a 43.42% rate of settlement relative to other diversity cases, which settle in 37.04% of cases. This difference is statistically significant at p < 0.001. However, when a foreign government litigates against an individual, as indicated in T-Test #2, the rate of settlement is 30.75%. This is more than six percentage-points lower than the rate of settlement in other cases. Again, the difference is statistically significant at p < 0.001. In T-Test #3, we provide a direct comparison of rates of settlement for cases where corporate litigants face individual litigants and cases in which a foreign government litigates against an individual. The rates at which corporate litigants and foreign governments settle cases (43.42% and 30.75%, respectively) are statistically distinguishable from each other at p < 0.001. This provides evidence that there is a statistical relationship between litigant type and settlement outcome consistent with the non-directional nature of Hypothesis 4, but it is interesting to note that the rate of settlement for foreign governments is markedly lower compared to those diversity jurisdiction cases involving corporate

litigants. Perhaps it is the case that foreign governments are more likely to litigate a case until and if they receive a satisfactory outcome.

Table 7: T-Tests of Settlement Outcomes
by Corporate and Foreign Government Litigant

Statistics	T-Test #1: All Diversity Cases		T-Test #2: All Diversity Cases		T-Test #3: All Diversity Cases	
	Corporate Litigant vs. Individual Litigant	*Other Cases*	*Foreign Government vs. Individual Litigant*	*Other Cases*	*Corporate Litigant vs. Individual Litigant*	*Foreign Government vs. Individual Litigant*
Number of Cases Settled	721,966 out of 1,662,414 cases	255,887 out of 690,776 cases	3,077 out of 10,006 cases	255,887 out of 690,776 cases	721,966 out of 1,662,414 cases	3,077 out of 10,006 cases
Percentage of Cases Settled	43.42%	37.04%	30.75%	37.04%	43.42%	30.75%
Difference in Percent	6.38%		6.29%		12.67%	
P-Value	$p < 0.001$		$p < 0.001$		$p < 0.001$	

Note: The category of "Other Cases" in this table refers to those cases that are not included in the categories "Corporate Litigant vs. Individual Litigant" or "Foreign Government vs. Individual Litigant." This ensures that the "Other Cases" category is not biased due to the inclusion of cases that are subject to direct comparison in previous t-tests.

Taken as a whole, the t-tests presented in this section provide more evidence that the cost of litigation and litigant resources are more strongly related to case settlement outcomes than a litigant's home state status. While t-tests provide additional descriptive information and a simplistic bivariate test of statistical relationships, they cannot account for the influence of other variables that may explain variation in case outcomes. For that reason, in the next section we employ a logistic regression analysis to model case settlement outcomes.

B. *Logistic Regression Models of Case Settlement Outcomes*

Using all cases in the IDB database that were terminated between 1988 and 2021, we estimate the first series of logistic regression (logit) models. The first analysis parallels the first t-test analysis, where we seek to test the relationship between case settlement outcomes and the type of jurisdiction exercised in the federal courts. Given that a variety of legal considerations can influence case outcomes, we rely on as many variables as practical in the IDB database to control for the effects of different areas of the law (i.e., the nature of suit variable in the IDB database), the circuit in which the district court is located, and the year in which the cases were terminated. By including these variables in

the statistical models, they should account, at some level, for the unique precedents and law applicable within each area of law, within each circuit, and any changes in the law over time. Admittedly, this is an imperfect way of accounting for legal considerations, but this approach makes the best use of the data that is reliable in the IDB.[128] For ease of presentation, we omit the control variables from the logit model statistical tables and instead only present the key independent variables that are of concern for each analysis.[129] The first logit model can be expressed formally as follows:

$$Case\ Settlement = \beta_0 + \beta_1\ U.S.Government\ as\ Defendant\ +$$
$$\beta_2\ Federal\ Question + \beta_3 Diversity\ of\ Citizenship\ \beta_4\ Local\ Question +$$
$$\beta_5\ Nature\ of\ Suit_n + \beta_6 Circuit_c + \beta_7 Year_t + \varepsilon$$

The first four independent variables are binary classification (0 = No; 1 = Yes) for each type of jurisdiction in the IDB. However, the variable U.S. government as plaintiff is omitted because that is the baseline category against which all the other independent variables will be compared. The nature of suit variable subscript n accounts for each of the 110 variable codes in the IDB, while the subscript c for the circuit variable accounts for each of the 11 numbered circuits in the United States plus the District of Columbia Circuit, and subscript t accounts for each year from 1988 through 2021 in which a case was terminated.

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[128]   Specifically, each nature of suit variable is treated as a separate binary "dummy" variable (coded as 0 = No or 1 = Yes) to reflect whether a case was filed in a given nature of suit category on the civil suit cover sheet. The same coding scheme is used for the circuit and year variables—each circuit and year is treated as a binary variable (0 = No and 1 = Yes).

[129]   Each logit model estimated in this article includes more than 100 control variables, which accounts for each nature of suit variable, circuit in which the case was heard, and the year in which the case was terminated.

Table 8 presents the results of the logit model.

Table 8: Models of Case Settlement, All Civil Cases Terminated 1988–2021

Variable	Model 1
Jurisdiction: U.S. Gov. as Defendant	0.371***
(0=No; 1=Yes)	(0.007)
Jurisdiction: Federal Question	0.606***
(0=No; 1=Yes)	(0.006)
Jurisdiction: Diversity of Citizenship	1.075***
(0=No; 1=Yes)	(0.006)
Jurisdiction: Local Question	-0.306***
(0=No; 1=Yes)	(.033)
Constant	-2.733***
	(0.013)
N	8,777,304
Percent Correctly Predicted	76.17%
Reduction in Error	6.27%

Note: Control variables omitted for brevity. These variables are binary estimates for each nature of suit code (0=No; 1=Yes); binary estimates for each circuit in which a given case was heard (0=No; 1=Yes), and binary estimates for each year that a given case was terminated (No=0; 1=Yes). The baseline (excluded) estimate for jurisdiction variables are cases in which the federal government is a plaintiff. Standard errors in parentheses. Two-tailed test of statistical significance: * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$.

Each of the four independent variables in Table 8 relating to the type of federal jurisdiction attain statistical significance at the $p < 0.001$ level. However, given that it is difficult to ascertain the substantive effects of variables in a logit model, we estimated predicted probabilities for each of the jurisdictions noted in the IDB database. These predicted probabilities are presented in Figure 1.

Figure 1: Probability of Settlement, All Civil Cases Terminated 1988–2021
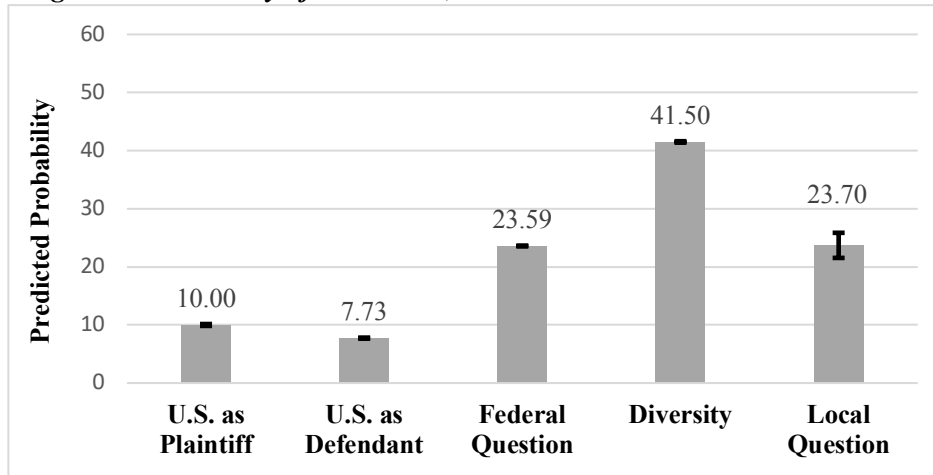
The predicted probabilities in Figure 1 were estimated using the Margins command in Stata.[130] Each estimate includes a 95% confidence interval. However, the confidence intervals for the first four jurisdiction categories are very small and barely visible in Figure 1, while the local question estimate provides a wider range.

The estimates indicate some variation in case settlement, after accounting for the control variables from Model 1 in Table 8. However, consistent with the t-test analysis in Table 5, there is a 41.50% probability of case settlement in the diversity of citizenship jurisdiction category. This is markedly higher than any of the other jurisdiction categories. Thus, diversity jurisdiction cases are the most likely to settle relative to other types of civil cases litigated in the U.S. district courts.

While this model is informative at a broad level, it does not provide enough information to squarely address Hypotheses 1 to 4. For that reason, we estimate an additional six logit models in Table 9. A formal example of one of these models, Model 4, is presented below:

$$Case\ Settlement = \beta_0 + \beta_1\ Removed\ Case\ +$$
$$\beta_2\ Home\ State\ Litigant\ Case + \beta_3 Corporate\ Litigant +$$
$$\beta_4\ Individual\ Litigant + \ \beta_5\ Nature\ of\ Suit_n + \beta_6 Circuit_c + \ \beta_7 Year_t +$$
$$\varepsilon$$

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[130]   *Margins*, Stata, https://www.stata.com/manuals/rmargins.pdf (last visited Oct. 5, 2022).

   Each of the independent variables of interest in these models are coded as binary measures, denoting whether the case was removed from state court, and various measures of litigant status.

   Every independent variable reported in Table 9 attains statistical significance at the $p < 0.001$ level. A few general observations can be made regarding the models presented in this table. First, regarding the removal of cases from state court, when no other variables are considered, diversity cases that are removed from state courts are less likely to settle. However, when accounting for other independent variables, the sign of the variable's coefficient changes and becomes positive, indicating that a case is more likely to settle. In other words, the probability that a removed case will settle is heavily dependent on other factors.

   Regarding home-state litigant status, a generic home-state litigant (without regard to them being a corporation or individual) results in a diminished likelihood of settlement. In addition, corporate litigants are more likely to settle (in general), while individual litigants are not. Turning to what we term the resource imbalance model, which assesses the influence of corporations and foreign governments, the results are consistent with the t-tests presented in the previous section. Corporate litigants are more likely to settle a case when litigating against an individual, but foreign governments are less likely to settle. But when examining the final two models in Table 9, whenever home state status is attached to any type of litigant (corporate, individual, plaintiff, or defendant) they are less likely to settle a case. One must remember that this finding is in relation to diversity of citizenship cases where all parties are out-of-state.

   To better understand the substantive effects of these results, we estimate predicted probabilities in Figure 2. We relied on the Type of Home State Litigant model to estimate these predicted probabilities because that model resulted in the greatest percentage of correctly predicted outcomes and the greatest reduction in error.

Table 9: Models of Case Settlement, Diversity Jurisdiction Cases Only

Variable	Model 1: Removal	Model 2: Home-State Litigant	Model 3: Corporate and Individual Litigants	Model 4: Resource Imbalance	Model 5: Type of Home-State Litigant	Model 6: Home-State Plaintiffs and Defendants
Removed Case (0=No; 1=Yes)	-0.046*** (0.003)	0.040*** (-.003)	0.037*** (0.003)	0.037*** (0.003)	0.043*** (0.003)	0.014*** (0.003)
Home-State Litigant (0=No; 1=Yes)	——	-0.570*** (0.003)	-0.561*** (0.003)	-0.567*** (0.003)	——	——
Corporate Litigant (0=No; 1=Yes)	——	——	0.089*** (0.004)	——	——	——
Individual Litigant (0=No; 1=Yes)	——	——	-0.072*** (0.005)	——	——	——
Corporate Litigant vs. Individual Litigant (0=No; 1=Yes)	——	——	——	0.028*** (0.003)	0.033*** (0.003)	0.026*** (0.003)
Foreign Government Litigant vs. Individual Litigant (0=No; 1=Yes)	——	——	——	-0.235*** (0.023)	-0.221*** (0.023)	-0.243*** (0.023)
Corporate Home-State Litigant (0=No; 1=Yes)	——	——	——	——	-0.530*** (0.003)	
Individual Home-State Litigant (0=No; 1=Yes)	——	——	——	——	-0.582*** (0.003)	
Plaintiff Home-State (0=No; 1=Yes)	——	——	——	——	——	-0.543*** (0.003)
Defendant Home-State (0=No; 1=Yes)	——	——	——	——	——	-0.618*** (0.004)
Constant	-1.661*** (0.021)	-1.255*** (0.021)	-1.253*** (0.022)	-1.266*** (0.021)	-1.272*** (0.021)	-1.252*** (0.021)
N	2,363,091	2,363,091	2,363,064	2,363,064	2,363,064	2,363,064
Percent Correctly Predicted	66.33%	66.27%	66.29%	66.30%	66.51%	66.33%
Reduction in Error	18.89%	18.75%	18.80%	18.82%	19.31%	18.90%

Note: Control variables omitted for brevity. These variables are binary estimates for each nature of suit code (0=No; 1=Yes); binary estimates for each circuit in which a given case was heard (0=No; 1=Yes), and binary estimates for each year that a given case was terminated (No=0; 1=Yes). The baseline (excluded) estimate for jurisdiction variables are cases in which the federal government is a plaintiff. Standard errors in parentheses. Two-tailed test of statistical significance: * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$.

        While the results for all estimates in Figure 2 are statistically significant at $p < 0.001$, there is little substantive difference between corporate or home-state litigants and their settlement probability. However, when there is no home-state litigant (i.e., all litigants are out-of-state), the probability of settlement is 53.84%. Again, assuming out-of-state litigants have a higher cost of litigation, this finding comports with the expectations of the Priest and Kline formal model.

***Figure 2: Predicted Probability of Settlement Outcome,
Type of Home-State Litigant Model***
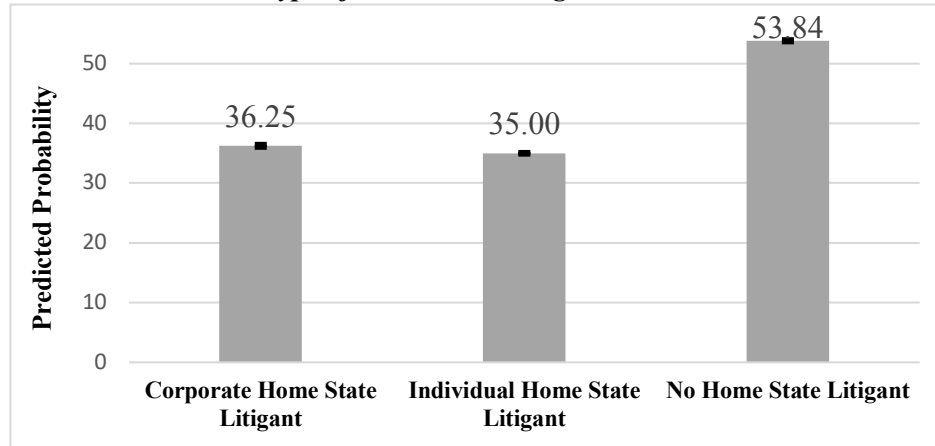
Based upon the results presented here, there is support for Hypothesis 1—that diversity jurisdiction cases will be more likely to settle than other cases. However, there is no support for Hypothesis 2 (that diversity jurisdiction cases will be more likely to settle with the presence of a home-state litigant). The results of Table 9 and Figure 2 both present evidence to support Hypothesis 3— that cases involving out-of-state litigants will be more likely to settle. Finally, there is evidence to support the non-directional Hypothesis 4—that there is a statistical relationship between well-resourced litigants and case settlements. Interestingly, the findings for corporations and foreign governments are not in the same direction. That is, corporations are generally more likely to settle a diversity jurisdiction case, while foreign governments are not.

To test Hypotheses 5 and 6, we now estimate a series of t-tests and logistic regression models to assess verdict outcomes in diversity cases.

C. T-Tests of Verdict Outcomes

The analysis presented here for case verdicts is necessarily different from the analysis regarding case settlements because what the variables measure is substantively different. Consider the settlement variable. Normally when parties settle a case, who received the better deal or could be said to have "won" is often unknowable. This is also true to in the IDB database. There is not systematic evidence to say that one party versus another received a more favorable outcome in the settlement. Thus, the dependent variable only measures whether the case was settled.

This stands in contrast to the verdict outcome variable. Regarding verdicts, it is clear if a party won or lost a case. This substantive difference in variables necessarily means that the t-tests and logit models presented in this section and the following section will vary slightly from the preceding analysis.

As such, the analysis that follows is most concerned with home-state status and litigant status as associated with the plaintiff/defendant. In addition, we limit the sample of cases in this analysis to only include those that resulted in a judgment for the plaintiff or defendant. While this is a substantially smaller sample when compared to the settlement analysis, there are still tens of thousands of observations in each test that we estimate.[131]

We begin this section's t-test analysis by comparing plaintiff verdict outcomes in cases involving home-state plaintiffs, all out-of-state litigants, and home-state defendants. Table 10 presents three different t-test estimates. The first t-test shows that when a home-state litigant is the plaintiff, they are likely to win 50.26% of the time. When compared to those situations where all parties are out-of-state, the plaintiff wins in 54.18% of cases. This difference of 3.92% is statistically significant at p < 0.001. But when examining those cases where the home-state litigant is the defendant, there is not a statistically distinguishable difference between home-state defendants (judgment for plaintiff in 54.33% of cases) and when all parties are out-of-state (54.18%). The p-value for this test is p = 0.855. But when directly comparing the two groups of cases—those with home-state plaintiffs and those with home-state defendants—there is a statistically distinguishable difference at the p < 0.001 level. However, while home-state plaintiffs are slightly more likely to win their case (50.26% of the time), home-state defendants are slightly more likely to lose their case (plaintiffs win in 54.33% of the time—or put different, home-state defendants win 45.67% of the time). This does not present strong evidence in support of Hypothesis 5. If home-state status were to substantively affect case outcomes, home-state plaintiffs should win more often relative to cases involving out-of-state litigants, and home-state defendants should be statistically more likely to win their cases compared with out-of-state litigants. But that is not the case in Table 10. The results here provide little support of a systematic home state advantage in the context of U.S. district court litigation.

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[131]   However, we do not assess the influence of foreign governments in the verdict analysis because of the relatively small number of cases. Instead, these cases will be used as the baseline for comparison in the logistic regression analysis presented in the next section.

Table 10: T-Tests of Case Verdict (Plaintiff Judgment)
by Home-State Litigant

Statistics	T-Test #1: All Diversity Cases		T-Test #2: All Diversity Cases		T-Test #3: Home State Litigant Cases Only	
	Home State Plaintiff vs. Out of State Defendant	*All Out-of-State Litigants*	*Out of State Plaintiff vs. Home State Defendant*	*All Out-of-State Litigants*	*Home State Plaintiff vs. Out of State Defendant*	*Out of State Plaintiff vs. Home State Defendant*
Number of Cases with a Judgment for the Plaintiff	12,561 out of 24,990 cases	3,203 out of 5,911 cases	5,975 out of 10,997 cases	3,203 out of 5,911 cases	12,561 out of 24,990 cases	5,975 out of 10,997 cases
Percentage of Cases with a Judgment for the Plaintiff	50.26%	54.18%	54.33%	54.18%	50.26%	54.33%
Difference in Percent	3.92%		0.15%		4.07%	
P-Value	p < 0.001		p = 0.855		p < 0.001	

To help assess Hypothesis 6—that well-resourced litigants will be more likely to prevail—Table 11 assesses outcomes for corporate plaintiffs/defendants, while Table 12 assesses outcomes for individual plaintiffs/defendants. It is immediately apparent that corporate litigants are, on average, successful when they appear as a party in a case. When corporations are plaintiffs, courts render a verdict for the plaintiff in 63% of cases. And when corporations are defendants, a judgment for the plaintiff occurs in 49.66% of cases (in other words, corporate defendants win in 50.34% of cases). Although corporations are most likely to win as a plaintiff, they are, on average, successful in their cases, more often than not, regardless of whether they appear as the plaintiff or defendant. These findings are all statistically significant at p < 0.001. These t-test findings are evidence in support of Hypothesis 6.[132]

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[132] Due to data availability issues, it is not feasible to measure damages awarded. While a verdict in favor of a litigant may be titled a "winning result," if this is accompanied by nominal damages, that may not be a decisive "win" relative to other cases with significant monetary damages. However, for the sake of this study, the empirical analysis can only assess verdict outcomes and not damage awards.

Table 11: T-Tests of Case Verdict (Plaintiff Judgment) by Corporate Litigant

Statistics	T-Test #1: All Diversity Cases		T-Test #2: All Diversity Cases		T-Test #3: Corporate Litigant Cases Only	
	Corporate Plaintiff	*Other Cases*	*Corporate Defendant*	*Other Cases*	*Corporate Plaintiff*	*Corporate Defendant*
Number of Cases with a Judgment for the Plaintiff	5,075 out of 8,055 cases	16,607 out of 33,735 cases	11,943 out of 24,051 cases	9,739 out of 17,739 cases	5,075 out of 8,055 cases	11,943 out of 24,051 cases
Percentage of Cases with a Judgment for the Plaintiff	63.00%	49.22%	49.66%	54.90%	63.00%	49.66%
Difference in Percent	13.78%		5.24%		13.34%	
P-Value	p < 0.001		p < 0.001		p < 0.001	

Turning to Table 12, one should expect individuals to have fewer resources for litigation compared to other types of litigants, especially corporate litigants. The t-test results here are a sharp contrast to those presented in Table 11. When an individual appears as a plaintiff, these litigants succeed on a verdict in 49% of cases. And when an individual is a defendant, the plaintiff wins in 54.34% of cases. And, as the final t-test in Table 12 helps to illustrate, individual litigants are, on average, not successful when a court issues a verdict. These findings are statistically significant at $p < 0.001$, and they lend additional support to Hypothesis 6. The t-test here suggests that the most well-resourced litigants are successful on average, while the least-resourced litigants are not successful on average.

But, like the preceding analysis of case settlement outcomes, it is necessary to further examine verdict outcomes using logistic regression analysis to better understand how other variables may influence diversity jurisdiction outcomes. That is the subject of the next section.

Table 12: T-Tests of Case Verdict (Plaintiff Judgment) by Individual Litigant

Statistics	T-Test #1: All Diversity Cases		T-Test #2: All Diversity Cases		T-Test #3: Individual Litigant Cases Only	
	Individual Plaintiff	*Other Cases*	*Individual Defendant*	*Other Cases*	*Individual Plaintiff*	*Individual Defendant*
Number of Cases with a Judgment for the Plaintiff	15,682 out of 32,004 cases	6,035 out of 9,852 cases	5,518 out of 10,154 cases	16,199 out of 31,702 cases	15,682 out of 32,004 cases	5,518 out of 10,154 cases
Percentage of Cases with a Judgment for the Plaintiff	49.00%	61.26%	54.34%	51.09%	49.00%	54.34%
Difference in Percent	12.26%		3.25%		5.34	
P-Value	p < 0.001		p < 0.001		p < 0.001	

D. *Logistic Regression Models of Case Verdict Outcomes*

The first logit model presented in this section mirrors the model presented in Table 8. However, the dependent variable in this model is a case verdict outcome (judgment for the plaintiff). Each of the four independent variables of interest attain statistical significance at $p < 0.001$. Relative to the baseline category where the U.S. government is the plaintiff, all other jurisdiction cases, except the cases arising under local question jurisdiction, result in a diminished likelihood of a verdict for the plaintiff. This model predicts outcomes in the dependent variable correctly 67.03% of the time and reduces the model's error by 21.53%.

Table 13: Models of Verdict for the Plaintiff, All Civil Cases Terminated 1988–2021

Variable	Model 1
Jurisdiction: U.S. Gov. as Defendant	-0.893***
	(0.050)
Jurisdiction: Federal Question	-0.658***
	(0.045)
Jurisdiction: Diversity of Citizenship	-0.734***
	(0.050)
Jurisdiction: Local Question	0.694**
	(.033)
Constant	1.218***
	(0.081)
N	129,014
Percent Correctly Predicted	67.03%
Reduction in Error	21.53%

Note: Control variables omitted for brevity. These variables are binary estimates for each nature of suit code (0=No; 1=Yes); binary estimates for each circuit in which a given case was heard (0=No; 1=Yes), and binary estimates for each year that a given case was terminated (No=0; 1=Yes). The baseline (excluded) estimate for jurisdiction variables are cases in which the federal government is a plaintiff. Standard errors in parentheses. Two-tailed test of statistical significance: * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$.

To better understand the substantive effect of these coefficient estimates, we again estimate the predicted probabilities of the dependent variables based upon the model in Table 13. Figure 3 shows that the probability of a judgment for the plaintiff in a diversity jurisdiction case that proceeds to a verdict is 51.88%. Local question cases have the greatest probability of a verdict for the plaintiff (77.14%). While the results here do not have a clear bearing on Hypothesis 5, they do provide some evidence in support of Hypothesis 6. Specifically, the United States government is, perhaps, the most well-resourced litigant in the federal courts. When the U.S. appears as the plaintiff, there is a 56.25% probability that the case will result in a judgment for the plaintiff. And when the U.S. is the defendant, there is a 40.64% probability that the plaintiff will win (put differently, there is a 59.36% probability that the federal government will win).

Figure 3: Probability of Verdict for the Plaintiff,
All Civil Cases Terminated 1988–2021
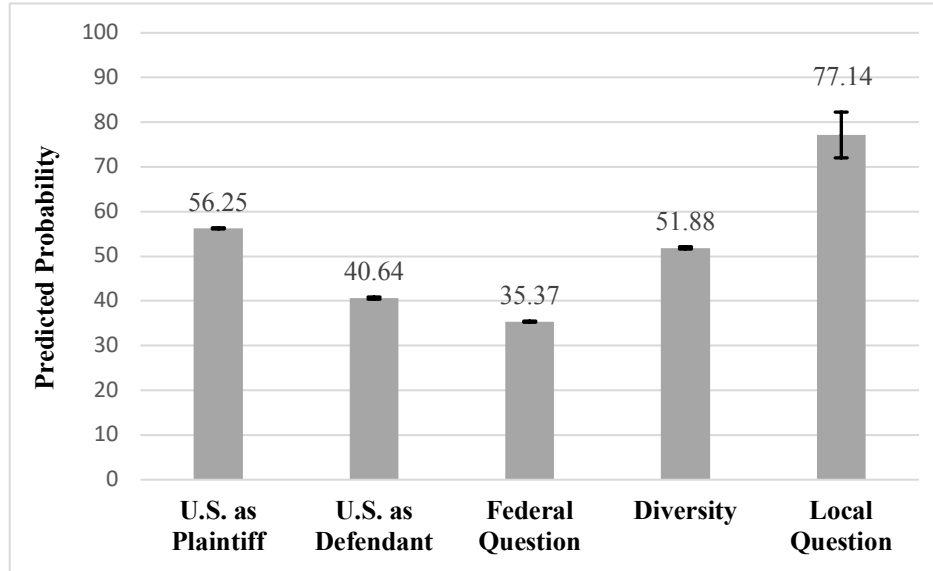
To better understand the potential influence of home state status and litigant resources, we next estimate three logit models in Table 14. The third model, which includes the most independent variables, can be expressed formally as follows:

Plaintiff Verdict $= \beta_0 + \beta_1$ *Removed Case* $+ \beta_2$ *Home State Plaintiff* $+$
β_3 *Home State Defendant* $+ \beta_4$ *Corporate Plaintiff* $+$
β_5 *Corporate Defendant* $+ \beta_6$ *Individual Plaintiff* $+ \beta_7$ *Individual Defendant* $+$
β_8 *Nature of Suit*$_n + \beta_9 Circuit_c + \beta_{10} Year_t + \varepsilon$

When examining the results of the models presented in Table 14 it is immediately apparent that the variables measuring home state status do not attain statistical significance. In other words, there is no evidence of a statistical relationship between home state status (either as a plaintiff or defendant) and a case's verdict. These findings do not support Hypothesis 5. However, there is, again, support for Hypothesis 6 based upon the results in the third model. When the plaintiff is a corporation, that increases the probability of a ruling for the plaintiff. Conversely, when the defendant is a corporation, the probability of ruling for the plaintiff decreases. These findings are statistically significant at p < 0.001. The only other variable to consistently attain statistical significance is the variable denoting whether the case was removed from state court. In each of the three models, when a case was removed from state courts, that decreased the likelihood

that the court would render a verdict for the plaintiff.[133] Again, this finding is statistically significant at $p < 0.001$.

Although Model 1 performs the best as measured by the percent correctly predicted and the reduction in error, we rely on Model 3 to estimate predicted probabilities since that model provides context for the substantive effect of corporate litigant status.

**Table 14: Models of Verdict for the Plaintiff, Diversity Cases Only**

Variable	Model 1: Removal	Model 2: Home State Litigant	Model 3: Corporate and Individual Litigants
Removed Case	-0.269***	-0.280***	-0.259***
(0=No; 1=Yes)	(0.023)	(0.024)	(0.025)
Home State Plaintiff	-----	0.006	-0.006
(0=No; 1=Yes)		(0.030)	(0.037)
Home State Defendant	-----	-0.028	-0.039
(0=No; 1=Yes)		(0.034)	(0.039)
Corporate Plaintiff	-----	-----	0.240***
(0=No; 1=Yes)			(0.071)
Corporate Defendant	-----	-----	-0.103***
(0=No; 1=Yes)			(0.031)
Individual Plaintiff	-----	-----	0.040
(0=No; 1=Yes)			(0.066)
Individual Defendant	-----	-----	-0.070
(0=No; 1=Yes)			(0.040)
Constant	0.627***	0.633***	0.611***
	(0.102)	(0.104)	(0.113)
N	41,879	41,879	41,732
Percent Correctly Predicted	62.34%	62.29%	62.32%
Reduction in Error	21.74%	21.64%	21.70%

Note: Control variables omitted for brevity. These variables are binary estimates for each nature of suit code (0=No; 1=Yes); binary estimates for each circuit in which a given case was heard (0=No; 1=Yes), and binary estimates for each year that a given case was terminated (No=0; 1=Yes). Standard errors in parentheses. Two-tailed test of statistical significance: * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$.

As Figure 4 indicates, the probability of a verdict for the plaintiff is 62.28% when a corporation is the plaintiff, and that decreases to 45.71% when the defendant is a corporation. These results can be compared to those cases where there is no corporate litigant (53.52% probability of a verdict for the plaintiff). These estimates provide additional evidence in support of Hypothesis 6—that well-resourced litigants are likely to prevail.

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[133] Based upon an unreported predicted probability analysis, the probability of a verdict for the plaintiff when a case was removed from state court is 45.36%. However, when the case originated in the federal courts, the probability of a verdict for the plaintiff is 54.79%.

***Figure 4: Predicted Probability of Verdict for Plaintiff,
Corporate and Individual Litigants Model***
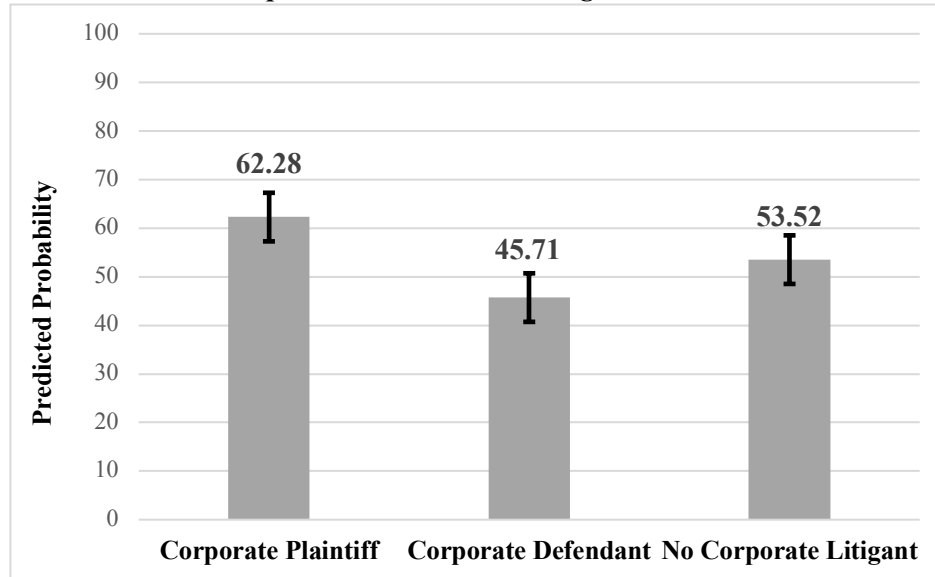
V.   DISCUSSION AND CONCLUSION

The empirical results presented in this article provide no substantive evidence that home state or local biases influence case settlements or verdicts. While diversity jurisdiction cases are more likely to settle than other types of cases in federal district courts (supporting Hypothesis 1), cases involving a home state litigant are not more likely to settle (rejecting Hypothesis 2). Instead, when all the parties are out-of-state litigants, and presumably litigation costs are higher, cases are more likely to settle (supporting Hypothesis 3). This outcome is consistent with the expectations of the Priest and Kline formal model of settlements.[134] And while there is evidence that litigant status, as a well-resourced litigant, influences settlement outcomes (support for Hypothesis 4), the directional effect is different for corporations and foreign governments. The presence of a corporate litigant results in an increased likelihood of settlement, while the presence of a foreign government litigant leads to a decreased likelihood of settlement. That is, the data suggests that foreign governments are more likely to continue litigating a case.

With regard to verdict outcomes for the plaintiff, again there is no substantive evidence to support the claim that home-state plaintiffs/defendants are more/less likely to win based upon the empirical findings presented in Table 14 (rejecting Hypothesis 5). But there is evidence that well-resourced litigants—

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[134]   *See* discussion *supra* Section II.C. and Table 1.

corporate litigants—are likely to prevail when a case proceeds to a verdict (supporting Hypothesis 6). In summary, it does not appear that home-state or local biases influence case settlements or verdicts based upon this analysis. However, there is empirical evidence that litigation costs and litigant resources do have bearing on the outcome of a case.

What are the implications of these findings? First, given the lack of support for home-state or local biases, home-state litigants and out-of-state litigants should assume that, on average, the federal courts will not treat litigants differently based upon their geographic identity.[135] Thus, if a litigant is unsure of whether to litigate in state court or federal court, these findings should provide assurance that they will not be systematically disadvantaged in federal district court. This analysis, however, does not and cannot address whether a litigant would be *advantaged* if they were to litigate in a state court. This is still an open question and one that is deserving of further research. After all, as noted in Section II.A, the argument that state courts would be biased against out-of-state litigants was one of the chief arguments in favor of granting diversity of citizenship jurisdiction to the federal courts. Litigators will need to determine for themselves whether it is best to litigate in state court or federal court, given this unknown information.

Second, litigators should be prepared to settle diversity jurisdiction cases, particularly those that involve all out-of-state litigants. The logistics and costs of litigating in a non-home venue can undoubtedly be a challenging and expensive endeavor for all parties involved. As such, many cases already resolve themselves through settlement rather than other procedural resolutions or decisions on the merits. Legal counsel should convey the complexities and potential costs to clients in helping to fashion a resolution that is acceptable to all parties.

Third, the findings here reinforce Professor Galanter's[136] expectations regarding well-resourced litigants and repeat players in the judicial system. More often than not, corporations win a case once it proceeds to a verdict. For litigators representing individuals or litigants that are not well-resourced, they should counsel their clients about the likelihood of success due to resource asymmetries. This is not to say that under-resourced litigants cannot and do not prevail—they certainly do. However, there simply is a greater likelihood that, based upon the data presented here, the well-resourced litigant will prevail.

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[135]   The empirical results presented here cannot say definitively why this is the case. One possible explanation is that Article III protections alleviate pressure on federal district court judges to favor home state litigants, because continued service in the U.S. district courts is not contingent upon pleasing voters or political officials who must re-appoint the judge. Alternatively, it may be the case that home state attachments are not salient considerations in the decision-making process. Such a determination should be the subject of future research.

[136]   *See generally* Galanter, *supra* note 99.

The results presented here will not be the final word on this matter. Indeed, there are numerous other avenues for future research regarding the potential for home-state or local biases. For example, this analysis only assessed diversity jurisdiction cases. It is unclear if cases that present a federal question and involve litigants from other states will result in similar findings. In addition, this research raises questions about the implications of removing a case from state court to federal court. In the context of case settlement, most of the models in Table 9 suggest that settlement is likely to occur once a case is removed. Perhaps removal elongates the litigation process, raising the potential costs of litigation, leading to an increased likelihood of settlement. Or, perhaps upon removal, a plaintiff may feel as though they have lost an "advantage" of litigating in state court, and therefore the next best strategic option is to settle. Certainly, these are plausible explanations, but they are ones that cannot be addressed given the limitations of this study. Understanding under what contexts litigants decide to settle in diversity jurisdiction cases is an area ripe for qualitative research, particularly interviews with attorneys and clients. Such information could provide insight as to the implications of removal on litigation strategy.

But in the context of case verdicts, removal from state courts had a different statistical effect. When evaluating verdicts, cases that were removed from state courts resulted in a decreased likelihood of a verdict for the plaintiff (in other words, there was an increased likelihood that the defendant would prevail).[137] Perhaps it is the case that if a defendant decides to remove a case from state court, they are more committed to litigating it and investing the resources to do so. Again, this is speculation and interviews with attorneys and clients could shed light on this finding.

It is also unclear whether certain federal district courts are more/less likely to engage in home-state biases. While this analysis examined federal courts in the aggregate and controlled for circuit effects (which accounts for some level of geographic variation), it does not preclude the possibility that some federal courts may be susceptible to such favoritism, or perhaps favoritism that is conditioned on a particular type of out-of-state litigant. For example, Professor Bumiller's survey findings of litigators suggests that there may be a rural bias instead of a general out-of-state bias.[138] As such, would an Alabama court be susceptible to home-state or local bias if the out-of-state litigant was from, say, New York City or Los Angeles? Exploring these specific regional variations are important to fully assess the potential influence (or lack thereof) of local bias in the federal courts.

And, of course, future research should seek to directly address the question of whether state courts are susceptible to local bias against out-of-state litigants. While there has been research on this matter through attorney surveys,

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[137]   *See supra* note 133.

[138]   Bumiller, *supra* note 82, at 762.

an empirical analysis along the lines of what is presented here should be completed. Furthermore, such a study should account for differences in judicial selection methods to assess whether, and to what extent, judges who are elected are more susceptible to local biases relative to other selection mechanisms.[139] If state courts truly do not disadvantage out-of-state litigants, not only would such a finding provide litigators with new information that could influence litigation strategy, but it would also raise important questions regarding the use of diversity jurisdiction in the federal courts.

Finally, it is important to note that the findings presented here are derived from one specific time period: 1988–2021. Thus, one should not assume that our research conclusions also would apply to earlier time periods—including those in which many previous studies of local bias were conducted. This means, too, that our findings should not be interpreted as contradicting the evident assumptions of a home-state bias embedded in the U.S. Constitution and the Judiciary Act of 1789. It is entirely possible that such biases used to have more significant influence on case outcomes in diversity cases, particularly in the late eighteenth and early- to mid-nineteenth centuries,[140] when state-based identities were more powerful than today.[141] As national identity became more prominent, and state-based identities much less so, perhaps home-state biases began to exert less influence on court rulings, thereby obviating the need for constitutional and other legal methods of leveling the playing field in diversity cases. Further research is necessary to determine whether such assumptions about the historical trajectory of home-state bias in diversity cases are valid.

For now, at least, it seems fair to say that even if home-state bias was a barrier to justice in the past, it is a barrier no longer. The results presented here suggest that, on average, no home-state biases exist in the U.S district courts.

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[139]   As discussed in footnote 30, it is possible that elected judges will be more likely to favor home-state litigants. But, again, this is a question in need of empirical analysis.

[140]   Indeed, as James Madison noted in Federalist 46, it is "beyond doubt that the first and most natural attachment of the people will be to the governments of their respective States." THE FEDERALIST NO. 46, at 291 (James Madison) (Clinton Rossiter ed., 2003).

[141]   *See* Emily Pears & Emily Sydnor, *The Correlates and Characteristics of American State Identity*, 52 PUBLIUS 173, 173–74 (2022).