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FOREWORD: PARALLEL AND DISTINCTIVE ROLES OF FEDERAL COURTS

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The relationship between state and federal courts, their respective roles, and the appropriate allocation of jurisdiction between these court systems has been the subject of considerable commentary and attention.[1] A recent federal judicial administration document, the Long Range Plan for Federal Courts,[2] spoke of the relationship between these courts in terms of [j]udicial federalism [which] relies on the principle that the state and federal courts together comprise an integrated system for the delivery of justice. . . .[3] The plan further noted that "the two court systems have played different but equally significant roles in our federal system" and argued that "[u]nless a distinctive role for the federal court system is preserved, there is no sound justification for having two parallel justice systems."[4] However, the role of federal courts in complex litigation, even that governed by state law, was nonetheless conceded.[5]

The role thus envisioned for federal courts, which has been supported by earlier commentators in this law review,[6] was to focus on fewer controversies of allegedly greater national importance. Congress was urged to leave for overcrowded state courts the task of handling claims governed by state law and even cases governed by federal law — under the Jones Act, FELA, and ERISA — involving employee injuries and welfare benefit plans. While Congress did raise the amount-in-controversy requirement to $75,000, it has done little to shift significantly the work of federal courts to the states, or to federal administrative agencies.

For many litigants, the parallel role of federal courts in handling cases that could be handled in state court continues to be important. Federal courts are ever popular. The federal district court diversity of citizenship docket in 1995 approached 50,000 cases, approximately one-fourth of the entire district court docket.[7] Overlapping roles of the state and federal judiciary provide to plaintiffs and to defendants in the case of removal jurisdiction a genuine alternative forum to state courts in civil litigation.

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1. *See generally* Dolores K. Sloviter, *A Federal Judge Views Diversity Jurisdiction Through the Lens of Federalism*, 78 VA. L. REV. 1671 (1992); Lauren K. Robel, *The Politics of Crisis in the Federal Courts*, 7 OHIO ST. J. ON DISP. RESOL. 115 (1991); Erwin Chemerinsky & Larry Kramer, *Defining the Role of the Federal Courts*, 1990 B.Y.U.L. REV. 67; Victor E. Flango & Craig Boersema, *Changes in Federal Diversity Jurisdiction: Effects on State Court Caseloads*, 15 U. DAYTON L. REV. 405 (1990); Jon O. Newman, *Restructuring Federal Jurisdiction: Proposals to Preserve the Federal Judicial System*, 56 U. CHI. L. REV. 761 (1989); RICHARD A. POSNER, THE FEDERAL COURTS: CRISIS AND REFORM (1985); COUNCIL ON THE ROLE OF THE COURTS, THE ROLE OF COURTS IN AMERICAN SOCIETY (Jethro K. Lieberman ed.) (1984).

2. JUDICIAL CONFERENCE OF THE UNITED STATES, LONG RANGE PLAN FOR FEDERAL COURTS (1995).

3. *Id.* at 21.

4. *Id.*

5. *Id.* at 31 n.16.

6. *See, e.g.*, Judge Robert M. Parker & Leslie J. Hagin, *Federal Courts at the Crossroads: Adapt or Lose!*, 14 MISS. C. L. REV. 211 (1994); Charles Clark, *Mules and Wagons — A Plea for Jurisdictional Reform*, 14 MISS. C. L. REV. 263 (1994).

7. ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, CASELOAD CHARTBOOK, 168 (1995) [hereinafter CHARTBOOK]. The data presented in the chartbook is based on the twelve month period ending on June 30 which was the statistical year used by federal courts until 1992. Therefore, the reported figure of 49,693 diversity cases will not match the data for the statistical year ending September 30 in the ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS. CHARTBOOK at ix.

The functions of federal courts are not unique. There is clearly overlap with the functions of state courts. However, for many litigants, federal courts are not only an alternative to state courts, but also the only option to obtain civil justice. For example, for litigants in Mississippi, the federal courts offer something that state courts simply cannot provide, or do not provide well — an available forum for class action litigation. With no rule authorizing class actions and with the equitable bill of peace being at best a blunt procedural instrument which does not assure a right to jury trial,[8] it is not surprising that litigants in this state would look to a federal forum for civil justice rather than commencing their cases piecemeal or joining them to the extent allowable under state Rules.[9] In states such as Mississippi where state procedural rules are more limited, the role played by federal courts is distinctive, albeit perhaps not the unique one envisioned by federal judicial administrators.

In part, therefore, federal courts do serve a role parallel to state courts, while also playing a distinctive role in the administration of civil justice. Those two roles — one distinctive, one redundant — serve as the subtext to this symposium of federal practice and procedure. The symposium focuses on two important issues regarding the relationship between state and federal courts in our so-called unified court system. One issue, already mentioned, is class action litigation, which is discussed at length in two articles, by Ann Saucer[10] and by Ross F. Bass and John W. Robinson[11] respectively. Those articles review recent developments in class action litigation, and focus closely on evolving standards for class certification. Also considered are recent modifications to Rule 23 and the impact of the Supreme Court's decision in *Amchem*.[12] The other article[13] covers an issue related to the overlapping roles of state and federal court removal jurisdiction. Sidney Powell and Deborah Pearce-Reggio detail procedure for removal of cases from state to federal court, and for remand of cases improperly removed. The article is a road map for removing civil cases from state to federal court.

In each of these articles, frequent and first-time readers of this law review will find thoughtful analysis of the procedures discussed. These articles deal less with what the appropriate role for federal courts should be, and more with what

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8. Leaf River Forest Products, Inc. v. Deakle, 661 So. 2d 188, 192-93 (Miss. 1995). The Mississippi Supreme Court stated,

> While the label bill of peace may not have survived the adoption of the [Mississippi Rules of Civil Procedure], the chancery court's authority to grant substantive relief through equity remains viable and available. . . . The fact that a case otherwise proper for a bill of peace is one which warrants a jury trial by virtue of the Constitution does not prevent sustaining a bill of peace. The right to a jury trial is just one factor for the court to consider when determining whether it will grant the bill of peace.

Id. The Court noted, however, that the chancellor, by statute, was authorized to empanel a jury on claims that, if pending in circuit court, would be triable by jury.

9. *See generally* Guthrie T. Abbott & Pope S. Mallette, *Complex/Mass Torts Litigation in State Courts in Mississippi*, 63 MISS. L.J. 363 (1994).

10. S. Ann Saucer, *Class Actions in the Fifth Circuit*, 17 MISS. C. L. REV. 255 (1997).

11. Ross F. Bass, Jr. and John W. Robinson, III, *The Metamorphosis of Mass Tort Class Actions: A Fifth Circuit Perspective*, 17 MISS. C. L. REV. 207 (1997).

12. Amchem Prods., Inc. v. Windsor, 117 S. Ct. 2231 (1997).

13. Sidney Powell and Deborah Pearce-Reggio, *The Ins and Outs of Federal Court: A Practitioner's Guide to Removal and Remand*, 17 MISS. C. L. REV. 227 (1997).

the role actually is for litigants and their counsel. Litigants who seek access to federal court, or involuntarily find themselves in that special forum, should be able to put these pages to good use.