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### VI. The Anti-Injunction and All Writs Acts in Complex Litigation

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## VI. THE ANTI-INJUNCTION AND ALL WRITS ACTS IN COMPLEX LITIGATION\*

### A. Introduction

It should be evident by now that there is a lot at stake for all the parties to civil litigation in the determination of whether to proceed in state or federal court. Nowhere is this issue more hotly contested than in the context of multi-district class action litigation. The ability to proceed in federal court versus state court has tremendous implications for both the plaintiffs and the defendants in these actions.<sup>1</sup> Once a state or federal court has seemingly retained jurisdiction over a class action, however, the fight over the forum is not necessarily over. The last twenty years have seen a steady increase of competition between state and federal courts over jurisdiction to issue a final judgment or reach a settlement in these class actions. Specifically, there have been competing state court class actions that threaten to frustrate resolution of parallel class actions in federal district courts that are close to reaching settlement.

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1. See *supra* Part I; see also *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591 (1997) (striking down a class action settlement in ongoing asbestos litigation); Georgene M. Vairo, *Problems in Federal Forum Selection and Concurrent Federal State Jurisdiction: Supplemental Jurisdiction; Diversity Jurisdiction; Removal; Preemption; Venue; Transfer of Venue; Personal Jurisdiction; Abstention and the All Writs Act*, in 1 ALI-ABA COURSE OF STUDY MATERIALS: CIVIL PRACTICE AND LITIGATION TECHNIQUES IN FEDERAL AND STATE COURTS 221, 365 (2003) (noting that after *Amchem* there has been a “chilly reception” to mass tort class actions in federal courts, prompting movement of many mass tort and other state law based class actions to state court). See generally Victor E. Schwartz et al., *Federal Courts Should Decide Interstate Class Actions: A Call for Federal Class Action Diversity Jurisdiction Reform*, 37 HARV. J. ON LEGIS. 483 (2000) (noting the explosion of and problems with class action suits in state courts and calling for reforms that would give federal courts jurisdiction over more of such cases).

This article will help a plaintiff's class action lawyer determine the extent to which she can successfully institute an action in state court if unhappy with the federal district court proceedings. Similarly it will help a defendant's lawyer understand the power a federal district court may have to protect class action settlements in which the court has already invested significant time and resources. The forum where the settlement or judgment is ultimately entered may significantly impact the class recovery.

Federal courts have used the All Writs Act<sup>2</sup> to enjoin actual or threatened conflicting parallel state court proceedings in complex class action litigation. The Anti-Injunction Act,<sup>3</sup> which is rooted in the federalism principle that the federal government should stay out of state affairs, is a congressionally imposed limit on this broad grant of authority. It is therefore necessary to understand what the All Writs and Anti-Injunction Acts are and how the policy of federalism has impacted their interpretation by the courts.

Section B of this article will provide background on the problem of parallel or threatened parallel state court proceedings in multi-district class action litigation. Permeating these issues is the strong policy of federalism, reflected by the Anti-Injunction Act, which embodies a presumption in favor of permitting parallel actions in state and federal courts.

Section C will closely examine two of the foundational cases examining the use of and policies underlying the Anti-Injunction and All Writs Acts. This background is essential in understanding how recent appellate court decisions upholding the use of the All Writs Act by federal district courts to enjoin parallel state court proceedings deviates from the way the Supreme Court has historically characterized the purpose and function of both the Anti-Injunction Act and the All Writs Act.

Section D will look closely at *In re Baldwin-United Corp.*<sup>4</sup> and *In re Diet Drugs Products Liability Litigation*,<sup>5</sup> which illustrate the use of the All Writs Act to effect a broader reading of the limits imposed by the Anti-Injunction Act. It will then turn to a more

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2. 28 U.S.C. § 1651 (2000).

3. *Id.* at § 2283.

4. 770 F.2d 328 (2d Cir. 1985).

5. 282 F.3d 220 (3d Cir. 2002).

detailed analysis of how Congress's federalism concerns in enacting the Anti-Injunction Act may be frustrated by the current uses of the All Writs Act. Further, it will consider why the Supreme Court has thus far declined to grant certiorari in these cases, and how the Court might rule if it did take up the issue. Finally, Section D will consider recent legislative efforts that may further empower federal courts to preserve their interests in the face of parallel state proceedings that threaten a federal court's jurisdiction over multi-district class actions.

### *B. Background*

The problem of parallel state court proceedings undermining a federal court's ability to achieve global settlements in multi-district class action litigation has arisen in the contexts of mass torts,<sup>6</sup> securities,<sup>7</sup> and consumer protection.<sup>8</sup> Federal courts have used the All Writs Act to enjoin state court proceedings on the theory that such injunctions are necessary in aid of their jurisdiction. The Anti-Injunction Act is a limitation on a federal court's ability to issue such injunctions. Understanding how these acts were meant to work and how they have been interpreted by the courts is therefore necessary for a party to determine whether she can proceed in the forum of her choice, be it state or federal. Part 1 of this section introduces the Anti-Injunction and All Writs Acts themselves. Part 2 introduces the competing policy concerns of federalism and efficiency, which respectively underlie the Anti-Injunction Act and the All Writs Act. Part 3 examines the fact patterns of two cases, *In re Baldwin-United Corp.*<sup>9</sup> and *In re Diet Drugs Products Liability Litigation*,<sup>10</sup> which illustrate two situations in which a federal court might use the Anti-

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6. See, e.g., *id.*; *Carlough v. Amchem Prods., Inc.*, 10 F.3d 189 (3d Cir. 1993); *Ivy v. Diamond Shamrock Chems. Co. (In re "Agent Orange" Prod. Liab. Litig.)*, 996 F.2d 1425 (2d Cir. 1993).

7. See, e.g., *White v. Nat'l Football League*, 41 F.3d 402 (8th Cir. 1994); *In re Baldwin-United Corp.*, 770 F.2d 328 (2d Cir. 1985).

8. See, e.g., *Miller v. Brooks (In re Am. Honda Motor Co. Dealerships Relations Litig.)*, 315 F.3d 417 (4th Cir. 2003); *In re Factor VIII or IX Concentrate Blood Prods. Litig.*, 159 F.3d 1016 (7th Cir. 1998); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998).

9. 770 F.2d 328 (2d Cir. 1985).

10. 282 F.3d 220 (2d Cir. 2002).

Injunction and All Writs Acts to enjoin parallel state court proceedings that threaten federal jurisdiction.

### 1. The Anti-Injunction & All Writs Acts

Understanding the Anti-Injunction and All Writs Acts is critical to knowing whether class action plaintiffs must proceed in federal court when a case has been filed or removed there or whether they can file parallel actions in plaintiff friendly state courts that have concurrent jurisdiction. On the flip side, a class action defendant needs to know whether she can count on the soundness of federal settlement proceedings or judgments in the face of actual or threatened parallel state court proceedings.

Under the All Writs Act, federal courts "may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."<sup>11</sup> This broad grant of authority is limited by the Anti-Injunction Act, which bars a federal court from enjoining a proceeding in a state court unless that action is "expressly authorized by [an] Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."<sup>12</sup> The Anti-Injunction Act represents an absolute prohibition against a federal court enjoining state court proceedings, unless one of the three statutory exceptions applies.<sup>13</sup>

The All Writs Act contains the same language as the second of the three exceptions in the Anti-Injunction Act, and the parallel "necessary in aid of jurisdiction" language is construed similarly in both statutes. Together the All Writs Act and the Anti-Injunction Act govern whether a district court can properly enjoin state court litigation pending at the time injunctive relief is requested.<sup>14</sup>

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11. 28 U.S.C. § 1651 (2000).

12. *Id.* at § 2283.

13. *Atl. Coast Line R.R. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 286 (1970).

14. *Newby v. Enron Corp.*, 338 F.3d 467, 474 (5th Cir. 2003) (citation omitted).

## 2. Federalism vs. efficiency

An analysis of how federal courts use the All Writs and Anti-Injunction Acts to respond to the problem of threatened or actual parallel state court proceedings frustrating a federal court's ability to reach a global settlement necessitates consideration of the competing policy concerns of federalism and efficiency. Federalism represents the idea that the federal government should not interfere in areas that are traditionally left to the states.<sup>15</sup> In the context of our nation's dual state and federal court system, federalism applies to limit a federal court's ability to interfere with state court proceedings. Since federalism is a policy concern rather than an applicable law, it can be overridden if it conflicts with a more compelling competing concern. In the context of complex class action litigation, many federal courts have begun to recognize efficiency as a competing policy concern that is compelling enough to override the federalist proscription against federal court interference with state court proceedings.<sup>16</sup>

Federalism is the policy underlying the Anti-Injunction Act, which strictly limits a federal court's ability to enjoin state court proceedings. When the United States was established as a nation, the states surrendered some of their sovereign power to the national government, but retained much of it.<sup>17</sup> One of the powers the states retained was the maintenance of their own judicial systems.<sup>18</sup> On the federal level, the Constitution created the Supreme Court and empowered Congress to create a system of lower federal courts.<sup>19</sup> The Supreme Court has the power to directly review state court cases, while the lower federal courts do not have that power.<sup>20</sup> With the establishment of essentially separate state and federal legal systems it was necessary to work out "lines of demarcation" between the systems as litigants sought to invoke the power of the court in

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15. See Richard W. Garnett, *The New Federalism, the Spending Power, and Federal Criminal Law*, 89 CORNELL L. REV. 1, 11–23 (2003) (examining the New Federalism focus of the current Supreme Court and considering areas that have been seen as being properly left to state power).

16. See *infra* Part VI.D.1.

17. *Atl. Coast Line R.R.*, 398 U.S. at 285.

18. *Id.*

19. *Id.*

20. *Id.* at 286.

which they thought they had the best chance of success.<sup>21</sup> The Anti-Injunction Act, which prohibits a federal court from enjoining state court proceedings unless one of the three statutory exceptions applies, was enacted by Congress to draw such a line of demarcation.<sup>22</sup> The Act represents such a strong policy of noninterference between federal and state courts that there is a presumption in favor of permitting parallel state actions to proceed.<sup>23</sup>

While the Anti-Injunction Act embodies the policy of federalism, the All Writs Act can be seen as representing the policy of efficiency. The Act allows a federal court to issue all writs necessary in aid of its jurisdiction in order to make the most efficient use of its judicial resources.<sup>24</sup> It allows a federal court to take affirmative action aimed at protecting its jurisdiction, thus achieving the "rational ends of law."<sup>25</sup> There is necessarily a conflict between federalism and efficiency; therefore, there is a conflict between the Anti-Injunction Act and the All Writs Act. Federalism and the Anti-Injunction Act require federal courts to steer clear of interference with parallel state court proceedings, while efficiency and the All Writs Act invite federal courts to do what they can to reach a just global resolution. In theory the Anti-Injunction Act operates as a limit on the broad grant of authority conferred by the All Writs Act.<sup>26</sup> Thus, in order for a writ issued under the All Writs Act to be a valid exercise of federal court power, it must first meet one of the three exceptions prescribed by Congress under the Anti-Injunction Act.<sup>27</sup>

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21. *Id.*

22. *Id.* While the Anti-Injunction Act limits a federal court's ability to enjoin state court proceedings, it does allow injunctions in limited situations. On the other hand, the Supreme Court has ruled that state courts are almost never allowed to enjoin federal proceedings. See *Donovan v. City of Dallas*, 377 U.S. 408, 412 (1964) (holding that state courts may not enjoin federal courts except in the limited situation where an injunction is issued to protect jurisdiction over property already in the state court's custody and control); *Terral v. Burke Constr. Co.*, 257 U.S. 529, 532 (1922) (holding that state courts may not bar removal to federal court).

23. *Atl. Coast Line R.R.*, 398 U.S. at 296-97.

24. 28 U.S.C. § 1651 (2000).

25. *Harris v. Nelson*, 394 U.S. 286, 299 (1969).

26. See *In re Diet Drugs Prods. Liab. Litig.*, 282 F.3d 220, 233 (3d Cir. 2002); *In re Prudential Ins. Co. of Am. Sales Practice Litig.*, 261 F.3d 355, 364-67 (3d Cir. 2001).

27. See *Diet Drugs*, 282 F.3d at 233; *Prudential*, 261 F.3d at 364-67.

In other words, while efficiency concerns are important, they must not be so elevated as to undermine federalism.

### 3. Illustration of the problem of parallel state court proceedings jeopardizing a federal court's jurisdiction

The problem of state court proceedings threatening to derail a federal court's judgment or settlement can arise when parallel state court proceedings are merely threatened or when such parallel litigation is actually underway. *Baldwin-United* and *Diet Drugs* illustrate situations where a federal court might use the Anti-Injunction and All Writs Acts when faced with the danger that a threatened or an actual state court proceeding jeopardizes its jurisdiction.

#### *a. threatened parallel state court proceedings—Baldwin-United*

In some cases a federal district court will have spent significant time and resources working toward a settlement in a complex class action suit and its jurisdiction will be put in jeopardy by threatened parallel state court proceedings. In *Baldwin-United*, a federal district court was faced with the possibility that imminent New York state court litigation would derail its global settlement efforts. The Multidistrict Litigation Panel consolidated the proceedings of more than 100 federal securities lawsuits, involving approximately 100,000 plaintiffs who were holders of Baldwin single-premium deferred annuities (SPDAs).<sup>28</sup> The plaintiff class "asserted claims under the Securities Act of 1933 and the Securities Exchange Act of 1934 against 26 broker-dealers and related individuals who sold the SPDAs by representing them to be safe and desirable investments."<sup>29</sup> The claims were designed for the plaintiffs to obtain recovery over the sum they were already due to receive under a rehabilitation plan for Baldwin's insurance subsidiaries.<sup>30</sup> For two years, the district court coordinated settlement talks between the parties and had been successful in overseeing negotiations as to 18 of the 26 broker-dealer defendants.<sup>31</sup> These defendants signed stipulations of settlement and

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28. *In re Baldwin-United Corp.*, 770 F.2d 328, 331 (2d Cir. 1985).

29. *Id.*

30. *Id.* at 331–32.

31. *Id.* at 332.



in order to rule on the settlements the district court provisionally approved class status.<sup>32</sup> Only about 50 of the approximately 100,000 plaintiffs objected to the settlement.<sup>33</sup>

Representatives of 40 states in the National Association of Attorneys General (NAAG) were dissatisfied with the proposed settlements, concluding that the proposal did not adequately compensate plaintiffs for their federal and state law claims and that the defendants' actions might have violated state regulatory and criminal laws.<sup>34</sup> The district court initially approved the settlement and scheduled a hearing on the issue of whether the settlement was fair.<sup>35</sup> Subsequently, these state representatives began taking measures that would allow them, in their representative capacity under state law, to seek restitution and monetary recovery from defendants.<sup>36</sup> After unsuccessful negotiations between state representatives and defendants in which the states sought a higher settlement figure in exchange for termination of the threatened state administrative proceedings and civil litigation, 22 states submitted an amicus brief opposing the settlement as inadequate.<sup>37</sup> Shortly thereafter, several defendants received notices from the state of New York indicating its intent to seek restitution on behalf of the New York citizens who held Baldwin SPDAs.<sup>38</sup> These defendants petitioned the district court to enjoin the pending New York actions.<sup>39</sup>

The federal court was therefore faced with a situation where imminent New York state court proceedings threatened to derail a significant portion of a settlement that it had expended two years of time and resources working to bring about. After considering in Section C how the Anti-Injunction and All Writs Acts have been interpreted by the Supreme Court, Section D.1.a will return to the facts of *Baldwin-United* to illustrate how the federal court used the Acts to enjoin the New York state court from acting.

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32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at 332–33.

37. *Id.* at 333.

38. *Id.*

39. *Id.*

*b. actual parallel state court proceedings—Diet Drugs*

*Baldwin-United* illustrated the problem of threatened state court proceedings impacting a federal court's ability to reach a global settlement. Federal courts also face situations where parallel state court proceedings have already been instituted. In *Diet Drugs*, a federal district court was faced with the possibility that ongoing Texas state court litigation would derail its global settlement efforts. *Diet Drugs* involved mass tort litigation that arose from injuries caused by American Home Products's (AHP) appetite suppressants "Pondimin" and "Redux", which were taken by more than four million people between 1995 and 1997.<sup>40</sup> In 1997, data surfaced suggesting a link between use of the drugs and valvular heart disease.<sup>41</sup> Approximately 18,000 individual lawsuits and over 100 class actions were filed in federal and state courts across the country and AHP removed many of the state cases to federal court.<sup>42</sup> The Multidistrict Litigation Panel transferred all of the federal actions to Judge Bechtel in the Eastern District of Pennsylvania.<sup>43</sup> Global settlement talks with plaintiffs in the federal action and some of the state actions began in April 1999 and a settlement agreement was reached in November 1999, whereupon the district court entered an order conditionally certifying a nationwide settlement class and preliminarily approving the settlement.<sup>44</sup> The deadline for class members to opt out was March 2000.<sup>45</sup> After a fairness hearing in May, the district court entered a final order certifying the class and approving the settlement in August 2000.<sup>46</sup>

A number of state court actions were not included in the consolidated multidistrict litigation involved in the settlement.<sup>47</sup> One such action was the *Gonzalez* class action that was filed in Texas state court before AHP withdrew its drugs from the market and before the Multidistrict Litigation Panel consolidated the federal

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40. *In re Diet Drugs Prods. Liab. Litig.*, 282 F.3d 220, 225 (3d Cir. 2002).

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* at 225–26.

45. *Id.* at 226.

46. *Id.*

47. *See id.*

action.<sup>48</sup> AHP originally removed the *Gonzalez* action to federal court on the theory that a non-diverse defendant had been fraudulently joined to defeat diversity jurisdiction.<sup>49</sup> It was consolidated as part of the multidistrict litigation, but was ultimately remanded to Texas state court in February 2000 during the opt out period when Judge Bechtel found there to be no fraudulently joined defendant.<sup>50</sup> After the case was remanded, the plaintiffs filed an amended complaint dropping their class claims against the non-diverse defendant.<sup>51</sup> A week later the Texas court certified the *Gonzalez* class of all persons who purchased AHP's drugs in Texas and who sought economic damages.<sup>52</sup>

This class certification took place eight days before the end of the opt out period for the federal class settlement.<sup>53</sup> At this time, most of the members of the *Gonzalez* state class were also members of the federal class.<sup>54</sup> The *Gonzalez* plaintiffs took action to eliminate this overlap by moving in the Texas state court for an order opting out all of the unnamed members of the *Gonzalez* class from the federal class.<sup>55</sup> In response, AHP sought a temporary restraining order from the federal court to prevent the *Gonzalez* class from implementing a mass opt out.<sup>56</sup> On March 23 2000, hearings were held in both the Texas state court and Pennsylvania federal court on

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48. *Id.*

49. *Id.*; see also *supra* Part V.B.3 (discussing fraudulently joined defendants).

50. *Diet Drugs*, 282 F.3d at 226.

51. *Id.*

52. *Id.* at 226–27. While the *Gonzalez* class in the Texas state court action sought only economic damages, which included the purchase price of the drugs and treble damages, the federal settlement included personal injury, medical monitoring, mental anguish and punitive damage claims in addition to the economic damage claims. *Id.* at 226–27. The only conflict therefore was over the economic damages portion of the federal settlement. *Id.* For a discussion of economic and non-economic damages in complex class action litigation, see Perry H. Apelbaum & Samara T. Ryder, *The Third Wave of Federal Tort Reform: Protecting the Public or Pushing the Constitutional Envelope?*, 8 CORNELL J. L. & PUB. POL'Y 591 (1999).

53. See *Diet Drugs*, 282 F.3d at 227.

54. *Id.*

55. See *id.*

56. See *id.*

these respective motions.<sup>57</sup> The Texas court entered an order partially opting out the *Gonzalez* class from the federal case, and the federal court granted the temporary restraining order denying the effect of the opt out and “order[ing] Gonzalez class counsel to refrain from pursuing the opt out.”<sup>58</sup> After filing a second notice of removal, AHP moved for a permanent injunction restraining the Texas plaintiffs from instituting a mass opt out of unnamed Texas class members.<sup>59</sup>

This case raised the question of whether the federal district court had the power to issue an injunction that would prevent a state court from taking action that threatened to frustrate the district court’s efforts to finalize a settlement that the district court had expended significant time and resources reaching. After considering in Section C how the Anti-Injunction and All Writs Acts have been interpreted by the Supreme Court, Section D.1.b will return to the facts of *Diet Drugs* to examine the Third Circuit’s application of the Acts to uphold the district court injunction restraining the Texas plaintiffs from instituting a mass opt out, and declaring that any order purporting to affect or determine the opt out status of any member of the federal class was invalid.

The last twenty years have seen numerous instances in which appellate courts have used the All Writs Act as a basis for undertaking action that would seem to be otherwise barred by the non-interference policy of the Anti-Injunction Act. For example, appellate courts have issued injunctions that have effectively stayed state court proceedings. This Article focuses primarily on this type of federal court action. Appellate courts have also used the All Writs Act as an independent basis for removal jurisdiction, which was, until recently, an option for federal courts. In the context of All Writs removal, federalism policy concerns won out over the efficiency concerns embodied in the All Writs Act.

#### 4. The All Writs Act as an independent basis for removal

Until recently, a split existed among circuits as to the propriety of using the All Writs Act as an independent basis for removal of

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57. *Id.*

58. *Id.*

59. *Id.* at 227–28.

state cases to federal court.<sup>60</sup> In November 2002, the United States Supreme Court held in *Syngenta Crop Protection, Inc. v. Henson*<sup>61</sup> that the All Writs Act does not create original federal jurisdiction and therefore cannot be used to remove an otherwise unremovable case.<sup>62</sup> In other words, the All Writs Act cannot be used to avoid complying with the requirements of the removal statute.<sup>63</sup>

The appellate courts upholding the use of the All Writs Act as a basis for removal weighed the efficiency interest more heavily than the federalism interest.<sup>64</sup> Historically, however, the Supreme Court has been less interested in efficiency and more interested in upholding the federalism principles upon which the nation was founded. This has been reflected in recent years by the Court's federalism decisions, which have diminished federal power and afforded more latitude to the individual states.<sup>65</sup> Before the Court spoke on the issue of All Writs removal in *Syngenta*, appellate courts had the freedom to adopt a rule allowing for such removal, thereby giving federal courts considerable latitude to protect their jurisdiction. The Court's elimination of this means of protecting federal jurisdiction may indicate that the Court will lean toward

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60. Compare *VMS Ltd. P'ship Sec. Litig. v. Prudential Sec. Inc. (In re VMS Sec. Litig.)*, 103 F.3d 1317 (7th Cir. 1996) (affirming district court's use of the All Writs Act to remove and enjoin state court litigation), and *Ivy v. Diamond Shamrock Chems. Co. (In re "Agent Orange" Prod. Liab. Litig.)*, 996 F.2d 1425 (2d Cir. 1993) (affirming district court's use of the All Writs Act to remove parallel state court proceedings to prevent frustration of federal settlement), with *Malone v. Calderon*, 165 F.3d 1234 (9th Cir. 1999) (the All Writs Act may only be invoked in aid of jurisdiction that already exists), and *Pacheco De Perez v. AT&T Co.*, 139 F.3d 1368 (11th Cir. 1998) (the All Writs Act does not provide an independent basis of jurisdiction when federal jurisdiction is otherwise lacking). See *supra* Part V for a complete discussion of removal jurisdiction.

61. 537 U.S. 28 (2002).

62. *Id.* at 34.

63. *Id.* at 32–33. "The right of removal is entirely a creature of statute and 'a suit commenced in a state court must remain there until cause is shown for its transfer under some act of Congress.'" *Id.* at 32 (quoting *Great N. Ry. Co. v. Alexander*, 246 U.S. 276, 280 (1918)).

64. See, e.g., *In re VMS Ltd. P'ship Sec. Litig. v. Prudential Sec. Inc. (In re VMS Sec. Litig.)*, 103 F.3d 1317 (7th Cir. 1996); *Ivy v. Diamond Shamrock Chems. Co. (In re "Agent Orange" Prod. Liab. Litig.)*, 996 F.2d 1425 (2d Cir. 1993), *cert. denied*, 510 U.S. 1140 (1994).

65. See *Garnett*, *supra* note 15.

respecting federalism concerns over efficiency concerns in the complex class action context.

The Supreme Court has not yet, however, spoken on whether a district court has the ability to issue an injunction staying a parallel state court proceeding in order to protect and effectuate its judgments. The Court may be avoiding this issue because, in applying basic principles of federalism, it may feel compelled to strike the practice down as being outside the scope of what Congress intended when it enacted the Anti-Injunction Act and the All Writs Act. Its choice to avoid the matter may reflect a desire to reserve to district courts additional power to protect their jurisdiction. Whether or not the Supreme Court would uphold such practices if it chose to hear the issue is still an open question.<sup>66</sup>

The next section focuses on how the Court has historically construed the Anti-Injunction and All Writs Acts, the limits the Acts impose on federal courts, and the power the Acts grant. It is important to have this foundation in mind before examining how the courts have begun using the All Writs Act to aid their jurisdiction by issuing injunctions in situations that Congress historically intended to bar with its narrowly tailored allowance for injunctions in the Anti-Injunction Act.

### *C. Law*

In solving the problem of parallel state proceedings threatening the ability of federal courts to arrive at a global settlement, the modern trend has been to elevate efficiency policy concerns over federalism policy concerns in interpreting the Anti-Injunction Act and the All Writs Act. This modern reading of a federal court's power under the Acts differs from the Supreme Court's historic interpretation of the Acts. In the 1970s the Supreme Court issued rulings in *Atlantic Coast Line Railroad v. Brotherhood of Locomotive Engineers*<sup>67</sup> and *United States v. New York Telephone Co.*,<sup>68</sup> which illustrate the Court's historic interpretation of the Acts.

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66. See *infra* Part VI.D.1.d (considering whether the Supreme Court's decision not to take up this issue indicates efficiency concerns have won the day).

67. 398 U.S. 281 (1970).

68. 434 U.S. 159 (1977).

### 1. The Anti-Injunction Act

In *Atlantic Coast Line*, the Court struck down a district court order enjoining the Atlantic Coast Railroad Company from invoking an injunction issued by a Florida state court which prohibited picketing by the respondent union.<sup>69</sup> It held that the district court's order did not meet any of the three exceptions created by Congress in the Anti-Injunction Act,<sup>70</sup> which provides: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."<sup>71</sup>

The petitioner, Atlantic Coast Line, originally sought an injunction in 1967 against the respondent picketers in federal district court, but the federal judge denied its request.<sup>72</sup> Immediately thereafter it filed for an injunction in Florida state court, which it successfully obtained.<sup>73</sup> Two years later, the Supreme Court issued a decision in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*,<sup>74</sup> in which, on substantially similar facts, the Court struck down a state court injunction as a violation of federal law.<sup>75</sup> The respondents in *Atlantic Coast Line* thereafter unsuccessfully filed a motion in Florida state court for the dissolution of the injunction in light of the Court's ruling in *Jacksonville Terminal*.<sup>76</sup> The respondents then went back to the federal district court requesting an injunction against enforcement of the state court injunction.<sup>77</sup> The district court granted the injunction, the Fifth Circuit affirmed, and the Supreme Court granted certiorari, ultimately holding that the district court had overstepped its authority.<sup>78</sup>

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69. *Atl. Coast Line R.R.*, 398 U.S. at 283-85.

70. *Id.* at 284-85.

71. 28 U.S.C. § 2283 (2000).

72. *Atl. Coast Line R.R.*, 398 U.S. at 283.

73. *Id.*

74. 394 U.S. 369 (1969).

75. *See Atl. Coast Line R.R.*, 398 U.S. at 283-84.

76. *Id.*

77. *Id.*

78. *See id.* at 284-85.

To clarify its ruling, the Supreme Court considered Congress' purpose in enacting the Anti-Injunction Act.<sup>79</sup> The Act, in part, "stemmed from the essentially federal nature of our national government."<sup>80</sup> When the nation was established under the Constitution, the States necessarily surrendered part, but not all, of their sovereign power to the national government.<sup>81</sup> One of the powers reserved to the states was the maintenance of their own state judicial systems.<sup>82</sup> After much debate amongst the Framers about whether a federal court system needed to be created or whether the state courts could be entrusted to protect both state and federal rights, they arrived at a compromise whereby the Constitution created one Supreme Court while Congress was given the power to create a lower federal court system.<sup>83</sup> Only the Supreme Court was given the power to directly review cases from state courts under the Constitution.<sup>84</sup> Since Congress first created a system of lower federal trial and appellate courts under the Judiciary Act of 1789,<sup>85</sup> it has never given these lower federal courts the power to directly review cases from state courts.<sup>86</sup> With the establishment of two essentially separate legal systems, it was inevitable that conflicts would develop between the two systems as litigants sought to invoke the power of the court in which they thought they had the best chance of success,<sup>87</sup> "[t]hus, in order to make the dual system work and 'to prevent needless friction between state and federal courts,' it was necessary to work out lines of demarcation between the two

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79. *Id.* at 285.

80. *Id.* For a more detailed survey of the history of the Anti-Injunction Act, see LINDA MULLENIX ET AL., UNDERSTANDING FEDERAL COURTS AND JURISDICTION 397-99 (1998); Steven M. Larimore, *Exploring the Interface Between Rule 23 Class Actions and the Anti-Injunction Act*, 18 GA. L. REV. 259, 268-271 (1984).

81. *Atl. Coast Line R.R.*, 398 U.S. at 285.

82. *Id.*

83. *Id.*

84. *Id.* at 286.

85. Act to Establish the Judicial Courts of the United States, ch. 20, Judiciary Act of 1789, 1 Stat. 73 (1789).

86. See *Atl. Coast Line R.R.*, 398 U.S. at 285-86.

87. *Id.* at 286.



systems.”<sup>88</sup> It was against this backdrop that the original Anti-Injunction Act was passed.<sup>89</sup>

The injunction in *Atlantic Coast Line* was technically directed at the railroad rather than the Florida state court.<sup>90</sup> However, the Supreme Court recognized that the prohibition of the Anti-Injunction Act could not be avoided by addressing the order to the parties.<sup>91</sup> The order was effectively an injunction staying Florida State court proceedings.<sup>92</sup> There is a strong presumption under the Act in favor of allowing a State court proceeding to go forward.<sup>93</sup> There is, in fact, an absolute prohibition against a federal court enjoining State court proceedings unless one of the three statutory exceptions applies.<sup>94</sup> Therefore, for the injunction to be valid under the Anti-Injunction Act, it must either have been expressly authorized by Congress, necessary in aid of the federal court’s jurisdiction, or issued for the purpose of protecting a prior judgment.<sup>95</sup> The first exception did not apply in this case, as neither party argued that Congress had expressly authorized a federal court to issue an injunction in this situation.<sup>96</sup>

The Court found that the second exception, that the order be necessary in aid of the federal court’s jurisdiction, also did not

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88. *Id.* at 286 (quoting *Okla. Packing Co. v. Okla. Gas & Elec. Co.*, 309 U.S. 4, 9 (1940)).

89. *See id.*

90. *See id.* at 287.

91. *Id.*

92. *See id.* at 287–88.

93. *See id.* at 297.

94. *Id.* at 286.

95. *See* 28 U.S.C. § 2283 (2000).

96. *Atl. Coast Line R.R.*, 398 U.S. at 288. Although the Anti-Injunction Act calls for express Congressional authorization, a federal law does not have to contain an explicit reference to § 2283; there is “no prescribed formula.” *Amalgamated Clothing Workers v. Richman Bros.*, 348 U.S. 511, 516 (1955). However, in order to qualify as expressly authorized, “an Act of Congress must have created a specific and uniquely federal right or remedy, enforceable in a federal court of equity, that could be frustrated if the federal court were not empowered to enjoin a state court proceeding.” *Mitchum v. Foster*, 407 U.S. 225, 237 (1972). For a more detailed explication of case-law interpreting the “expressly authorized” requirement, see James P. George, *Parallel Litigation*, 51 BAYLOR L. REV. 769, 882–84 (1999).

apply.<sup>97</sup> The respondents argued that the district court acquired jurisdiction over the controversy in 1967 when petitioners originally asked the district court to issue an injunction against the union picketers. They also argued that in light of the Supreme Court's decision in *Jacksonville Terminal*, indicating that the respondent had a right to picket and that the state court injunction was illegitimate, the state court had interfered with a federally protected right. Therefore, a federal injunction was "necessary in aid of its jurisdiction."<sup>98</sup> The Supreme Court rejected this argument, pointing out that the state and federal courts in this case had concurrent jurisdiction and neither court had the power to prevent either party from simultaneously pursuing claims in both courts.<sup>99</sup>

The Court acknowledged that while the language of the exception is broad, an injunction is necessary in aid of a court's jurisdiction only if "some federal injunctive relief may be necessary

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97. *Atl. Coast Line R.R.*, 398 U.S. at 294–96. Some courts and commentators have referred to the "necessary in aid of its jurisdiction" exception to § 2283 as the in rem or property exception. The idea is that the threat posed by parallel state court proceedings of undermining a federal judgment is most acute when jurisdiction is dependent upon a res (or property). There is indeed a threat of rendering "the exercise of the federal court's jurisdiction nugatory" if the state court issues a judgment on the same piece of property since the property itself is necessary to satisfy any judgment in the case. *Winkler v. Eli Lilly & Co.*, 101 F.3d 1196, 1202 (7th Cir. 1996) (quoting Martin H. Redish, *The Anti-Injunction Statute Reconsidered*, 44 U. CHI. L. REV. 717, 754 (1977)); see also *Mitchum v. Foster*, 407 U.S. 225, 235 (1972); *Bennett v. Medtronic, Inc.*, 285 F.3d 801 (9th Cir. 2002). The same risk is not inherent in most in personam cases, since satisfying a judgment does not rely on deliverance of a particular res. Some courts, however, have found there to be enough of a risk of rendering a federal court's jurisdiction effectively void in an in personam case that they have allowed an injunction under this exception to § 2283. See, e.g., *Flanagan v. Arnaiz*, 143 F.3d 540, 545 (9th Cir. 1998) (allowing an injunction in order to effectuate a settlement agreement over which the federal court had retained jurisdiction); *Winkler*, 101 F.3d at 1202 (threat of parallel state proceedings disrupting the orderly resolution of the federal litigation significant enough to issue injunction in multi-district litigation case); *Sycuan Band of Mission Indians v. Roache*, 54 F.3d 535, 540 (9th Cir. 1994) (injunction necessary to preserve the integrity of exclusive federal jurisdiction). A court's interpretation of the All Writs Act may color how broadly or narrowly it views this exception to the Anti-Injunction Act. See *infra* Part VI.D.1.

98. See *Atl. Coast Line R.R.*, 398 U.S. at 294.

99. *Id.* at 295–96.

to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case."<sup>100</sup> Since the state and federal courts had concurrent jurisdiction, the state court's assumption of jurisdiction over the state and federal claims at issue "did not hinder the federal court's jurisdiction so as to make an injunction *necessary* to aid that jurisdiction."<sup>101</sup> In addition, the injunction could not be necessary in aid of jurisdiction simply because the state court had, according to the federal court, acted improperly under *Jacksonville Terminal*, because lower federal courts do not have the power to directly review state court decisions.<sup>102</sup>

Finally, the Court found that the third exception—to protect or effectuate the federal court's judgments—did not apply.<sup>103</sup> The respondents argued that in making its 1967 decision not to issue the petitioner's requested injunction, the district court determined that the respondents had a federally protected right to protest, with which a state court could not interfere. Therefore, the district court's injunction was issued to protect its prior judgment.<sup>104</sup> The Supreme Court, however, found that in 1967, the district court merely determined that federal law could not be invoked to enjoin the respondents from picketing; it did not determine that federal law also precludes state regulation of picketing, which would be required for the 1969 injunction to be necessary to protect or effectuate the 1967

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100. *Id.* at 295.

101. *Id.* at 296.

102. *Id.*

103. *Id.* at 293. The third exception to § 2283 is often referred to as the Relitigation Exception. *See, e.g.,* Chick Kam Choo v. Exxon Corp., 486 U.S. 140 (1988) (the relitigation exception authorizes a federal court to enjoin litigation in state courts of an issue that was actually previously presented to and decided by the federal court). The relitigation exception is designed to permit a federal court to prevent state litigation of an issue that was previously presented to and decided by the federal court. It is based on the concepts of res judicata and collateral estoppel. The relitigation exception is narrower than the doctrine of res judicata because it only protects matters that have actually been decided by a federal court. *See* Selletti v. Carey, 70 Fed. Appx. 603, 604-05 (2d Cir. 2003).

104. *Atl. Coast Line R.R.*, 398 U.S. at 288.

order.<sup>105</sup> What the respondents were really trying to do was to get the district court “to decide that the state court judge was wrong in distinguishing the *Jacksonville Terminal* decision, . . . [but] [s]uch an attempt to seek appellate review of a state decision . . . cannot be justified as necessary ‘to protect or effectuate’” the previous order under the Anti-Injunction Act.<sup>106</sup>

Despite the proscription against enjoining the actions of the Florida state court, the Supreme Court indicated that the respondents were not without recourse. The district court did not have the authority to review the actions of the state court. At least theoretically, however, the Supreme Court did.<sup>107</sup> If, after the respondents had exhausted their state court remedies, i.e., “gone up the ladder” to the Florida Supreme Court, and were unable to obtain relief, they could petition for hearing in the U.S. Supreme Court, the one federal court that does have the power under the Constitution to review state court proceedings.<sup>108</sup> This, of course, would have involved significant time and expense in litigation.<sup>109</sup> While it would have been easier and more efficient to allow the district court’s injunction to stand, a strict reading of the Anti-Injunction Act and its exceptions does not allow federal courts to issue injunctions in the name of efficiency. Indeed, the *Atlantic Coast Line* court emphasized that, “since the statutory prohibition against such injunctions in part rests on the fundamental constitutional independence of the States and their courts, the exceptions should not be enlarged by loose statutory construction.”<sup>110</sup> However, there may be cases where the federal interest in efficiency is so strong, such as in complex multi-district litigation, that a broader reading of the Anti-Injunction Act might be acceptable in order to allow a federal district court to enjoin a state court proceeding.<sup>111</sup>

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105. *See id.* at 290.

106. *Id.* at 293.

107. *Id.* at 296.

108. *See id.*

109. Also, practically speaking, the Supreme Court grants certiorari on so few cases each year that respondents were unlikely to ever get federal review.

110. *Atl. Coast Line R.R.*, 398 U.S. at 287.

111. *See infra* Part VI.D.1.

## 2. The All Writs Act

Federal courts have effected such a broad reading of the Anti-Injunction Act when interpreting the All Writs Act. In *New York Telephone Company*, the Supreme Court upheld a district court order, finding that the district court had the authority to issue the order under the All Writs Act.<sup>112</sup> The order directed the New York Telephone Company (Company) to provide necessary facilities and technical assistance to the FBI to implement a previous order which authorized the use of pen registers to monitor a suspected illegal gambling enterprise.<sup>113</sup> The Court held that the district court's order fell under the provisions of the All Writs Act, which provides: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."<sup>114</sup>

The district court issued the injunction after finding there was probable cause to conclude an illegal gambling enterprise was being conducted at a particular location.<sup>115</sup> After refusing to comply with the parts of the order that required the Company to lease lines to the FBI and to offer technical assistance, the Company moved the district court to vacate those portions of the order.<sup>116</sup> The FBI determined that it would not be able to set up its operation and effectively monitor the gambling enterprise if the Company did not comply with the order.<sup>117</sup>

The Supreme Court first recognized the district court's power to implement the pen register order under Federal Rule of Civil Procedure 41.<sup>118</sup> The issue was whether the assistance of the Company, which was necessary to the implementation of the order, could be compelled under the All Writs Act to "effectuate and prevent the frustration of [its] orders."<sup>119</sup> The Court observed that the All Writs Act had served since its original inclusion in the

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112. *United States v. N.Y. Tel. Co.*, 434 U.S. 159, 171-75 (1977).

113. *Id.* at 161-62.

114. 28 U.S.C. § 1651 (2000).

115. *N.Y. Tel. Co.*, 434 U.S. at 162.

116. *Id.* at 163.

117. *See id.*

118. *Id.* at 168-69.

119. *Id.* at 172.

Judiciary Act as a “legislatively approved source of procedural instruments designed to achieve the ‘rational ends of law.’”<sup>120</sup> The Act could be used to prevent the frustration of orders it had previously issued in exercising jurisdiction it had otherwise obtained (i.e., jurisdiction obtained on a basis other than on the All Writs Act itself),<sup>121</sup> unless Congress limited this power.<sup>122</sup> In this case, because the district court had the power to issue the pen register order under FRCP 41, and because the Company’s assistance was necessary to implement that order, the All Writs Act provided the authority to issue an order compelling the Company to comply.<sup>123</sup>

This case demonstrates the unique power of the All Writs Act to affect parties who are not otherwise party to a cause of action. The Court found that the Company was not a third party so far removed from the underlying controversy in the case that the district court could not compel its assistance.<sup>124</sup> The power that the All Writs Act confers upon federal courts “extends, under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice.”<sup>125</sup>

The Court noted that a federal court’s power under the All Writs Act is limited when Congress has appropriately confined such action.<sup>126</sup> Therefore, where another statute conflicts with a federal court’s power under the All Writs Act, the federal court must yield to Congress’s intent. In the context of on going state court litigation, the Anti-Injunction Act, as illustrated in *Atlantic Coast Line*,<sup>127</sup> represents Congress’s intent that, as a general rule, federal courts should not interfere. The next section examines the interaction between these acts, how they have been interpreted to allow federal courts to issue injunctions aimed at state court proceedings in multi-

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120. *Id.*

121. *See id.* at 172–73; *cf. supra* Part VI.B.4 (explaining that the All Writs Act does not provide an independent basis of jurisdiction supporting removal).

122. *N.Y. Tel. Co.*, 434 U.S. at 172–73.

123. *Id.* at 172.

124. *Id.* at 174.

125. *Id.*

126. *Id.* at 172–73.

127. 398 U.S. 281 (1970).

district class actions, and recent developments that may further empower federal courts to preserve their interests as against parallel state proceedings.

#### D. Current Trends

##### 1. The courts

When applicable, the Anti-Injunction Act acts as a limit on the broad provision of authority granted to federal courts by the All Writs Act.<sup>128</sup> The Anti-Injunction Act, however, is only implicated in reference to state court proceedings that are already underway.<sup>129</sup> Therefore, in situations such as *In re Baldwin-United Corp.*<sup>130</sup> (considered earlier), the Act technically does not apply because the district court issued an injunction before any suits were commenced in state court.<sup>131</sup> On the other hand, the All Writs Act embodies a much broader grant of authority to federal courts.<sup>132</sup> Its authorization to issue writs necessary or appropriate in aid of the federal court's jurisdiction is not limited to state proceedings that are already underway. Even though the Anti-Injunction Act does not technically apply to state proceedings that are not yet underway, federal courts have nevertheless used cases interpreting the Anti-Injunction Act's

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128. *In re Diet Drugs Prods. Liab. Litig.*, 282 F.3d 220, 233 (3d Cir. 2002).

129. The Anti-Injunction Act is worded in terms of staying proceedings in a state court, which necessarily implies that state proceedings have already been instituted. See 28 U.S.C. § 2283 (2000).

130. 770 F.2d 328 (2d Cir. 1985); see *supra* Part VI.B.3.a.

131. The injunction in *Baldwin-United* enjoined the state of New York from filing a suit that was imminent. See 770 F.2d at 338; see also *Dombrowski v. Pfister*, 380 U.S. 479, 484 n.2 (1965) (the Anti-Injunction Act does "not preclude injunctions against the institution of state court proceedings, but only bar[s] stays of suits already instituted.").

132. The grant of authority under the All Writs Act extends well beyond the area of federal and state court interaction. It has been used for a wide array of purposes. See, e.g., *United States v. Hayman*, 342 U.S. 205, 220-22 (1952) (holding that the All Writs Act provided the district court authority to order a federal prisoner to be produced in court for a hearing); *Chandler v. Judicial Council*, 398 U.S. 74, 112 (1970) (stating that the All Writs Act provided the Supreme Court the authority to order lower federal court to further exercise its jurisdiction) (Harlan, J., concurring).

“necessary in aid of jurisdiction” exception to understand the meaning of similar language in the All Writs Act.<sup>133</sup>

*a. interaction between the Anti-Injunction and  
All Writs Acts—Baldwin-United*

Recall that in *Baldwin-United*, the federal district court had reached stipulations of settlement for 18 of 26 broker-dealer defendants who were being sued for securities violations by approximately 100,000 plaintiffs, whose suits had been consolidated into one federal class action.<sup>134</sup> The district court issued an injunction as necessary in aid of its jurisdiction under the All Writs Act, enjoining imminent proceedings in New York state court that threatened to undermine the federal settlement.<sup>135</sup> Since no suits had actually been commenced in state court, the Anti-Injunction Act was technically inapplicable as a limit on the federal court’s ability to issue the injunction under the All Writs Act.<sup>136</sup> Nevertheless, the Second Circuit considered cases interpreting the “necessary in aid of jurisdiction” clause of the Act to understand the meaning of the All Writs Act.<sup>137</sup> The court noted that the clause permits a district court to enjoin actions in state court to prevent relitigation of issues relating to an existing federal judgment, despite the fact that the parties to the original action could raise *res judicata* as an affirmative defense to accomplish the same end.<sup>138</sup>

The Court further explained that even before a federal court has reached a judgment, “the preservation of the federal court’s jurisdiction or authority over an ongoing matter may justify an injunction against actions in state court.”<sup>139</sup> Such a situation occurs when state court action would so interfere “with a federal court’s consideration or disposition of a case as to seriously impair the

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133. See *Baldwin-United*, 770 F.2d at 335.

134. See *id.* at 331; see also *supra* Part VI.B.3.a.

135. See *Baldwin-United*, 770 F.2d at 333.

136. See *id.* at 335.

137. *Id.*

138. *Id.* The power to enjoin state proceedings granted to federal courts under the All Writs Act is more powerful than the *res judicata* defense because the All Writs Act can stop litigation before it even starts, while *res judicata* can only be raised once litigation has commenced.

139. *Id.*



federal court's flexibility and authority to decide that case."<sup>140</sup> While the mere existence of a parallel lawsuit in state court seeking to adjudicate the same in personam claim does not by itself provide sufficient grounds for a federal court to issue an injunction, the court held that in this case the district court appropriately found that the maintenance of the actions in state court would significantly impair its jurisdiction and authority over the consolidated federal multidistrict action.<sup>141</sup> In this case, "the potential for an onslaught of state actions posed more than a risk of inconvenience or duplicative litigation;" the proposed litigation "threatened to 'seriously impair the federal court's flexibility and authority' to approve settlements in the multi-district litigation."<sup>142</sup>

The court characterized the district court proceedings as substantial in scope, as having consumed vast amounts of judicial time, and as nearing completion.<sup>143</sup> Further, multiple state actions would frustrate the district court's efforts to craft a settlement since the success of any settlement arrived at was to be dependent on the parties' ability to agree to release any and all related civil claims the plaintiffs had against defendants.<sup>144</sup> If states could derivatively assert the same claims that were the subject of the settlement on behalf of class members, there could be no certainty about the finality of a federal settlement, and "[a]ny substantial risk of this prospect would threaten all of the settlement efforts by the district court and destroy the utility of the multi-district forum otherwise ideally suited to resolving such broad claims."<sup>145</sup> The court also noted that principles of federalism and comity are not disturbed by issuing injunctive relief in cases such as this, where impending state

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140. *Id.* (quoting *Atl. Coast Line R.R. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 295 (1970)).

141. *Id.* at 336.

142. *Id.* at 337.

143. *Id.* The court also took into consideration that out of approximately 100,000 plaintiffs who were parties to the consolidated federal class action only fifty chose to opt out of the settlement. *Id.* Further, the court noted that the *Baldwin-United* defendants' bankruptcy had occurred two years earlier, but the states had waited until a federal settlement was almost finalized before taking significant action against the defendants and threatening to institute suit in their representational capacity. *See id.*

144. *Id.*

145. *Id.*

court suits are vexatious and harassing.<sup>146</sup> As a result of these considerations the *Baldwin* Court concluded that the “injunction protecting the settling defendants was unquestionably ‘necessary or appropriate in aid of’ the federal court’s jurisdiction.”<sup>147</sup>

The *Baldwin-United* court found that the injunction was appropriately necessary in aid of the federal court’s jurisdiction under the All Writs Act (and as the same language is interpreted in the Anti-Injunction Act) despite the fact that state court proceedings had not yet begun. All Writs injunctions can also be issued in cases where parallel state court litigation is already underway if it satisfies one of the three exceptions of the Anti-Injunction Act.

*b. interaction between the Anti-Injunction and All  
Writs Acts—Diet Drugs*

In cases where the Anti-Injunction Act is applicable—i.e., when state court proceedings are already underway—a federal court must first satisfy one of the three exceptions allowed by Congress under the Anti-Injunction Act before enjoining a state court proceeding in aid of its jurisdiction under the All Writs Act.<sup>148</sup> The Anti-Injunction Act is a limit on the All Writs Act.<sup>149</sup> There has been a recent trend, however, to allow federal district courts to enjoin parallel class action state court proceedings under the authority of the All Writs Act in situations that traditionally would not have been understood as meeting one of the narrow exceptions to the Anti-Injunction Act.<sup>150</sup> Appellate courts have reinterpreted the Anti-Injunction Act’s

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146. *Id.* The court analogized the circumstances of the case to an in rem action, which was the traditional basis for the “necessary in aid” exception to the Anti-Injunction Act, because it was a situation where it is intolerable to have conflicting orders from different courts. *See supra* note 97.

147. *Baldwin-United*, 770 F.2d at 338. The court does note that if the settlement process were to break down or if it appeared that prompt settlement of the matter was no longer likely, that the injunction against parallel actions might be lifted since state court proceedings cannot be enjoined “merely because they are duplicative of actions being heard in federal court.” *Id.*

148. *Atl. Coast Line R.R. v. Bhd. of Locomotive Eng’rs.*, 398 U.S. 281, 286 (1970).

149. *In re Diet Drugs Prods. Liab. Litig.*, 282 F.3d 220, 233 (3d Cir. 2002).

150. *See* Joan Steinman, *The Newest Frontier of Judicial Activism: Removal Under the All Writs Act*, 80 B.U. L. REV. 773, 785–92 (2000).

"necessary in aid of jurisdiction" exception to give federal courts more power to protect their interests by use of the All Writs Act.<sup>151</sup>

Without explicitly saying so, the Court of Appeals opinions that have upheld such district court injunctions appear to use the All Writs Act to effect a broader reading of the Anti-Injunction Act's exceptions in the name of the federal interest in the efficient resolution of exceedingly complex multi-district litigation. A more cynical interpretation of this trend is that the courts are using the All Writs Act to do an "end-run" around the strict requirements of the Anti-Injunction Act.<sup>152</sup>

Recall that the district court in *In re Diet Drugs Products Liability Litigation* enjoined a Texas State court from approving a mass opt out of federal class plaintiffs in multi-district mass tort litigation.<sup>153</sup> The opt out would have undermined the federal court's ability to achieve a global settlement.<sup>154</sup> Because the case involved state proceedings already underway, the Anti-Injunction Act limited the broad grant of authority to the district court under the All Writs Act.<sup>155</sup> An exception to the Anti-Injunction Act had to apply before an injunction could be issued under the All Writs Act. Because the parties did not argue that the injunction met the first exception—expressly authorized by Congress—or the third exception—necessary to protect or effectuate its judgments—the Court only considered whether the injunction met the second exception: "necessary in aid of jurisdiction."<sup>156</sup>

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151. See, e.g., *Baldwin-United*, 770 F.2d at 335.

152. See Steinman, *supra* note 150, at 815–24.

153. See *supra* Part VI.B.3.b. In resolving whether the injunction issued by the federal court was appropriate in this case, the Third Circuit first addressed and rejected the appellant's argument that their second attempt at removing the Texas Gonzalez case to federal court was effective and that the state court's jurisdiction was defeated before it ordered the opt out. *Diet Drugs*, 282 F.3d at 232. The Court noted that this "illustrate[d] the remarkable extent to which lawsuits can be turned into procedural entanglements" where "legal jockeying employed by both sides exhibits a proclivity to attempt to manipulate the rules for immediate tactical advantage." *Id.* Instead of entering the "tenebrous world of procedural machinations" the Court went on to consider the substantive arguments raised as to the validity of the injunction. *Id.* at 231–32.

154. *Diet Drugs*, 282 F.3d at 236–39.

155. *Id.* at 233 ("The power granted by the All Writs Act is limited by the Anti-Injunction Act."); see *supra* Part VI.C.1.

156. See *Diet Drugs*, 282 F.3d at 233.

Historically, the necessary in aid of jurisdiction exception was applied primarily in situations where a res (or property) was at stake.<sup>157</sup> The Third Circuit acknowledged the traditional notion that “in personam actions in federal and state court may proceed concurrently, without interference from either court, and [that] there is no evidence that the exception to § 2283 was intended to alter this balance.”<sup>158</sup> The Third Circuit nonetheless read the “necessary in aid of jurisdiction” exception broadly enough to cover parallel in personam actions under unique circumstances. The Court observed that while it may not be enough that state action “risk[s] some measure of inconvenience or duplicative litigation,”<sup>159</sup> a court may issue an injunction where “the state court action threatens to frustrate proceedings and disrupt the orderly resolution of the federal litigation.”<sup>160</sup>

The Third Circuit has recognized a category of federal cases, beyond res cases, where state actions present a special threat to the federal court’s jurisdiction.<sup>161</sup> In *Carlough v. Amchem Products, Inc.*,<sup>162</sup> it found that a federal court could appropriately enjoin state court proceedings to protect its jurisdiction where the federal case involved complex litigation, especially litigation involving a substantial class of persons from multiple states or a consolidation of cases from multiple districts.<sup>163</sup> It reasoned that complex nationwide cases make special demands on the flexibility and authority of federal courts that may justify an injunction otherwise prohibited by the Anti-Injunction Act.<sup>164</sup> The threat in this context is compounded

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157. See *supra* note 97 (discussing the history of the “necessary in aid of jurisdiction” exception).

158. See *Diet Drugs*, 282 F.3d at 234 (quoting *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 642 (1977)).

159. *Id.* (citing *In re Baldwin-United Corp.*, 770 F.2d 328, 337 (2d Cir. 1985)).

160. *Id.* (quoting *Winkler v. Eli Lilly Co.*, 101 F.3d 1196, 1202 (7th Cir. 1996)).

161. See cases cited *infra* note 185.

162. 10 F.3d 189 (3d Cir. 1993).

163. *Id.* at 198; see *Diet Drugs*, 282 F.3d at 235.

164. *Carlough*, 10 F.3d at 198. The court notes cases in other circuits where justices have concurred in this conclusion. See, e.g., *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998); *Wesch v. Folsom*, 6 F.3d 1465, 1470 (11th Cir. 1993); *Three J Farms, Inc. v. Plaintiffs’ Steering Comm. (In re Corrugated*

where there are conditional class certifications and impending settlements in federal actions.<sup>165</sup> These cases involve an enormous amount of time and expenditure of resources as the federal court seeks to forge a solution where the parties seek complicated, comprehensive settlements in order to resolve as many claims as possible in one proceeding.<sup>166</sup> As such, these complex cases are especially vulnerable to "parallel state actions that may 'frustrate the district court's efforts to craft a settlement in the multi-district litigation before it.'"<sup>167</sup>

The *Diet Drugs* court found that the *Gonzalez* state action posed such a threat to the federal court's jurisdiction. First, the Court considered the nature of the federal action itself. The action was the consolidation of over two thousand cases filed in or removed to federal court, comprising a finally certified federal class of six million members.<sup>168</sup> The district court and the parties expended two years of "exhaustive work" toward reaching a settlement.<sup>169</sup> The district court issued over a thousand orders in the case.<sup>170</sup> The district court employed careful management during that time to keep the "enormously complicated" settlement process on track.<sup>171</sup> Given the careful balancing the district court performed to bring about a settlement, any state court action that might interfere with the court's settlement oversight seriously threatened its ability to manage the final stages of the complex litigation.<sup>172</sup>

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Container Antitrust Litig.), 659 F.2d 1332, 1334-35 (5th Cir. Unit A 1981). The court also makes special note of a class of cases that analogize complex litigation cases to actions in rem. *See supra* note 97; *cf.* *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 806-07 (9th Cir. 2002) (holding that the action did not fall within the limited class of in personam cases that courts have exempted from the restriction of the Anti-Injunction Act, and stating that otherwise courts would run the danger of effectively eliminating parallel or related federal and state proceedings).

165. *Diet Drugs*, 282 F.3d at 236.

166. *Id.*

167. *Id.* (quoting *Carlough*, 10 F.3d at 203).

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.* at 236-37.

In addition to the nature of the federal action itself, the Third Circuit also considered the nature of the state court action in determining whether the state proceeding posed a sufficient threat to justify an injunction pursuant to the All Writs Act despite the Anti-Injunction Act's prohibition.<sup>173</sup> The court found that the Texas state court's opt out order, contrary to a previous district court order, would directly affect the identity of the parties making up the federal class.<sup>174</sup> In addition, the Texas court's order would make it difficult to distinguish which action members of both the federal and state classes were actually party to.<sup>175</sup> The court also noted that because injunctions must be "necessary in aid of jurisdiction" to fall under the exception to the Anti-Injunction Act, the injunctions must be narrowly tailored to meet the needs of the case.<sup>176</sup> The court found this requirement was met since the district court's order only enjoined the mass opt out; it did not prevent individual *Gonzalez* plaintiffs from opting out.<sup>177</sup>

Finally, the court considered federalism.<sup>178</sup> It weighed heavily the fact that Texas plaintiffs who wished to opt out of the federal class could still do so in their individual capacities.<sup>179</sup> They retained the option to commence individual lawsuits in the forums of their choice.<sup>180</sup> The federal court order would not interfere with this type of state court proceeding.<sup>181</sup> It further noted that the injunction did not interfere with the state court proceeding itself, as it only prevented the application of state court orders directed at the federal action.<sup>182</sup>

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173. *See id.* at 234, 237.

174. *Id.* at 237.

175. *Id.* at 237–38.

176. *Id.* at 238.

177. *See id.* The court distinguished its earlier decision in *Carlough v. Amchem Prods., Inc.*, 10 F.3d 189, 196 (3d Cir. 1993), where it upheld a substantially broader injunction that effectively stayed the entire parallel state action, rather than only an attempted opt out or other portions of the order aimed squarely at the federal action. *Diet Drugs*, 282 F.3d at 238.

178. *Diet Drugs*, 282 F.3d at 239.

179. *See id.*

180. *Id.*

181. *Id.*

182. *Id.*; *see also* *Amalgamated Sugar Co. v. NL Indus. Inc.*, 825 F.2d 634, 639 (2d Cir. 1987) ("While the Anti-Injunction Act is designed to avoid

In considering the interaction between the Anti-Injunction and All Writs Acts, the court stated, "since the parallel 'necessary in aid of jurisdiction' language is construed similarly in both the All Writs Act and the Anti-Injunction Act, a finding that an injunction is 'necessary in aid' of jurisdiction for purposes of one of these statutes implies its necessity for purposes of the other."<sup>183</sup> This construction runs counter to the historically narrow construction of the "necessary in aid of jurisdiction" exception under the Anti-Injunction Act, which was in fact generally applied to situations where property was held by the court.<sup>184</sup> This illustrates a recent trend in appellate opinions regarding the All Writs Act's application in multi-district class actions.<sup>185</sup> While the courts purport to require that an exception to the Anti-Injunction Act be met—specifically the "necessary in aid of jurisdiction" exception—before an injunction can issue under the authority of the All Writs Act, they do not conduct a standard analysis.

The courts have essentially used the broad interpretation of this language under the All Writs Act to effect a broader reading of the Anti-Injunction Act's exception.<sup>186</sup> This is a noteworthy phenomenon, considering how narrow Congress intended the Anti-

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disharmony between federal and state systems, the exception in § 2283 reflects congressional recognition that injunctions may sometimes be necessary in order to avoid that disharmony.").

183. *Diet Drugs*, 282 F.3d at 239 (quoting *Carlough v. Amchem Prods., Inc.*, 10 F.3d 189, 201 n.9).

184. See discussion *supra* note 97.

185. See, e.g., *In re Factor VIII or IX Concentrate Blood Prods. Litig.*, 159 F.3d 1016, 1020 (7th Cir. 1998); *In re Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998); *White v. Nat'l Football League*, 41 F.3d 402, 409 (8th Cir. 1994); *Ivy v. Diamond Shamrock Chems. Co. (In re "Agent Orange" Prod. Liab. Litig.)*, 996 F.2d 1425, 1431 (2d Cir. 1993).

186. The three main types of multi-district class actions where use of the All Writs Act to enjoin parallel state court proceedings threatening the federal court's jurisdiction has been upheld are mass tort, securities, and consumer protection cases. *Diet Drugs* was a mass tort case. *In re Baldwin-United Corp.*, 770 F.2d 328 (2d Cir. 1985), was a consolidated complex class action that dealt with securities. *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 134 F.3d 133 (3d Cir. 1998), was a consumer protection case where the court recognized the legitimacy of using the All Writs Act in the consumer protection context despite the fact that the issuance of an All Writs injunction in that case was found to be inappropriate where the federal settlement was struck down by the court of appeal.

Injunction Act's exceptions to be.<sup>187</sup> It is a reflection of the importance federal courts place on their ability to protect federal jurisdiction in "complex cases where certification or settlement has received conditional approval, or perhaps even where settlement is pending, [since] the challenges facing the overseeing court are such that it is likely that almost any parallel litigation in other fora presents a genuine threat . . . ."<sup>188</sup> This reinterpretation of the Anti-Injunction Act exception allows federal courts more latitude and therefore greater ability to protect their interests by use of the All Writs Act.

*c. limits on the use of the All Writs Act—General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*

The preceding cases reflect the willingness of federal courts to issue All Writs injunctions to protect the federal settlement process. The critical distinction between these cases and cases where All Writs injunctions are disallowed is that these cases involve complex class actions where a settlement was reached or was close to being reached.<sup>189</sup> A party will not be successful in obtaining an injunction against parallel state court proceedings in non-complex cases, the early stages of complex cases, or even in cases where a settlement has been set aside by the court of appeals.<sup>190</sup> Efficiency policy concerns are not as strongly implicated in those situations.

A party will be unable to secure an injunction against parallel state court proceedings if a settlement entered into by parties to a federal class action has been set aside. The Third Circuit disallowed use of the All Writs Act to enjoin parallel state court proceedings in this situation in *General Motors*, a consumer protection case.<sup>191</sup> *General Motors* involved a nationwide class of plaintiff truck owners seeking damages and injunctive relief for the allegedly defective design of certain GM truck fuel systems, which created a high risk of

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187. See *Atl. Coast Line R.R. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 287 (1970) ("[T]he exceptions [to § 2283] should not be enlarged by loose statutory construction.").

188. *Diet Drugs*, 282 F.3d at 236.

189. See *Vairo*, *supra* note 1, at 355–69.

190. See *id.*

191. *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 134 F.3d 133 (3d. Cir. 1998).



fire following side collisions.<sup>192</sup> The District Court for the Eastern District of Pennsylvania previously certified a nationwide class and approved a settlement whereby class members were to receive \$1,000 coupons that could be redeemed within 15 months to buy a new GM truck, and attorneys for the class were to receive \$9.5 million in attorney's fees.<sup>193</sup> Objectors within the class, however, appealed to the Third Circuit, which determined that the district court erred in certifying the nationwide settlement class of General Motors truck owners.<sup>194</sup> The Third Circuit vacated the class certification order and set aside the settlement, but left open the possibility that the district court could cure the defect in the certification procedure, re-certify the class, and get the revised settlement approved on remand.<sup>195</sup>

Instead of proceeding in federal court, however, the parties to the federal settlement restructured their deal with defendant General Motors and submitted it to a Louisiana state court, where a similar class action had been pending, but had not been removed to federal court.<sup>196</sup> The restructured settlement provided marginally better terms for the class, and over \$26 million in attorney's fees.<sup>197</sup> The Louisiana state court preliminarily approved the new settlement and provisionally certified the 5.7 million member nationwide class.<sup>198</sup> Counsel for the class members who had objected to the federal settlement attempted to derail the Louisiana proceeding by simultaneously removing the state court action and seeking an injunction by the federal court under the All Writs Act against the

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192. *Id.* at 137.

193. *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.* 55 F.3d 768, 782 (3d Cir. 1995). The nationwide class the district court certified composed 5.7 million registered truck owners, 5,200 of which opted out of the class and 6,500 of which objected to the settlement. *Gen. Motors Corp.*, 134 F.3d at 138.

194. *Gen. Motors Corp.*, 134 F.3d at 139. The Third Circuit determined that the district court failed to make required class findings of "numerosity, commonality, typicality, and adequacy of representation" as required by Federal Rules of Civil Procedure Rule 23. *Id.*

195. *Id.*

196. *Id.*

197. *White v. Gen. Motors Corp.*, 718 So. 3d 480, 509 (La. App. 1998).

198. *Gen. Motors Corp.*, 134 F.3d at 139.

parties proceeding in state court.<sup>199</sup> They argued that the Louisiana state settlement was an “end run” around, and a violation of, the jurisdiction of the district court to which the Third Circuit had remanded the case.<sup>200</sup> The Third Circuit responded that although the procedure followed by the parties to the settlement gave them pause, precedent compelled them to find there was no relief available under the All Writs Act.<sup>201</sup>

An injunction was inappropriate under the All Writs Act because no exception to the Anti-Injunction Act applied. The Appellants did not argue that an injunction was expressly authorized in the situation by an act of Congress.<sup>202</sup> They argued that either the relitigation exception or the “necessary in aid of jurisdiction” exception to the Anti-Injunction Act applied.<sup>203</sup> As to the relitigation exception, the court found that while the district court would have been bound on remand to apply the precepts it announced in order to properly certify the class, their decision did not have res judicata or collateral estoppel effect on other jurisdictions.<sup>204</sup> The court noted that denial of class certification is not a “judgment” for purposes of the Anti-Injunction Act and that their decision rejecting the provisional federal settlement class was not a judgment with respect to the Louisiana settlement agreement.<sup>205</sup>

The court also found the “necessary in aid of jurisdiction” exception to the Anti-Injunction Act inapplicable.<sup>206</sup> It distinguished precedent allowing injunctions to be issued under the exception as applying to cases where the federal court had already approved a provisional settlement or such approval was imminent, where the federal court had expended considerable time and resources, and where the parallel state action threatened to derail the provisional

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199. *See id.* at 137–41.

200. *Id.* at 137.

201. *Id.*

202. *Id.* at 144 n.5; *see also supra* note 96 (discussing the expressly authorized exception).

203. *Gen. Motors Corp.*, 134 F.3d at 144–45.

204. *Id.* at 145.

205. *Id.* at 146. The court also noted that its interpretation of Rule 23, the federal rule of civil procedure governing class actions, is not binding on the Louisiana state court. *Id.*

206. *Id.* at 144–45.

settlement.<sup>207</sup> In the instant case, the court noted there was “no class-wide settlement pending before the district court . . . and no stipulation of settlement or prospect of settlement [in the district court was] imminent.”<sup>208</sup> Further, the court pointed out that if the Louisiana court approved the settlement “then the nationwide class [would] be certified [and] no court [would] have any plaintiffs left with which to proceed.”<sup>209</sup> If the settlement was ultimately disapproved by the Louisiana state court, then the district court would be within its power to continue discovery.<sup>210</sup> Efficiency concerns that might call for an expanded interpretation of the ‘necessary in aid of jurisdiction’ exception, such as in *In re Diet Drugs*, did not exist in this case, therefore an injunction was barred.<sup>211</sup>

*General Motors* illustrates federal courts’ unwillingness to issue All Writs injunctions staying parallel state proceedings in complex cases where a federal settlement is not imminent. Since the court was less concerned with efficiency being undermined, it performed a standard Anti-Injunction Act analysis, under which federalism concerns demanded that the federal court not interfere with parallel state proceedings. Since the court found the appellants’ requested injunction did not fall under any of the three exceptions to the Anti-Injunction Act, the district court did not have positive power to issue an injunction under the All Writs Act.<sup>212</sup>

*d. have efficiency policy concerns won the day?*

Despite the Anti-Injunction Act’s proscription against federal courts staying state proceedings, use of the All Writs Act to enjoin parallel state court proceedings as “necessary in aid of” federal

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207. *Id.* at 145.

208. *Id.*

209. *Id.*

210. *Id.*

211. Because the Louisiana state court had already entered a final judgment in the settlement, the Third Circuit also found that its review was barred by the Full Faith and Credit Act, 28 U.S.C. § 1738 (2000), and the Rooker-Feldman doctrine. *Gen. Motors Corp.*, 134 F.3d at 138, 141–43.

212. *Gen. Motors Corp.*, 134 F.3d at 138, 144. The court also noted that the federal court did not have personal jurisdiction over the almost 5.7 million absentee plaintiffs who were not before that court. *Id.* at 140–41.

courts' jurisdiction have gained wide acceptance in appellate courts across the country.<sup>213</sup> This has occurred in complex cases where a settlement has been entered, conditionally approved, or is even merely pending.<sup>214</sup> The circuit courts of appeal seem to understand that parallel state court litigation can present a genuine threat to the jurisdiction of the federal court.<sup>215</sup> If this is correct, parties to complex class action litigation can expect federal courts to be proactive in protecting their jurisdiction against attempts to circumvent federal settlements and judgments by filing competing actions in state court.

Parties should be wary, however, of the possibility that the U.S. Supreme Court could step in and change this. Notably, the Court has not yet ruled on whether this use of the All Writs Act is proper. The Court's recent federalism cases and its decision in *Syngenta* raise questions about whether the Supreme Court would uphold this use of the All Writs Act and such a broad reading of the Anti-Injunction Act.<sup>216</sup>

The Court's choice not to take up the issue of injunctions issued against state court proceedings that threaten a federal court's jurisdiction in complex class actions may reflect some affinity for the efficiency policy concern. The Court has already foreclosed All Writs removal as a means for federal courts to protect their jurisdiction in such cases.<sup>217</sup> The Court may therefore be hesitant to eliminate All Writs injunctions as a means for federal courts to protect settlement proceedings from being derailed by parallel state court action.

While one must be careful not to read the Court's avoidance of the matter to be an endorsement of All Writs injunctions, the practical effect of allowing the practice to continue is important. As the only federal court with inherent power to review state court decisions, the U.S. Supreme Court is the one body that does not have a vested interest in allowing or not allowing All Writs injunctions to

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213. See *In re Diet Drugs Prods. Liab. Litig.*, 282 F.3d 220 (3d Cir. 2002).

214. See, e.g., *id.* at 236.

215. See, e.g., *id.*

216. See *Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28 (2002); Garnett, *supra* note 15, at 11–23.

217. See *Syngenta*, 537 U.S. at 31–34.

be issued against state court proceedings. It does not have to worry about its jurisprudential efforts being undermined because it is the ultimate Court of review. It is therefore in a position to weigh loftier concerns of what should and should not be allowed in the nation's dual court system. In cases the Court has taken up in recent years, it has elevated federalism above efficiency concerns.<sup>218</sup>

Despite any concern the Court may have had in *Syngenta* with eliminating All Writs removal as a means for lower federal courts to protect their jurisdiction, the need for separation between state and federal court systems won out.<sup>219</sup> There had been a considerable split between the circuits as to the propriety of All Writs removal.<sup>220</sup> In the context of issuing All Writs injunctions there is much more uniformity.<sup>221</sup> The lower federal courts have in essence agreed that efficiency concerns justify the issuance of injunctions under the All Writs Act as a means of protecting their jurisdiction. The Supreme Court's choice not to consider the issue has left the decision to the individual circuits, effectively allowing federal courts to use the All Writs Act to issue injunctions against parallel state court proceedings in complex class actions. Though the Court has been staunchly federalist, this illustrates some sensitivity to efficiency in the complex litigation context.

As the law stands now, parties to complex class action litigation can expect federal courts to be very protective of their jurisdiction, especially as they approach the point of reaching a settlement. A plaintiff class in such a situation can attempt to initiate parallel litigation in state court, but is likely to be enjoined unless the federal settlement process has suffered a deficiency or has completely

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218. See Part VI.B.4.

219. See *Syngenta*, 537 U.S. at 32–34.

220. Compare *VMS Ltd. P'ship Sec. Litig. v. Prudential Sec. Inc.* (*In re VMS Sec. Litig.*) 103 F.3d 1317, 1323 (7th Cir. 1996), and *Sable v. Gen. Motors Corp.*, 90 F.3d 171, 175 (6th Cir. 1996), and *Ivy v. Diamond Shamrock Chems. Co.* (*In re "Agent Orange" Prod. Liab. Litig.*), 996 F.2d 1425, 1431 (2d Cir. 1993) (circuits that upheld All Writs injunctions), with *Hillman v. Webley*, 115 F.3d 1461 (10th Cir. 1997), *Henson v. Ciba-Geigy Corp.*, 261 F.3d 1065 (11th Cir. 2001) (circuits that disallowed All Writs removal).

221. See cases cited *supra* note 185.

broken down.<sup>222</sup> They may derive some hope from the fact that the Supreme Court's recent jurisprudence, and indeed the history of the Anti-Injunction Act, indicates the Court is inclined to allow state proceedings to proceed without interference by federal courts. However, the Court's unwillingness to consider the issue of All Writs injunctions issued against state court proceedings by federal courts indicates sympathy for the efficiency concerns underlying such action, and signifies an unwillingness to strike these injunctions down.

## 2. The legislature

District courts and circuit courts of appeal are not alone in taking steps to expand federal court authority to further federal interests of efficiency and justice in the area of multi-district class action litigation. The House of Representatives recently approved the Class Action Fairness Act of 2003,<sup>223</sup> which is currently awaiting approval in the Senate. The current draft of the bill would, *inter alia*, ease the complete diversity requirements of the section 1332 diversity statute in class actions where the amount in controversy exceeds five million dollars.<sup>224</sup> Under the Act, the complete diversity requirement would be met in the case of a class action, thus providing for original or removal jurisdiction in federal court, where:

(A) any member of [the] class of plaintiffs is a citizen of a State different from any defendant; (B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or (C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.<sup>225</sup>

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222. Recall that the problem is with an entire class or a large subsection thereof filing parallel actions in state court. Individual plaintiffs, of course, have the option to opt out of the class action and pursue state remedies.

223. H.R. 1115, 108th Cong. (2003).

224. *Id.* at § 4; see also *supra* Parts II, V.B.1.

225. H.R. 1115 § 4.

The Act also gives district courts discretion to decline to exercise jurisdiction over a class action where the government's interests are not implicated.<sup>226</sup>

A motivation behind the Class Action Fairness Act is to give federal courts jurisdiction in class actions where state court judges have too hastily certified classes and approved settlements.<sup>227</sup> In *Syngenta Crop Protection, Inc. v. Henson*,<sup>228</sup> the Supreme Court eliminated All Writs removal, which was one of the means federal courts had been using to protect federal interests in the class action context. The Class Action Fairness Act can therefore be seen, at least in part, as a response to the Court's elimination of All Writs removal as a means of protecting federal courts' efforts to achieve global settlement in multi-district class actions.<sup>229</sup>

### *E. Conclusion*

Parties to complex class action litigation have much riding on the determination of whether they can proceed in state versus federal court. The current interpretation of a federal court's power under the All Writs Act to protect its jurisdiction in these cases should give class action defendants some peace of mind in knowing they are protected from malcontent plaintiffs mounting attacks in parallel state court proceedings on imminent or pending federal settlements. At the same time, there is some hope for complex class action plaintiffs who want to pursue state court remedies because they are unhappy with the way a federal court has handled the case. If it is early in the federal settlement process, or a version of a settlement has been ruled deficient, such plaintiffs are not estopped from

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226. *Id.* The resolution sets forth five factors for the court to consider in determining whether to exercise its jurisdiction or to decline to take jurisdiction. *Id.*

227. See Judith Resnik, *Constricting Remedies: The Rehnquist Judiciary, Congress, and Federal Power*, 78 IND. L.J. 223, 301 (2003) (recounting witness testimony before committee members who spoke to this problem and proposed the solution that class actions be federalized "as a means of reining in wayward state court judges and plaintiffs' lawyers").

228. 537 U.S. 28 (2002).

229. See Resnik, *supra* note 227, at 298-303.

pursuing alternative settlement negotiations in a state court with jurisdiction over the case.<sup>230</sup>

Also, although the U.S. Supreme Court has not specifically taken up this issue, its recent rulings indicate that it is more concerned with federalism principles than those of efficiency. If so, it is possible that the Court may choose to speak on the propriety of federal courts' use of All Writs injunctions to enjoin parallel state court proceedings. To date, the Court has deferred to the judgment of the circuits to give district courts this power in the name of efficiency; however, it may choose to eliminate these injunctions as inconsistent with their precedent interpreting the prohibition of the Anti-Injunction Act. The Court might also be more willing to strike down the federal court practice of issuing All Writs injunctions if Congress approves the Class Action Fairness Act, which would give federal courts broader power to protect their interests by expanding their subject matter jurisdiction.<sup>231</sup>

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230. Of course, the requirements of personal and subject matter jurisdiction must be met, and it must be a case where the federal court has not attained exclusive jurisdiction over the matter. *See supra* Parts II (diversity jurisdiction), III (federal question jurisdiction).

231. *See supra* notes 223–29 and accompanying text.



