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Determination of Federal Jurisdictional Amount in Suits on Unliquidated Claims

Hoping to keep federal court dockets free of petty claims and thereby to reduce the delay in bringing to trial controversies involving more substantial sums, Congress has given United States district courts jurisdiction of many civil actions arising under the Constitution, laws, or treaties of the United States and most disputes between parties of diverse citizenship only when the alleged right forming the basis of a claimant's cause of action can be valued at more than ten thousand dollars.[1] The value of a particular claim is determined by reference to those portions of its proponent's plead-

1. 28 U.S.C. §§ 1331(a), 1332(a) (1964). These provisions refer to the value of the claimant's right as "the amount in controversy." For a discussion of the application of this legislation in special situations, see 1A BARRON & HOLTZOFF, FEDERAL PRACTICE & PROCEDURE § 392 (Rules ed. 1960) (counterclaims and crossclaims); 2 *id.* §§ 503, 534, 569 (1961) (joinder of claims and parties).

Federal law provides different jurisdictional provisions for particular classes of cases arising under the Constitution, laws, or treaties of the United States. See 28 U.S.C. §§ 1333-40, 1343-45, 1346(b), 1347-48, 1350-51, 1353-58 (1964). At present the largest categories of suits governed by § 1331(a) are actions arising under the Jones Act and suits challenging the constitutionality of state legislation. See S. REP. No. 1830, 85th Cong., 2d Sess. 5 (1958). The jurisdictional minimum in an interpleader action brought in a federal court on the basis of diversity of citizenship is $500. 28 U.S.C. § 1335 (1964).

"The jurisdictional amount should not be so high as to convert the Federal courts into courts of big business nor so low as to fritter away their time in the trial of petty controversies." S. REP. No. 1830, *op. cit. supra*, at 3.

ing which tend to support his prayer for relief.[2] Neither the existence of a valid defense to the claim, even if it is obvious from the face of the proponent's own pleading, nor an ultimate recovery of less than ten thousand dollars has any significance in testing a court's jurisdiction.[3]

When an opponent or the court *sua sponte* questions the validity of a claimant's assertion that the right which he seeks to enforce has a value exceeding ten thousand dollars, the claimant must establish the truth of his assertion.[4] The statements in his pleading are not necessarily helpful, for they satisfy the specificity requirements of the Federal Rules of Civil Procedure if they merely allege facts sufficient to indicate the general nature of the events supposedly giving rise to a right of recovery.[5] Moreover, the assertion of the presence of the jurisdictional amount itself need be nothing more than a sentence to the effect that the amount in controversy exceeds ten thousand dollars.[6] Nevertheless, it is generally assumed, on the basis of the rule enunciated by the United States Supreme Court in *Saint Paul Mercury Indem. Co. v. Red Cab Co.*,[7] that a claimant's allegation of the presence of the jurisdictional amount should be conclusive unless (1) it appears not to have been made in good faith or (2) the court believes as a matter of legal certainty that the value of the right in controversy is in fact ten thousand dollars or less.

2. Saint Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 289 (1938). See generally WRIGHT, FEDERAL COURTS § 33 (1963).

3. Saint Paul Mercury Indem. Co. v. Red Cab Co., *supra* note 2, at 289. See generally 1 MOORE, FEDERAL PRACTICE ¶ 0.92[1] (2d ed. 1964); WRIGHT, *op. cit. supra* note 2, § 33. *But see* Unique Balance Co. v. De Vries, 166 F. Supp. 849 (N.D. Cal. 1958).

4. See Wade v. Rogala, 270 F.2d 280, 285 (3d Cir. 1959); Kantor v. Comet Press Books Corp., 187 F. Supp. 321, 322 (S.D.N.Y. 1960); FED. R. CIV. P. 12(b), (h)(2); WRIGHT, *op. cit. supra* note 2, § 33.

The court has discretion in determining the mode of proof. See Gibbs v. Buck, 307 U.S. 66, 71-72 (1939); Wade v. Rogala, *supra*, at 285; Kantor v. Comet Press Books Corp., *supra*, at 322; 1 MOORE, *op. cit. supra* note 3, ¶ 0.92[4].

FED. R. CIV. P. 12(d) provides that jurisdictional issues "shall be . . . determined before trial on application of any party, unless the court orders that the . . . determination thereof be deferred until the trial."

5. "A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third party claim, shall contain . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief . . . ." FED. R. CIV. P. 8(a)(2). See Conley v. Gibson, 355 U.S. 41, 47 (1957); 2 MOORE, *op. cit. supra* note 3, ¶ 8.03. FED. R. CIV. P. 9(g) provides: "Where items of special damage are claimed, they shall be specifically stated." This rule is designed to prevent an adversary from being surprised at the nature of the injuries for which relief is sought. Therefore, only a general statement of the types of injuries allegedly sustained is necessary to satisfy the requirements of the rule. Great Am. Indem. Co. v. Brown, 307 F.2d 306, 308 (5th Cir. 1962); 2 MOORE, *op. cit. supra* note 3, ¶ 9.08. Indeed, no greater factual detail is required in pleading special damages than in pleading ordinary damages. See FED. R. CIV. P. Form 9.

6. See FED. R. CIV. P. Form 2.

7. 303 U.S. 283, 288-89 (1938).

There may be relatively little difficulty in determining whether claims for liquidated damages—fixed amounts or amounts that can be fixed with a few simple calculations[8]—meet the jurisdictional requirement as interpreted in the light of the *St. Paul* doctrine. This could be true, for example, when suit is brought to recover lost salary or the proceeds of an insurance policy.[9] Comparatively easy disposition can likewise be made of those types of claims which are considered incapable of pecuniary valuation and therefore not justiciable in a federal court when jurisdiction is predicated solely upon a statute containing a minimum amount-in-controversy provision.[10] Evaluating a cause of action becomes more troublesome, however, when its proponent demands unliquidated damages,[11] such as compensation for pain and suffering, mental anguish, inconvenience, or humiliation, or when he requests punitive damages and the applicable substantive law does not clearly prohibit their recovery.[12]

When confronted with such unliquidated or punitive damage claims, some courts stress the "good faith" aspect of the *St. Paul* rule. It is apparently the absence of clear guidelines for establishing

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8. "Liquidated damages 'mean damages, agreed upon as to amount by the parties, or fixed by operation of law, or under the correct applicable principles of law made certain in amount by the terms of the contract, or susceptible of being made certain in amount by mathematical calculations from factors which are or ought to be in the possession or knowledge of the party to be charged.'" Norwood Morris Plan Co. v. McCarthy, 295 Mass. 597, 602, 4 N.E.2d 450, 454 (1936), quoting from Cochrane v. Forbes, 267 Mass. 417, 420, 166 N.E. 752, 753 (1929).

9. Air Line Dispatchers Ass'n v. California E. Airways, Inc., 127 F. Supp. 521 (N.D. Cal. 1954) (where only damages sought are for lost earnings stemming from employee's wrongful discharge, amount in controversy equals amount of former salary lost minus amount of compensation received from an employer other than defendant since discharge); Nikora v. Mayer, 122 F. Supp. 587 (D. Conn. 1954) (in suit for specific performance of land contract, value of real property which is subject matter of contract is amount in controversy); New Century Cas. Co. v. Chase, 39 F. Supp. 768 (S.D.W. Va. 1941) (in suit on insurance policy, maximum liability on policy is amount in controversy).

10. Kurtz v. Moffitt, 115 U.S. 487 (1885) (habeas corpus proceeding); Davenport v. Procter & Gamble Mfg. Co., 241 F.2d 511 (2d Cir. 1957) (suit to compel specific performance of an arbitration contract); United States *ex rel.* Curtiss v. Haviland, 297 Fed. 431 (2d Cir. 1924) (lunacy inquisition); McGuire v. Amrein, 101 F. Supp. 414 (D. Md. 1951) (suit to prohibit divulgence of contents of intercepted telephone message); Whitney v. American Shipbuilding Co., 197 Fed. 777 (N.D. Ohio 1911) (stockholder's action to compel a corporation to allow him to inspect its books and records); Bowman v. Bowman, 30 Fed. 849 (C.C.N.D. Ill. 1887) (divorce action).

11. "Unliquidated damages are such as rest in opinion only, and which cannot be ascertained by computation or calculation." Litsinger v. Ross, 185 Md. 154, 157, 44 A.2d 435, 436 (1945).

12. In some kinds of actions applicable law prohibits an award of punitive damages under any circumstances. In such situations a demand for exemplary damages can be discounted completely as legally impossible of fulfillment. See, *e.g.*, Deming v. Buckley's Art Gallery, 196 F. Supp. 246 (W.D. Ark. 1961) (punitive damages not recoverable in breach of contract action); Kantor v. Comet Press Books Corp., 187 F. Supp. 321 (S.D.N.Y. 1960) (punitive damages not recoverable for "fraud arising out of publishing contract"); Newcastle Prods., Inc. v. School Dist. of Blair Township, 18 F. Supp. 335 (W.D. Pa. 1936) (punitive damages not recoverable from municipal corporation).

a claimant's good faith that leads to the lack of uniformity in the methods employed in determining the question of sincerity and also, no doubt, to the inconsistency in the results reached. For example, in *Harris v. Pasquotank County*,[13] where the defendant challenged the validity of the plaintiff's allegation that the amount in controversy in a breach of contract action met the jurisdictional minimum, the court held that the latter's affidavit asserting his honest belief that he was entitled to more than ten thousand dollars damages was sufficient by itself to satisfy the good faith requirement. The court in *Gordon v. Daigle*,[14] on the other hand, was unwilling to rely only upon the claimants' affidavits. It conducted a pre-trial hearing and received evidence on such matters as the length of time during which the plaintiffs were unable to work and the nature of their disabilities before deciding that each claimant lacked good faith in seeking damages in excess of ten thousand dollars for whiplash injuries suffered in an automobile accident.

Courts have shown a similar lack of uniformity in applying the "legal certainty" aspect of the *St. Paul* rule. *Wade v. Rogala*[15] exemplifies one approach. Plaintiff sued under the Jones Act[16] as the administratrix of the estate of a seaman whose death was allegedly attributable to defendant's negligence, which was said to have resulted in the sinking of the vessel on which the decedent had been working. The Court of Appeals for the Third Circuit held that there was no justification for the lower court's method of determining before trial that plaintiff could not produce sufficient evidence to support a verdict in excess of the jurisdictional minimum or that such a verdict, if rendered, would have to be set aside as a matter of law. Although it apparently approved of a judge's looking at *some* evidence before trial in an effort to test the validity of a claimant's allegation regarding the amount in controversy, the court felt that where "the issue of jurisdictional amount . . . is so closely tied to the merits of the cause . . . ,"[17] the court should not insist upon the pre-trial production of so much evidence that "under the guise of determining jurisdiction, the merits of the controversy [are] . . . summarily decided . . . ."[18] The court in *Anthony v. United Ins. Co. of America*,[19] however, took a different position on the issue of pre-trial examination of the amount in controversy. Defendant's agent had sold a thousand-dollar life insurance policy to the insured

13. 227 F. Supp. 625 (E.D.N.C. 1964).

14. 230 F. Supp. 819 (W.D. La. 1964).

15. 270 F.2d 280 (3d Cir. 1959).

16. 41 Stat. 1007 (1920), 46 U.S.C. § 688 (1964).

17. Wade v. Rogala, 270 F.2d 280, 285 (3d Cir. 1959).

18. *Ibid.; accord*, Diana v. Canada Dry Corp., 189 F. Supp. 280 (W.D. Pa. 1960); see Barry v. Edmunds, 116 U.S. 550, 565 (1886).

19. 240 F. Supp. 95 (E.D.S.C. 1965).

on the basis of misrepresentations to her that she was an acceptable risk despite her bad health. After her death, defendant maintained that it was not bound by its agent's statements and that it was therefore not obligated on the policy. The beneficiary sued to recover fifty thousand dollars actual and punitive damages in reliance upon state law, which would have permitted an award of exemplary damages. Dismissing the complaint for want of jurisdiction, the court, apparently unconcerned about looking at all the facts tending to support the plaintiff's recovery, held that "under the facts in this case" a jury verdict in excess of ten thousand dollars would not be permitted to stand as a matter of law.

When a court, after reviewing evidence introduced to substantiate the validity of an allegation that a claim can support an award of more than ten thousand dollars, rules that recovery in excess of this figure is impossible, it could be influenced by two fundamentally different considerations. On the one hand, it might simply feel that no jury would return a verdict larger than the jurisdictional minimum on the basis of the claimant's evidence. In such a case, the court would be resting its decision on a factual determination rather than a legal certainty. In attempting to evaluate the evidence as it assumed a jury would, rather than attempting to determine the maximum permissible verdict a jury could reach, the court would have misconceived the relationship between judge and jury, since it is not the judge's responsibility to decide what a jury will do.[20] On the other hand, the court might believe that if a jury returned a verdict in excess of the jurisdictional minimum on the basis of the evidence, the result could not be allowed to stand.[21] Here the *St. Paul* rule is properly applied, and the fear expressed in *Wade* that an extensive examination of a claimant's evidence would impinge upon the jury's role is not well founded, for the court has sought to determine the largest recovery which the evidence can support as a matter of law, rather than the size of the award to which it will actually lead.[22] Indeed, it would seem that the only fair way for a court to determine the largest amount to which a claimant could legally be entitled is to consider *all* his evidence on the damage issue.

As noted above, Congress established the jurisdictional minimum

20. Smithers v. Smith, 204 U.S. 632, 645-46 (1907); Barry v. Edmunds, 116 U.S. 550, 565 (1886).

21. See Turner v. Wilson Line, 242 F.2d 414, 419 (1st Cir. 1957); Anthony v. United Ins. Co. of America, 240 F. Supp. 95, 96 (E.D.S.C. 1965). *But see* Bell v. Preferred Life Assur. Soc'y, 320 U.S. 238, 243 (1943).

22. "The controlling distinction between the power of the court and that of the jury is that the former is the power to determine the law and the latter to determine the facts." Dimick v. Schiedt, 293 U.S. 474, 486 (1935); *accord,* Hickman v. Jones, 76 U.S. (9 Wall.) 197, 201 (1869); Georgia v. Brailsford, 3 U.S. (3 Dall.) 1, 4 (1794).

in an effort to reduce the caseload of the federal courts. However, no rules were provided by which a court can determine whether the proper amount is actually in controversy in a given case.[23] In *St. Paul* the Supreme Court attempted to correct this deficiency by holding that a claimant's allegation respecting the value of the right which he seeks to assert should control if the "good faith" and "legal certainty" criteria are satisfied, but it has never defined the standards by which these tests are to be applied. No standard is actually needed for the application of the "good faith" aspect of the *St. Paul* rule, because that criterion has little significance without reference to the amount legally recoverable. If it is legally certain that recovery in excess of the jurisdictional minimum is impossible, the claimant's good faith belief that he is entitled to more than ten thousand dollars is irrelevant.[24] Conversely, if there is no such legal certainty, it is unlikely that bad faith would be found when a claimant has a legal right to recover the amount sought.[25] In failing to lay down standards for determining which recoveries are legally impossible, the Court no doubt assumed that judges would use the same guidelines which they regularly employ in setting aside excessive verdicts and in ordering remittiturs—other situations in which it is crucial to determine the maximum amount of a legally permissible verdict. In unliquidated damage suits, courts generally allow a jury award to stand unmodified unless it is "grossly excessive,"[26] "flagrantly outrageous and extravagant,"[27] or "so high as to shock the conscience."[28] However, these standards obviously provide no basis for

23. The only legislation dealing specifically with the determination of the amount in controversy is 28 U.S.C. § 2108 (1964): "Where the power of any court of appeals to review a case depends upon the amount or value in controversy, such amount or value, if not otherwise satisfactorily disclosed upon the record, may be shown and ascertained by the oath of a party to the case or by other competent evidence." This legislation appears to have been enacted during the period when a particular amount in controversy was a prerequisite to appeal to a federal court of appeals from certain territorial courts. Its value today is doubtful. See 28 U.S.C. §§ 1291-92 (1964). Even accepting § 2108 as an indication of congressional feeling on the question of methods to be employed in determining the amount in controversy, it provides no clearer guidelines than those currently in use in the district courts.

24. See McDonald v. Patton, 240 F.2d 424, 426 (4th Cir. 1957).

25. *But see* Brown v. Bodak, 188 F. Supp. 532 (S.D.N.Y. 1960). Plaintiff filed a complaint seeking $8,500 damages for personal injuries at a time when the jurisdictional minimum was only $3,000. The jurisdictional minimum was raised to $10,000 before trial, however, and the court dismissed the complaint with leave to amend. Thereupon plaintiff amended to claim $10,500 but alleged no additional elements of damage. The court felt that the amendment was colored, for the purpose of attempting to establish federal jurisdiction. Without determining whether a recovery in excess of $10,000 would have been legally permissible, the court dismissed the action because of plaintiff's bad faith in alleging the amount in controversy.

26. Montgomery Ward & Co. v. Morris, 260 F.2d 504, 506 (6th Cir. 1958).

27. Mooney v. Henderson Portion Pack Co., 339 F.2d 64, 65 (6th Cir. 1964).

28. Denny v. Montour R.R., 101 F. Supp. 735, 743 (W.D. Pa. 1951).

anything approaching an objective determination and must be partly responsible for the inconsistency in the results achieved in applying the jurisdictional limitations.[29]

It is probably impossible to formulate objective guidelines for determining whether the ten thousand dollar minimum is present in a particular action for unliquidated damages, so long as the *St. Paul* rule remains law.[30] Therefore, any attempt to create a greater degree of consistency in the results of hearings on the jurisdictional issue in the course of such suits must come from a more uniform method for employing the *St. Paul* tests when a pre-trial attack is made upon a claimant's jurisdictional-amount allegation. Any procedure adopted should be predicated upon three considerations. First, since a claimant's sincerity cannot be determined without reference to the amount which he can legally recover, an independent examination into his good faith is generally futile.[31] Second, a court cannot with fairness dismiss a claimant's action on the ground of lack of the requisite amount in controversy without taking account of all his evidence bearing on the damage issue. Third, in deference to Congress' desire to expedite the conduct of business in the federal courts, these tribunals must strive to consider this evidence with all reasonable dispatch.[32]

One approach would be to allow a claimant of unliquidated damages whose allegation of the amount in controversy has been challenged to file an affidavit with the court specifying with par-

29. *Compare* Jenkins v. Fandal, 242 F. Supp. 528 (W.D. Pa. 1965), *with* Mintz v. DeBiase, 236 F. Supp. 654 (D. Mass. 1964). In the former case plaintiff claimed damages for pain, suffering, inconvenience and loss of future earnings on account of back injuries alleged to have been sustained in an automobile accident resulting from defendant's negligence. Although plaintiff maintained that she had experienced discomfort immediately after the accident, she waited three weeks to consult a physician. She produced little evidence to show that the mishap had diminished her earning power. Eventually the jury awarded her only $2,000. Although the court recognized that the validity of an allegation of the amount in controversy can be made at any time, it denied a post-trial motion to dismiss her complaint, holding that the complaint did not clearly lack a valid allegation of jurisdictional amount. In the latter case plaintiff sought compensation for pain, suffering, shock, sickness, and continuing discomfort from injuries said to have been sustained when she was thrown from defendant's horse. The court dismissed the complaint for failure to state a claim which could be valued at $10,000 or more, despite the fact that the plaintiff had been hospitalized for three weeks, in casts and incapacitated for two months, in braces for an additional six weeks, and allegedly suffered continued pain and discomfort.

30. While *St. Paul* is generally recognized as the leading decision dealing with the interpretation of the jurisdictional amount provisions in the Judicial Code, it must be noted that the case appears to have involved a claim for liquidated damages—the out-of-pocket expenses incurred because of defendant insurer's alleged breach of contract in denying liability upon certain workmen's compensation claims asserted against plaintiff employer. Since *St. Paul* did not expressly address itself to the special problems involved in determining the amount in controversy in suits for unliquidated damages, doubt has been cast upon the need to consider it binding in this area. See Barry v. Edmunds, 116 U.S. 550, 565 (1886).

31. See text accompanying notes 22 & 23 *supra*.

32. See note 1 *supra* and accompanying text.

ticularity the nature of the injuries he has allegedly sustained and the evidence upon which he will rely to prove his damages. The court could examine this affidavit alone, without considering the actual evidence, in much the same manner as it would deal with the affidavits and depositions filed in connection with a motion for summary judgment. Upon the basis of the sworn allegations it could apply what legal certainty standards there are to determine whether a claimant could legally recover more than ten thousand dollars. The time and the expense necessary to produce the actual evidence bearing on the damage issue would thus be saved, and the claimant would be afforded an opportunity to state his entire case in favor of the court's taking jurisdiction of his cause of action.

If a court should find during the course of trial that the statements in a claimant's affidavit were exaggerated, it could invoke the sanction provided by Congress in the 1958 amendments to the Judicial Code. These provisions authorize courts to deny costs to a claimant, or to assess costs against him, if he ultimately recovers less than ten thousand dollars in any action in which federal jurisdiction has been predicated upon an amount in controversy in excess of that figure.[33] Indeed, these amendments suggest that Congress foresaw cases in which a court could not confidently decide before trial whether there was an appropriate amount in controversy and that it approved a court's taking jurisdiction in such cases.[34] Moreover, since this legislation was designed to deter the filing of "inflated" claims it was not necessarily intended to be applied in every case in which less than ten thousand dollars is recovered, despite the claimant's good faith in asking for more than ten thousand dollars.[35] The threat

33. 28 U.S.C. § 1331(b) (1964) provides in reference to claims arising under the Constitution, laws, or treaties of the United States: "Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff."

28 U.S.C. § 1332(b) (1964), dealing with suits brought in federal courts because of the diverse citizenship of the parties, contains language virtually identical to that of § 1331(b), but applies only to "the plaintiff who files the case originally in the Federal courts . . . ." It appears that these words were omitted from § 1331(b) through oversight. See 58 COLUM. L. REV. 1291 n.31 (1958).

34. Lutz v. McNair, 233 F. Supp. 871 (E.D. Va. 1964).

35. The claimant who acted in good faith in demanding more than $10,000 need not fear the costs provisions, since a court is not required to assess costs, even though ultimate recovery is less than that amount. Stachon v. Hoxie, 190 F. Supp. 185 (W.D. Mich. 1960); see S. REP. No. 1830, *op. cit. supra* note 1, at 5.

It has been argued that the continued application of the good-faith test in determining the validity of a claimant's allegation of the amount in controversy would render the costs provisions virtually meaningless, since a claim found to be in bad faith is likely to be dismissed, and, where it is not dismissed, it seems difficult to say that a court can find a claimant in good faith for the purpose of taking jurisdiction but in bad faith for the purpose of applying the costs provisions, where the same test of good faith is involved in both determinations. Foster, *Congress Changes Jurisdiction of United States District Courts*, Wis. B. Bull., August 1958, p. 73; Comment, 58 COLUM.

of these costs provisions—or, if Congress so desires, more serious penalties[36]—should make a claimant consider the contents of his affidavit carefully. Not to be overlooked in this regard is the possibility of a contempt citation when a claimant can be shown to have falsified his affidavit.[37]

Since the final determination of the amount in controversy would rest in the judge's subjective evaluation of the claimant's affidavit considered against the background of the imperfect standards currently available for applying the *St. Paul* test, the above proposal will not serve as a panacea for the difficulty involved in an attempt to determine accurately the value of the rights in controversy in unliquidated damage actions. Nevertheless, the establishment of a uniform method for dealing with the problem will increase the likelihood of achieving consistency and predictability in the results of pretrial hearings on this jurisdictional question. A court's adoption of the proposal would serve to implement the congressional policy of limiting the jurisdiction of federal courts and thereby expediting the conduct of their business, and at the same time would give the claimant a better opportunity than he has at present in some courts to indicate in detail the nature of all his evidence relating to the amount put into controversy by his complaint.

L. REV. 1287, 1291-94 (1958); Note, 45 MARQ. L. REV. 117, 119 (1961); see Stachon v. Hoxie, *supra.* See generally Cowen, *Federal Jurisdiction Amended,* 44 VA. L. REV. 971, 975-78 (1958).

36. See ALI, STUDY OF THE DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS 49 (Tent. Draft No. 1, 1963), where it was suggested that the deterrent value of the costs provisions could be enhanced if a court were permitted to tax against a party who filed an inflated claim the amount of his opponent's reasonable expenses and attorney's fees attributable to the conduct of his defense. Similar assessments are currently permissible against a party who has abused the federal pretrial discovery procedure. See FED. R. CIV. P. 30(d), 37(a), 37(c). The proposal does not appear among the American Law Institute's final recommendations dealing with the diversity jurisdiction of federal courts. See ALI, STUDY OF THE DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS 64-65 (Official Draft 1965).

37. Compare FED. R. CIV. P. 56(g), which provides for contempt penalties when a party files in bad faith a motion for summary judgment.