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Federal Jurisdiction to Enforce a Settlement After Vacating a Dismissal Order Under Rule 60(b)(6)

Alyson M. Weiss
Benjamin N. Cardozo School of Law

FEDERAL JURISDICTION TO ENFORCE A SETTLEMENT AGREEMENT AFTER VACATING A DISMISSAL ORDER UNDER RULE 60(b)(6)

The judiciary has strongly favored voluntary settlement of litigation by upholding and enforcing settlement agreements whenever possible.[1] The main principle underlying this policy is conservation of both judicial and individual resources.[2] By successful settlement, parties avoid the cost and delay inherent in litigation, and the court is spared an unnecessary trial.[3] For these reasons, there is much to be gained by encouraging and facilitating compromise. That the majority of cases are concluded by settlement "is a tribute to both the trial bench and the practicing bar."[4]

In routine federal civil cases, prior court approval is not required for a settlement to be binding and enforceable.[5] In the specific context reviewed by this Note, however, a federal court's jurisdiction to enforce a repudiated settlement agreement may turn directly on whether the agreement was approved by the court or incorporated into the court's order dismissing the case. This Note addresses a division among the circuit courts regarding the subject matter jurisdiction[6] of

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[1] This policy was first articulated by the Supreme Court early in this century in Williams v. First Nat'l Bank, 216 U.S. 582, 595 (1910). The policy is equally valid today, almost 80 years later. See, e.g., American Sec. Vanlines, Inc. v. Gallagher, 782 F.2d 1056, 1060 (D.C. Cir. 1986); McCall-Bey v. Franzen, 777 F.2d 1178, 1195 (7th Cir. 1985); Aro Corp. v. Allied Witan Co., 531 F.2d 1368, 1372 (6th Cir.), cert. denied, 429 U.S. 862 (1976); D.H. Overmeyer Co. v. Loflin, 440 F.2d 1213, 1215 (5th Cir.), cert. denied, 404 U.S. 851 (1971); Autera v. Robinson, 419 F.2d 1197, 1199 (D.C. Cir. 1969); McCarthy v. Cahill, 249 F. Supp. 194, 198 (D.D.C. 1966).

[2] See, e.g., *American Sec. Vanlines*, 782 F.2d at 1060 n.5 (settlements save judicial and private resources and help control congestion of court calendar); *Aro Corp.*, 531 F.2d at 1372 (settlements spare parties, courts, and tax-paying citizens from burdens of trial); see also Manual for Complex Litigation 2d § 23.11, at 159 (1985) (far more cases are settled than tried, reflecting the preference among lawyers and litigants for negotiated agreements rather than expense and uncertainty of trial); see generally F. James & G. Hazard, Civil Procedure §§ 6.3 - .4, at 285-95 (3d ed. 1985) (discussing social and economic costs of civil litigation).

[3] *Autera*, 419 F.2d at 1199.

[4] Id.

[5] See infra notes 23-27 and accompanying text. "Enforceable" means that the agreement can be enforced by a court of law, but not necessarily a federal court without an independent basis for federal jurisdiction.

[6] For subject matter jurisdiction to exist, a chosen court must be competent to hear a particular case. The competency of federal courts is governed by article III of the Constitution and several jurisdictional statutes. See infra notes 31-33 and accompanying text. Subject matter jurisdiction must be distinguished from personal jurisdiction, which concerns the court's authority over the parties to a dispute. See J. Friedenthal, M. Kane & A. Miller, Civil Proce-

a federal district court to enforce a repudiated settlement agreement after vacating a prior dismissal order under Federal Rule of Civil Procedure 60(b)(6) ("Rule 60(b)(6)").[7] The particular situation where the settlement agreement was neither approved by the court nor made a part of its dismissal order is explored.[8]

The typical situation where a question of subject matter jurisdiction arises is as follows: two parties, litigating a civil matter in federal court, settle their dispute—usually through a long series of negotiations.[9] The court then dismisses the case;[10] however, the court neither

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dure § 3.1, at 96-97 (1985) [hereinafter Friedenthal], for an overview of the traditional bases for personal jurisdiction.

This Note focuses on federal subject matter jurisdiction over a civil controversy and does not address issues involving personal jurisdiction. Subject matter jurisdiction is generally considered to be more significant than personal jurisdiction in that the former cannot be consented to by the parties and can be challenged by the parties or the court at any time during the proceedings, as well as on appeal. Friedenthal, supra, § 2.2, at 13; see also Fed. R. Civ. P. 12(h) (addressing waiver and preservation of jurisdictional defenses). Moreover, since parties may always consent to a court's personal jurisdiction, Friedenthal, supra, § 3.5, at 104, such issues rarely arise in the particular situation addressed by this Note. Several courts have expressed the view that parties who negotiate and execute a settlement plan in federal court "knowingly and voluntarily" consent to that court's personal jurisdiction. See, e.g., Greater Kan. City Laborers Pension Fund v. Paramount Indus., 829 F.2d 644 (8th Cir. 1987); Fulgence v. J. Ray McDermott & Co., 662 F.2d 1207 (5th Cir. 1981); Meetings & Expositions, Inc. v. Tandy Corp., 490 F.2d 714 (2d Cir. 1974); Cummins Diesel Michigan, Inc. v. The Falcon, 305 F.2d 721 (7th Cir. 1962).

7 Fed. R. Civ. P. 60(b)(6) [hereinafter Rule 60(b)(6)] (quoted infra note 52).

8 This Note does not address the division of authority regarding whether a stipulation of dismissal must be filed in court to satisfy the requirements of Fed. R. Civ. P. 41 (governing dismissal procedures). Compare McCall-Bey v. Franzen, 777 F.2d 1178, 1184 (7th Cir. 1985) (stipulation must be filed in court to provide permanent record of information essential to management of judicial docket) with Oswalt v. Scripto, Inc., 616 F.2d 191, 195 (5th Cir. 1980) ("[t]o require the filing of a formal document would be to countenance a mechanistic view of the Federal Rules of Civil Procedure and exalt form over substance").

9 See Manual for Complex Litigation 2d, supra note 2, § 23.11-.12, at 159-64 (discussing negotiation procedures).

10 Dismissal of certain types of cases, such as class actions or actions where a receiver has been appointed, requires leave of court. Fed. R. Civ. P. 41(a)(1). See generally Friedenthal, supra note 6, § 9.5, at 447-50 (discussing voluntary and involuntary dismissals).

Dismissal may be either with or without prejudice, depending on the voluntary stipulation of the parties or specification by the court. See Fed. R. Civ. P. 41. A dismissal with prejudice is deemed an adjudication on the merits. Friedenthal, supra note 6, § 14.7, at 65. For purposes of this Note, however, it makes little difference whether the dismissal was with or without prejudice, as voluntary dismissals following settlement typically provide that the judgment is on the merits. Id. Thus, Rule 60(b)(6) must be invoked to vacate the order of dismissal before reopening the original case. See infra notes 52-70 and accompanying text.

The outcome of the jurisdictional issue may be affected by the particular provision under which the original action was dismissed. If the action was dismissed by voluntary stipulation of the parties pursuant to Rule 41(a)(1)(ii), the district court can neither condition dismissal on performance of a settlement agreement nor retain jurisdiction to enforce the agreement. See Hinsdale v. Farmers Nat'l Bank & Trust Co., 823 F.2d 993, 995 n.1 (6th Cir. 1987); *McCall-Bey*, 777 F.2d at 1185. On the other hand, if the action was dismissed by order of court under

formally approves the settlement agreement,[11] nor makes it a part of the dismissal order.[12] Subsequently, one of the parties to the settlement agreement repudiates. The nonbreaching party then moves under Rule 60(b)(6) to vacate the dismissal order and reopen the case. The issue addressed by this Note is whether the federal district court has subject matter jurisdiction to enforce the settlement agreement after vacating its dismissal order pursuant to Rule 60(b)(6).[13] If the federal court does not have jurisdiction to enforce the agreement, the wronged party must either proceed with the original litigation[14] or pursue a separate state action for specific enforcement of the agreement.[15]

The state of the law regarding this problem is, at best, inconsistent.[16] The two circuits that have spoken most definitively—the fourth and the sixth—are in direct conflict. The Supreme Court de-

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Rule 41(a)(2), the district court may properly impose terms and conditions upon dismissal. See *Hinsdale*, 823 F.2d at 995 n.1; *McCall-Bey*, 777 F.2d at 1188; see also Friedenthal, supra note 6, § 9.5, at 447-50 (examples of terms and conditions often imposed). A breach of the terms and conditions of a dismissal order pursuant to Rule 41(a)(2) converts a dismissal without prejudice into a dismissal with prejudice. See *McCall-Bey*, 777 F.2d at 1184.

11 See infra notes 23-27 and accompanying text, discussing the procedure for court approval of a settlement agreement and instances where such approval is required.

12 Rule 41(a)(1)(ii), governing the procedure for voluntary dismissal by stipulation, does not require that a settlement agreement be filed in court or that a stipulation recite the terms of a settlement. See *McCall-Bey*, 777 F.2d at 1189.

13 Most courts agree that the original litigation can be reopened for breach of a settlement agreement. See infra notes 61-64 and accompanying text. The conflict arises where parties seek enforcement of the settlement agreement by the federal court, and there is no independent basis for federal subject matter jurisdiction over the enforcement action. This situation most frequently occurs where the original suit was based on a federal question, and diversity of citizenship does not exist. See, e.g., Aro Corp. v. Allied Witan Co., 531 F.2d 1368, 1371 (6th Cir.), cert. denied, 429 U.S. 862 (1976) (discussed infra notes 72-80 and accompanying text).

14 This option assumes that the independent basis for federal jurisdiction over the original suit still exists.

15 Where a state statute of frauds bars enforcement of an oral settlement agreement, however, a party seeking to enforce such an agreement could be left without a remedy—short of reopening and proceeding with the original litigation—if the federal court is powerless to enforce the agreement. This could drastically undercut the value of settlement agreements as an effective means of resolving legal disputes.

16 The conflicting opinions of the various district courts reflect the inconsistency permeating this issue. Many of the district courts have held that they have inherent authority to enforce settlement agreements. See, e.g., Echols v. Nimmo, 586 F. Supp. 467, 469 (W.D. Mich. 1984); Bergstrom v. Sears, Roebuck & Co., 532 F. Supp. 923, 934 (D. Minn. 1982); Read v. Baker, 438 F. Supp. 737 (D. Del. 1977), aff'd, 577 F.2d 728 (3d Cir.), cert. denied, 439 U.S. 869 (1978). In these cases, the original litigation was still pending at the time enforcement of the settlement agreements was sought. Some district courts, however, have asserted that a settlement agreement is not enforceable unless it has been incorporated into a dismissal order. See Musifilm, B.V. v. Spector, 568 F. Supp. 578, 581-82 (S.D.N.Y. 1983); Backers v. Bit-She, 549 F. Supp. 388, 389 (N.D. Cal. 1982); Denali Seafoods, Inc. v. Western Pioneer, Inc., 92 F.R.D. 763, 764 (W.D. Wash. 1981). Both earlier and later decisions issued by some of these same courts are in disagreement. See Pedersen v. M/V Ocean Leader, 578 F. Supp.

nied certiorari to the two leading cases and has not yet decided to clarify this issue.[17]

This Note argues that a federal court's jurisdictional power to enforce a repudiated settlement agreement should not depend on whether the agreement was approved by the court or incorporated into a dismissal order. Rather, an action to enforce a settlement agreement should be viewed as ancillary to the original litigation, thus granting a district court the discretionary power either to enforce the agreement or to remand the action to a state court if that forum is more appropriate. This view reflects the strong public policy favoring settlement of litigation, serves well the goals of judicial efficiency and economy, and does not undermine the longstanding legal tradition of limiting federal courts' subject matter jurisdiction to actions presenting a federal interest. Moreover, this proposal would effectively put an end to the "defensive gamesmanship" undercutting the value of settlement agreements, by preventing a party from divesting the federal court of jurisdiction by agreeing to a settlement in bad faith.[18]

Part I discusses the policy in the federal court system favoring enforcement of settlement agreements and explores the advantages and disadvantages of having a court-approved settlement. Part II reviews the bases for federal subject matter jurisdiction and examines the use of ancillary jurisdiction as a means to confer discretionary power on a federal district court over an action to enforce a repudiated settlement agreement—absent court approval of the agreement or incorporation of the agreement into a dismissal order. Part III provides background information on the purpose and use of Rule 60(b)(6) and explains its function in the context of a repudiated settlement agreement. Part IV analyzes the various decisions of the circuit courts and compares their rationales. Part V focuses on the specific problem presented—confusion and the need for uniformity in this area—and proposes that federal courts should have discretionary power to enforce a settlement agreement after vacating a prior dismissal order under Rule 60(b)(6).

1534 (W.D. Wash. 1984); Sidewinder Marine, Inc. v. Nescher, 440 F. Supp. 680, 682 (N.D. Cal. 1976).

[17] Of the remaining circuits addressing the issue, several follow one of two opposing rationales, and others have fashioned their own rules. Still other circuits apply conflicting rationales, declining to follow their own precedents primarily due to equitable considerations. The Supreme Court has denied certiorari to several of these cases as well. See infra notes 93-115 and accompanying text.

[18] *Sidewinder Marine*, 440 F. Supp. at 682.

I. SETTLEMENT AGREEMENTS

To encourage the amicable settlement of legal disputes, many courts have taken the approach that " 'a settlement is as binding, conclusive and final as if it had been entered in a judgment.' "[19] Under certain circumstances, courts *must* enforce settlement agreements.[20] Since typically there is no requirement that settlement agreements be reduced to writing,[21] many federal courts approve the enforcement of oral settlement agreements.[22]

Similarly, formal court approval of a settlement agreement is not routinely required.[23] In an ordinary case, settlements are viewed as

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19 American Sec. Vanlines, Inc. v. Gallagher, 782 F.2d 1056, 1060 (D.C. Cir. 1986) (quoting Clinton St. Greater Bethlehem Church v. City of Detroit, 484 F.2d 185, 189 (6th Cir. 1973)); see also Cummins Diesel Michigan, Inc. v. The Falcon, 305 F.2d 721, 723 (7th Cir. 1962) (voluntary settlement agreement cannot be repudiated and will be enforced by court).

20 See, e.g., Aro Corp. v. Allied Witan Co., 531 F.2d 1368, 1371 (6th Cir.) (court had duty to enforce settlement agreement "when required in the interests of justice"), cert. denied, 429 U.S. 862 (1976); Meetings & Expositions, Inc. v. Tandy Corp., 490 F.2d 714, 717 (2d Cir. 1974) (court had duty to enforce settlement agreement which it had approved).

21 See, e.g., Kukla v. National Distillers Prods. Co., 483 F.2d 619, 621 (6th Cir. 1973) (court has power to enforce oral settlement agreement which has not been reached in presence of court); Autera v. Robinson, 419 F.2d 1197, 1198 n.1 (D.C. Cir. 1969) (" '[I]t is well settled that the compromising of legal proceedings and the relinquishment of rights in connection therewith . . . are such part performance of an oral agreement as to except it from the operation of the statute of frauds.' ") (quoting Schanck v. Jones, 229 F.2d 31, 32 (D.C. Cir. 1956)). But see Gliniecki v. Borden, Inc., 444 F. Supp. 619, 621 (E.D. Wis. 1978), where the district court held that a Wisconsin statute of frauds was "substantive" law and must be applied by a federal court in a diversity suit, under the doctrine of Erie R.R. v. Tompkins, 304 U.S. 64 (1938). After reaching this conclusion, however, the court found that the statute did not preclude enforcement of oral settlement agreements under Wisconsin case law. *Gliniecki*, 444 F. Supp. at 622. Therefore, the federal court was free to enforce the oral settlement agreement. Id.

This Note does not directly address the split in authority as to whether a federal court should apply state or federal law in an action to enforce a settlement agreement. Compare the Fifth Circuit's opinion in Lee v. Hunt, 631 F.2d 1171, 1174 (5th Cir. 1980) (applying state law), cert. denied sub nom. Hunt v. Hunt, 454 U.S. 834 (1981), with the Fourth Circuit's opinion in Gamewell Mfg., Inc. v. HVAC Supply, Inc., 715 F.2d 112, 114-16 (4th Cir. 1983) (applying federal law), and the Seventh Circuit's opinion in Lyles v. Commercial Lovelace Motor Freight, Inc., 684 F.2d 501, 504 (7th Cir. 1982) (applying federal law).

22 See, e.g., *Lyles*, 684 F.2d at 504; Fulgence v. J. Ray McDermott & Co., 662 F.2d 1207, 1209 (5th Cir. 1981); Warner v. Rossignol, 513 F.2d 678, 682 (1st Cir. 1975); Green v. John H. Lewis & Co., 436 F.2d 389, 390 (3d Cir. 1970).

23 See McCall-Bey v. Franzen, 777 F.2d 1178, 1197 n.11 (7th Cir. 1985) (Swygert, J., dissenting) ("[p]rior court approval of settlements is required only in bankruptcies, class actions, and shareholder derivative suits"); United States v. City of Miami, 614 F.2d 1322, 1330 (5th Cir. 1980) (same). Fed. R. Civ. P. 23(e) mandates that a "class action shall not be dismissed or compromised without the approval of the court." Rule 23.1 contains an identical requirement for shareholder derivative actions. Fed. R. Civ. P. 23.1. These rules also require that notice of a proposed dismissal or compromise be given to all class members and shareholders. Fed. R. Civ. P. 23(e), 23.1. These requirements are necessary because dismissal or compromise affects those not present in court to represent their own interests. See Friedenthal, supra note 6, § 9.5,

completely within the litigants' control.[24] Where judicial approval is required, however, the court must scrutinize each term of the agreement to determine its effect and to ensure that it is not collusive or preferential.[25] Thus, one advantage to a court-approved settlement is that it eliminates any doubt as to whether a valid and binding agreement exists.[26] Nonetheless, many lawyers criticize the judicial approval requirement as deterring valid settlements and thus jeopardizing litigants' rights.[27]

This Note explores the specific situation where court approval of a settlement is not required to dismiss the action, but may be necessary to invoke the federal court's jurisdiction to enforce the agreement. Once a court has dismissed a case because the parties have reached a settlement, a subsequent breach of the settlement agreement leaves the injured party with a choice of remedies: (1) she may attempt to reopen and proceed with the original litigation as if there were no settlement, pursuant to Rule 60(b)(6);[28] (2) she may reopen

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at 447. Other types of cases that cannot be settled without court approval of the settlement agreements include "antitrust actions instituted by the United States [pursuant to 15 U.S.C. § 16] and actions involving minors, incompetents, and trusts, in which approval may be required by common law or statutes." Manual for Complex Litigation 2d, supra note 2, § 23.14, at 166.

24 Gardiner v. A.H. Robins Co., 747 F.2d 1180, 1189 (8th Cir. 1984) ("Courts not only frown on interference by trial judges in parties' settlement negotiations, but also renounce the practice of approving parties' settlement agreements."); see also *City of Miami*, 614 F.2d at 1330 ("If the parties can agree to terms, they are free to settle the litigation at any time, and the court need not and should not get involved.").

25 Manual for Complex Litigation 2d, supra note 2, § 33.14, at 291. The court may not rewrite a settlement agreement it deems unfair; it may only approve or disapprove the agreement. Id. § 30.41, at 236-37. Factors considered relevant by courts when determining whether a particular settlement should be approved include the following:

> (1) the extent to which [parties] object to the settlement, (2) the likelihood of the [parties] ultimately succeeding in the litigation, (3) the complexity of the factual and legal issues in the case, (4) the amount of the settlement compared to the amount that might be recovered, (5) the costs that would be incurred if the action went forward, (6) the plan for distributing the settlement and the extent to which it is likely to succeed, and (7) whether proper procedures have been provided for notifying absent [parties].

Friedenthal, supra note 6, § 16.7, at 754 (footnotes omitted). See generally Manual for Complex Litigation 2d, supra note 2, §§ 23.14, 30.4-30.44 (discussing in detail the procedures for judicial review and approval of settlement agreements).

26 See Autera v. Robinson, 419 F.2d 1197, 1202 (D.C. Cir. 1969).

27 Friedenthal, supra note 6, § 16.7, at 755; see also id. § 16.7, at 754 ("Provision[s] for judicial involvement in the settlement arena are . . . inconsistent with the general principle that litigants are free to settle, terminate, or discontinue a law suit as they see fit."). Another well-grounded argument against requiring court approval of a settlement agreement is that such a requirement may thwart the parties' desire for confidentiality. See infra note 126 and accompanying text.

28 This option is subject to the limitation that a motion for relief from judgment pursuant to Rule 60(b) cannot be used in place of a direct appeal. See V.T.A., Inc. v. Airco, Inc., 597

the case under Rule 60(b)(6) to seek enforcement of the settlement agreement by the federal district court;[29] or (3) she may institute a separate state action for specific enforcement of the agreement and/or damages.[30] Under the first and second alternatives, whether the settlement agreement was approved by the court or entered as part of its dismissal order may become a dispositive factor in the federal district court's jurisdictional power to grant the relief sought.

II. FEDERAL SUBJECT MATTER JURISDICTION

Federal subject matter jurisdiction[31] is governed by article III of the Constitution[32] and several jurisdictional statutes.[33] Congress's intent when enacting these jurisdictional statutes was to limit the subject matter jurisdiction of the federal courts to cases that present

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F.2d 220, 224 n.7 (10th Cir. 1979) (citing Horace v. St. Louis S.W. R.R., 489 F.2d 632, 633 (8th Cir. 1974)); Wojton v. Marks, 344 F.2d 222, 225 (7th Cir. 1965).

29 This option assumes that an independent basis for federal jurisdiction over the enforcement action does not exist. See Aro Corp. v. Allied Witan Co., 531 F.2d 1368 (6th Cir.), cert. denied, 429 U.S. 862 (1976).

30 See Hinsdale v. Farmers Nat'l Bank & Trust Co., 823 F.2d 993, 996 (6th Cir. 1987); Stipelcovich v. Sand Dollar Marine, Inc., 805 F.2d 599, 605 (5th Cir. 1986); Village of Kaktovik v. Watt, 689 F.2d 222, 231 (D.C. Cir. 1982).

31 See supra note 6, distinguishing subject matter jurisdiction from personal jurisdiction.

32 Article III provides, in pertinent part:

> Section 2. The judicial Power [of the United States] shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of Admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U.S. Const. art. III, § 2, cl. 1.

33 Statutes conferring subject matter jurisdiction include 28 U.S.C. §§ 1331 (federal questions), 1332 (diversity of citizenship), 1333 (admiralty, maritime and prize cases), 1334 (bankruptcies), 1335 (certain actions of interpleader), 1337 (actions under certain antitrust regulations), 1338 (patents, copyrights, trademarks, and unfair competition), 1343 (civil rights suits), 1345, 1346 (actions in which the United States is a party), and 1361 (actions to compel a United States officer to perform a duty) (1982). See also 15 U.S.C. §§ 77-80 (1982) (conferring federal subject matter jurisdiction over securities actions).

The most frequently asserted grounds for the exercise of federal subject matter jurisdiction are federal questions and diversity of citizenship. See Friedenthal, supra note 6, § 2.2. Although in most instances, the federal courts exercise concurrent jurisdiction with the state courts—a case may be heard in either forum—federal courts possess exclusive jurisdiction over certain types of cases. Among the cases which can only be filed in federal court are bankruptcy proceedings, 28 U.S.C. § 1334; patent and copyright suits, id. § 1338(a); federal crimes, 18 U.S.C. § 3231; and actions brought under particular antitrust regulations, 15 U.S.C. §§ 15, 26 (1982). See Friedenthal, supra note 6, § 2.2.

appropriate issues and circumstances for federal adjudication.[34] As early as 1799, the Supreme Court declared the venerable legal maxim that federal courts are courts of limited, rather than general, jurisdiction.[35] This principle has often been affirmed in various contexts.[36] Thus, federal subject matter jurisdiction can neither be consented to nor waived by parties to a lawsuit,[37] and the burden of proving the existence of federal jurisdiction is on the party claiming it.[38]

Although Congress may not enlarge federal courts' subject matter jurisdiction beyond the parameters of article III,[39] federal jurisdiction has been extended to areas not listed in article III in the interests of judicial economy, convenience, and fairness to parties.[40] The doctrines of ancillary and pendent jurisdiction, for example, were developed to enable federal courts to exercise jurisdiction over actions that could not be heard in federal court if brought separately to resolve related claims more efficiently and effectively.[41]

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[34] See 13 C. Wright, A. Miller & E. Cooper, Jurisdiction and Related Matters 2d § 3522 (1985); J. Friendly, Jurisdiction of Federal Courts 4-7 (1958).

[35] Turner v. Bank of N. Am., 4 U.S. (4 Dall.) 8, 11 (1799) ("A [federal court] is of *limited* jurisdiction; and has cognizance, not of cases generally, but only of a few specially circumstanced, amounting to a small proportion of the cases, which an unlimited jurisdiction would embrace."). See generally Friedenthal, supra note 6, § 2.2 (discussing presumption against existence of federal subject matter jurisdiction).

[36] See, e.g., Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89 (1984); Bush v. Lucas, 462 U.S. 367 (1983); Bell v. New Jersey, 461 U.S. 773 (1983); Parratt v. Taylor, 451 U.S. 527 (1981); Aldinger v. Howard, 427 U.S. 1 (1976); see also Fairfax Countywide Citizens Ass'n v. County of Fairfax, 571 F.2d 1299 (4th Cir.) (civil rights action), cert. denied, 439 U.S. 1047 (1978) (discussed infra notes 82-88 and accompanying text).

[37] See, e.g., Mitchell v. Mauer, 293 U.S. 237 (1934); Louisville & Nashville R.R. v. Mottley, 211 U.S. 149 (1908).

[38] See McNutt v. General Motors Acceptance Corp., 298 U.S. 178 (1936); see also Fed. R. Civ. P. 8(a)(1) (requiring that grounds for federal jurisdiction appear in pleadings).

[39] See, e.g., Palmore v. United States, 411 U.S. 389 (1973); Kline v. Burke Constr. Co, 260 U.S. 226 (1922); Sheldon v. Sill, 49 U.S. (8 How.) 441 (1850); Hodgson v. Bowerbank, 9 U.S. (5 Cranch) 303 (1809). Accordingly, Federal Rule of Civil Procedure 82 provides that the federal rules "shall not be construed to extend or limit the jurisdiction of the United States district courts." Fed. R. Civ. P. 82.

[40] See United Mine Workers v. Gibbs, 383 U.S. 715 (1966).

[41] Friedenthal, supra note 6, § 2.2; see also id. § 2.12, at 67 (federal subject matter jurisdiction extended to "avoid the wasteful and unfair results of piecemeal litigation of related disputes").

Ancillary and pendent jurisdiction are similar concepts in that the assertion of either is within the district court's discretion and the standards by which such discretion is exercised are practically identical. See Comment, Pendent and Ancillary Jurisdiction: Towards a Synthesis of Two Doctrines, 22 UCLA L. Rev. 1263 (1975) (discussing close relationship between ancillary and pendent jurisdiction). However, pendent jurisdiction is generally viewed as a "subcategory" of ancillary jurisdiction, and thus a more limited concept. See Friedenthal, supra note 6, § 2.12, at 66-67.

Federal courts have invoked ancillary jurisdiction to enforce settlement agreements in cases where they had original jurisdiction. Therefore, through ancillary jurisdiction, federal

Several standards have been articulated for determining whether a claim is ancillary or pendent to an action over which the federal court has original jurisdiction. The most frequently asserted requirement is that the related claims arise from a "common nucleus of operative fact" so that a party would "ordinarily be expected to try them all in one judicial proceeding."[42] A party is usually expected to try claims in one proceeding if determination of one claim would cause res judicata or collateral estoppel to apply to future litigation of the other claim.[43]

Both ancillary and pendent jurisdiction are discretionary devices, and a court may decline to hear a case even if it has the jurisdictional authority to do so.[44] The competing policy considerations affecting a court's discretion are judicial economy, convenience, and fairness to parties versus federalism and comity between the state and federal courts.[45]

Under these standards, federal district courts have asserted ancillary jurisdiction[46] over actions to enforce settlement agreements in

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courts may exercise subject matter jurisdiction over actions to enforce settlement agreements which were neither court approved nor made part of a dismissal order, after vacating a dismissal order under Rule 60(b)(6). For a general discussion of pendent jurisdiction, see Friedenthal, supra note 6, § 2.13, at 67-75; Note, The Evolution and Scope of the Doctrine of Pendent Jurisdiction in the Federal Courts, 62 Colum. L. Rev. 1018 (1962).

42 *Gibbs*, 383 U.S. at 725; see Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365 (1978). When deciding whether ancillary jurisdiction may be invoked, many courts seek to determine whether the insufficient claim "bears a logical relationship to the aggregate core of operative facts which constitutes the main claim over which the court has an independent basis of federal jurisdiction." Revere Copper & Brass, Inc. v. Aetna Casualty & Sur. Co., 426 F.2d 709, 714 (5th Cir. 1970). Other courts adopt the language of Fed. R. Civ. P. 13 and 14 (joinder provisions) and require that the related claims arise out of the "same transaction or occurrence." See, e.g., Amco Constr. Co. v. Mississippi State Bldg. Comm'n, 602 F.2d 730 (5th Cir. 1979); United States *ex rel.* D'Agostino Excavators, Inc. v. Heyward-Robinson Co., 430 F.2d 1077 (2d Cir. 1970), cert. denied, 400 U.S. 1021 (1971). Courts using this test have recognized that properly joined actions, such as compulsory counterclaims, cross-claims, and certain impleader claims, may fall within the ancillary jurisdiction of the federal courts. See, e.g., *Heyward-Robinson Co.*, 430 F.2d at 1077; *Amco Constr. Co.*, 602 F.2d at 730; Pennsylvania R.R. v. Erie Ave. Warehouse Co., 302 F.2d 843 (3d Cir. 1962).

43 Friedenthal, supra note 6, § 2.13, at 67-75.

44 See id. § 2.14, at 75-81.

45 *Gibbs*, 383 U.S. at 726; see also Friedenthal, supra note 6, § 2.13, at 71 (listing several factors considered by federal courts deciding whether to exercise jurisdiction over related claims). If—at any time during the proceedings—the court finds that jurisdiction over a related claim was exercised improperly, it may dismiss the claim without prejudice to institute a separate action in a state court. See id.

Stronger grounds for the exercise of ancillary or pendent jurisdiction are presented where the main federal claim falls within the federal courts' exclusive jurisdiction. In such cases, the argument that all the claims may be tried together only in federal court adds potency to the efficiency argument. See Aldinger v. Howard, 427 U.S. 1, 18 (1976).

46 Courts often use the terms "inherent," "derivative," or "continuing" jurisdiction, while characterizing actions to enforce settlement agreements as ancillary to the original suits. See,

several different contexts: (1) where the original litigation is still pending in the federal court;[47] (2) where the original litigation has been dismissed pursuant to a settlement which has either been approved by the court or incorporated into a dismissal order;[48] and (3) where the original litigation has been dismissed pursuant to a settlement which has been neither court approved nor made part of a dismissal order.[49] In the latter two situations, the dismissal order must be vacated pursuant to a Rule 60(b)(6) motion before the district court may proceed to enforce the settlement agreement.[50] Rule 60(b)(6) thus functions as a mechanism to bring parties back into federal court, and may—in some circuits—enable the federal court to subsequently assert ancillary jurisdiction over an action to enforce an agreement settling the related federal suit.[51]

III. THE FUNCTION OF RULE 60(b)(6)

Federal Rule of Civil Procedure 60(b) provides that a district

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e.g., Lasky v. Continental Prods., 804 F.2d 250, 254-55 (3d Cir. 1986); Bostick Foundry v. Lindberg, 797 F.2d 280, 282-83 (6th Cir. 1986), cert. denied, 479 U.S. 1066 (1987); Gamewell Mfg., Inc. v. HVAC Supply, Inc., 715 F.2d 112, 116 (4th Cir. 1983); Dankese v. Defense Logistics Agency, 693 F.2d 13, 16 (1st Cir. 1982). Whatever the terminology may be, the concept and its justification are the same. A settlement agreement is seen as an outgrowth of the underlying litigation; an action to enforce the agreement is viewed as a continuation of the original proceeding, and subject matter jurisdiction over an enforcement action is derived from the court's independent jurisdiction over the initial suit.

47 See, e.g., Kent v. Baker, 815 F.2d 1395 (11th Cir. 1987); *Gamewell*, 715 F.2d at 112; *Dankese*, 693 F.2d at 13; Cia Anon Venezolana De Navegacion v. Harris, 374 F.2d 33 (5th Cir. 1967). These courts have asserted that the forum in which an original action is pending represents the logical context for resolution of a related settlement dispute.

48 See, e.g., *Lasky*, 804 F.2d at 250; Kohl Indus. Park Co. v. County of Rockland, 710 F.2d 895 (2d Cir. 1983); Meetings & Expositions, Inc. v. Tandy Corp., 490 F.2d 714 (2d Cir. 1974); Fairfax Countywide Citizens Ass'n v. County of Fairfax, 571 F.2d 1299, 1303 n.8 (4th Cir.), cert. denied, 439 U.S. 1047 (1978). The justification commonly offered by these courts is that district courts have inherent jurisdictional power to enforce their own orders.

49 See, e.g., Joy Mfg. v. National Mine Serv. Co., 810 F.2d 1127 (Fed. Cir. 1987); Lyles v. Commercial Lovelace Motor Freight, Inc., 684 F.2d 501 (7th Cir. 1982); Aro Corp. v. Allied Witan Co., 531 F.2d 1368 (6th Cir.), cert. denied, 429 U.S. 862 (1976). The interests of judicial efficiency, economy, and fairness to litigants have strongly influenced these courts' decisions to exercise jurisdiction in this situation. See, e.g., *Aro Corp.*, 531 F.2d at 1371. But see Adduono v. World Hockey Ass'n, 824 F.2d 617 (8th Cir. 1987); Village of Kaktovik v. Watt, 689 F.2d 222 (D.C. Cir. 1982); *Fairfax*, 571 F.2d 1299, rejecting this reasoning and holding that district courts do not have jurisdiction to enforce settlement agreements that were neither court approved nor incorporated into a dismissal order.

50 Unless an independent basis for federal subject matter jurisdiction—such as diversity of citizenship—exists over the action to enforce the settlement agreement, the original litigation must be reopened pursuant to Rule 60(b)(6). See Hinsdale v. Farmers Nat'l Bank & Trust Co., 823 F.2d 993 (6th Cir. 1987). Where an independent basis for jurisdiction exists, a party may directly petition the federal court for specific enforcement of the agreement, avoiding a jurisdictional problem.

51 See infra notes 71-116 and accompanying text.

court may "relieve a party . . . from a final judgment, order, or proceeding."[52] Subsection (6) of the Rule permits a judgment to be set aside for "any other reason justifying relief from the operation of the judgment,"[53] and grants district courts the power to vacate judgments "whenever such action is appropriate to accomplish justice."[54] A party seeking relief from a judgment, however, must show that "extraordinary circumstances" exist which create a "substantial danger of an unjust result."[55] The Rule thus contains a "residual clause used

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52 Fed. R. Civ. P. 60(b) ("Rule 60(b)") provides in pertinent part:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Section 57 of the Judicial Code, U.S.C., Title 28, § 118, or to set aside a judgment for fraud upon the court. . . . [T]he procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Although subsection (6) was not present in the original 1938 version of Rule 60(b), which was modeled after California Code of Civil Procedure § 473 (Deering 1937), it was included in the 1946 amendments to the Rule. See Note, History and Interpretation of Federal Rule 60(b) of the Federal Rules of Civil Procedure, 25 Temp. L.Q. 77, 81 n.38, 82 (1951) (texts of the 1938 version of Rule 60(b) and Cal. Civ. Proc. Code § 473 in force in 1937). Further amendments included extending the time limit for filing a Rule 60(b) motion under the first three subsections from six months to one year. Advisory Committee on Rules for Civil Procedure Report of Proposed Amendments to Rules of Civil Procedure for the District Court of the United States, reprinted in 5 F.R.D. 436, 477-80 (1946). Although the congressional intent in adding subsection 6 is unclear, see id., some commentators have indicated that the advisory committee aimed "to simplify the procedure for obtaining relief and to liberalize the practice somewhat." Kane, Relief from Federal Judgments: A Morass Unrelieved by a Rule, 30 Hastings L.J. 41, 46 n.31 (1978); see also Comment, Rule 60(b): Survey and Proposal for General Reform, 60 Calif. L. Rev. 531, 538 (1972) [hereinafter Comment, Rule 60(b)] ("amended rule represented an expansive, liberal approach to procedure"); Comment, Equitable Power of a Federal Court to Vacate a Final Judgment for "Any Other Reason Justifying Relief"—Rule 60(b)(6), 33 Mo. L. Rev. 427, 427 (1968) [hereinafter Comment, Equitable Power] (1948 revision "substantially enlarged the equitable grounds on which a federal court may relieve a party from a final judgment, order, or proceeding").

53 Rule 60(b)(6) (quoted supra note 52).

54 Klapprott v. United States, 335 U.S. 601, 615 (1949).

55 Industrial Assocs. v. Goff Corp., 787 F.2d 268, 269-70 (7th Cir. 1986); see Ackermann

to cover unforeseen contingencies," as an effective means of achieving justice.[56]

A fundamental premise underlying Rule 60(b)(6) is that the district court has wide discretion either to grant or to deny motions to vacate judgments, depending on the particular facts of each case.[57] The district court is guided by several relevant factors when exercising its discretion, including "(1) the general desirability that a final judgment should not be lightly disturbed; (2) the procedure provided by Rule 60(b) is not a substitute for an appeal; [and] (3) the rule should be liberally construed for the purpose of doing substantial justice."[58] Additional factors considered by the court are the time within which the motion is made, the presence of intervening equities, and "any other factor that is relevant to the justice of the order under attack."[59] Taken together, these factors reflect a subtle balance between finality of judicial decisions and accomplishment of justice that Rule 60(b) attempts to achieve.[60]

It is well-settled that under Rule 60(b), district courts maintain jurisdiction to vacate their own orders entered in civil actions over which they had original jurisdiction.[61] Accordingly, district courts have discretionary power to set aside an order dismissing a case pur-

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v. United States, 340 U.S. 193, 199 (1950); Lasky v. Continental Prods., 804 F.2d 250, 256 (3d Cir. 1986); United States v. Sparks, 685 F.2d 1128, 1130 (9th Cir. 1982).

Both *Klapprott* and *Ackermann* involved petitioners who had been denied citizenship and faced deportation proceedings. The *Klapprott* court granted relief from the prior judgment because the petitioner had effectively been denied the chance to appeal—he had been confined to prison and unable to obtain an attorney. See *Klapprott*, 335 U.S. at 605, 608. In *Ackermann*, however, relief from the prior judgment was denied. The petitioners' choice not to appeal because of the cost involved did not constitute an "extraordinary circumstance" in the Court's view. See *Ackermann*, 340 U.S. at 202; see generally Kane, supra note 52, at 50-53 (discussing development of the "extraordinary circumstances" standard of *Klapprott* and *Ackermann*).

56 Stipelcovich v. Sand Dollar Marine, Inc., 805 F.2d 599, 605 (5th Cir. 1986) (citing 7 J. Lucas & J. Moore, Moore's Fed. Practice ¶ 60.27[2], at 274 (2d ed. 1985)); see also *Lasky*, 804 F.2d at 255 n.7 (district court cannot deny motion where extraordinary circumstances warrant relief in interests of justice).

57 See, e.g., *Lasky*, 804 F.2d at 256; *Sparks*, 685 F.2d at 1130.

58 *Lasky*, 804 F.2d at 256 (citing 7 J. Moore & J. Lucas, Moore's Federal Practice ¶ 60.19, at 60-165 (2d ed. 1985)); see also Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981) (using similar guidelines); United States v. Gould, 301 F.2d 353, 355-56 (5th Cir. 1962) (same).

59 *Lasky*, 804 F.2d at 256.

60 See *Stipelcovich*, 805 F.2d at 604; V.T.A., Inc. v. Airco, Inc., 597 F.2d 220, 226 (10th Cir. 1979); see also *Seven Elves*, 635 F.2d at 401 (Rule 60(b) strikes a balance between "the desire to preserve the finality of judgments and the 'incessant command of the court's conscience that justice be done in light of all the facts' ") (citation omitted).

61 See, e.g., *Lasky*, 804 F.2d at 255 n.6; Smith v. Widman Trucking & Excavating, 627 F.2d 792, 799 (7th Cir. 1980); see also 7 J. Moore & J. Lucas, supra note 58, at ¶ 60.28[1] ("[n]o independent jurisdictional ground is needed to support the motion proceeding, which is

suant to a settlement agreement where that agreement was later repudiated by one of the parties to the original action.[62] Such repudiation is viewed as an "extraordinary circumstance,"[63] warranting vacation of the dismissal order as an action necessary to achieve justice.[64] A district court's decision to either grant or deny a Rule 60(b) motion will only be overturned on appeal if considered an abuse of discretion.[65] Nevertheless, a slight abuse of discretion may justify reversal where denial of relief bars examination of the merits of a case.[66]

Once a court has reinstated a case for breach of a settlement agreement, whether the court will subsequently enforce the agreement or proceed with the original litigation on the merits largely depends

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ancillary to or in effect a continuation of the action that resulted in the [order] from which relief is sought").

62 See American Sec. Vanlines, Inc. v. Gallagher, 782 F.2d 1056 (D.C. Cir. 1986); United States v. Sparks, 685 F.2d 1128 (9th Cir. 1982); Chief Freight Lines Co. v. Local Union No. 886, 514 F.2d 572 (10th Cir. 1975); Warner v. Rossignol, 513 F.2d 678 (1st Cir. 1975); Autera v. Robinson, 419 F.2d 1197 (D.C. Cir. 1969); see also Fairfax Countywide Citizens Ass'n v. County of Fairfax, 571 F.2d 1299, 1303 (4th Cir.) (district court may vacate prior dismissal order for breach of settlement agreement), cert. denied, 439 U.S. 1047 (1978); Aro Corp. v. Allied Witan Co., 531 F.2d 1368, 1371 (6th Cir.) (attempted repudiation of settlement agreement "constituted full justification" for vacating dismissal order), cert. denied, 429 U.S. 862 (1976); Kelly v. Greer, 334 F.2d 434, 436 (3d Cir. 1964) (district court can vacate dismissal order which was based on stipulation of parties who relied on settlement agreement).

63 Ackermann v. United States, 340 U.S. 193, 199 (1950).

64 See Klapprott v. United States, 335 U.S. 601, 615 (1949). The particular facts of a case may be such that vacation of the dismissal order under Rule 60(b)(6) is not deemed appropriate, even though it is within the court's discretionary power. See, e.g., *Ackermann*, 340 U.S. at 199 (denial of Rule 60(b) motion affirmed on grounds that movant failed to show "extraordinary circumstances" creating "substantial danger of an unjust result"); Industrial Assoc., v. Goff Corp., 787 F.2d 268 (7th Cir. 1986) (same); Dankese v. Defense Logistics Agency, 693 F.2d 13, 15 (1st Cir. 1982) (denial of Rule 60(b) motion affirmed where motive for reopening original litigation was to persuade employees to admit that they remembered more than they previously admitted); Harman v. Pauley, 678 F.2d 479 (4th Cir. 1982) (interests of justice did not require vacation of dismissal order for breach of settlement agreement by one of six defendants).

65 See, e.g., Browder v. Director, Dep't of Corrections, 434 U.S. 257, 263 n.7 (1978); Stipelcovich v. Sand Dollar Marine, Inc., 805 F.2d 599, 601 (5th Cir. 1986); *Dankese*, 693 F.2d at 15; *Harman*, 678 F.2d at 481; National Indus. v. Republic Nat'l Life Ins. Co., 677 F.2d 1258, 1270 (9th Cir. 1982); V.T.A., Inc. v. Airco, Inc., 597 F.2d 220, 223 & n.7 (10th Cir. 1979).

An appellate court may always reverse a lower court on an error of law. *V.T.A., Inc.*, 597 F.2d at 223-24 n.7 (citing 11 C. Wright & A. Miller, Federal Practice and Procedure Civil § 2872 (1973)). Unless the lower court was without power to render judgment in the first place, however, "an appeal from the denial of a 60(b) motion raises for review only the order itself and not the underlying judgment." Id. at 224 (citing *Browder*, 434 U.S. at 263 n.7 (1978)); Hayward v. Britt, 572 F.2d 1324, 1325 (9th Cir. 1978); Pagan v. American Airlines, 534 F.2d 990, 992-93 (1st Cir. 1976).

66 See *Stipelcovich*, 805 F.2d at 604; Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981).

on the facts and circumstances of the particular case.[67] Where the settlement agreement was either approved by the court or made a part of its dismissal order and where there is no dispute as to whether a valid agreement exists, most courts agree that a district court has the power to summarily enforce the agreement after vacating a dismissal order under Rule 60(b)(6).[68] In fact, several cases have held that district courts have not only the power, but also the duty to enforce court approved settlements.[69] On the other hand, courts are sharply divided as to whether a district court may enforce a settlement agreement where the agreement was neither approved by the court nor made a part of its dismissal order.[70]

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[67] See Autera v. Robinson, 419 F.2d 1197, 1200 (D.C. Cir. 1969); Musifilm, B.V. v. Spector, 568 F. Supp. 578, 582 (S.D.N.Y. 1983).

[68] See, e.g., Solaroll Shade & Shutter Corp. v. Bio-Energy Sys., Inc., 803 F.2d 1130 (11th Cir. 1986); Mid-South Towing Co. v. Har-win, Inc. 733 F.2d 386 (5th Cir. 1984); Kohl Indus. Park Co. v. County of Rockland, 710 F.2d 895 (2d Cir. 1983); Dankese v. Defense Logistics Agency, 693 F.2d 13 (1st Cir. 1982); Sanchez v. Maher, 560 F.2d 1105 (2d Cir. 1977); United States v. Orr Constr. Co., 560 F.2d 765 (7th Cir. 1977); Aro Corp. v. Allied Witan Co., 531 F.2d 1368 (6th Cir.), cert. denied, 429 U.S. 862 (1976); Meetings & Expositions, Inc. v. Tandy Corp., 490 F.2d 714 (2d Cir. 1974); *Autera*, 419 F.2d at 1197.

The district court must hold an evidentiary hearing when factual issues bearing on the validity of a settlement agreement are presented. See, e.g., *Aro Corp.*, 531 F.2d at 1372; Echols v. Nimmo, 586 F. Supp. 467, 469 (W.D. Mich. 1984).

[69] *Sanchez*, 560 F.2d at 1108; *Aro Corp.*, 531 F.2d at 1371; *Tandy*, 490 F.2d at 717.

[70] Collateral antitrust issues often compete with the strong public policy in favor of upholding settlement agreements, where a possibly invalid patent or license agreement is entered into in settlement of litigation. Courts use a different "balancing test" in such contexts. See, e.g., Aronson v. Quick Point Pencil Co., 440 U.S. 257 (1979); Blonder-Tongue Laboratories v. University of Ill. Found., 402 U.S. 313 (1971); Lear, Inc. v. Adkins, 395 U.S. 653 (1969); see also Massillon-Cleveland-Akron Sign Co. v. Golden State Advertising Co., 444 F.2d 425, 427 (9th Cir.), cert. denied, 404 U.S. 873 (1971) (holding that the "recognized policy favoring settlement of disputes . . . must give way to the policy favoring free competition in ideas not meriting patent protection").

The leading case of the Sixth Circuit supporting federal jurisdiction to enforce settlement agreements, *Aro Corp.*, 531 F.2d at 1368 involved a license agreement entered into in an effort to settle a patent infringement suit. The court determined that the "public interest in the settlement of . . . litigation far outweigh[ed] any public interest to be served by providing [the defendant] with a second chance to litigate the validity of [a] soon-to-expire patent." *Id.* at 1374. In upholding the settlement agreement, the Sixth Circuit stated that "[s]ettlement is of particular value in patent litigation, the nature of which is often inordinately complex and time consuming." Id. at 1372. Thus, the Sixth Circuit appears to have focused on "misuse of judicial resources," rather than the Supreme Court's assumption that litigation is a "necessary corrective" in the patent system. Note, The Enforceability of Patent Settlement Agreements After *Lear, Inc., v. Adkins*, 48 U. Chi. L. Rev. 715, 725 (1981). See generally id. (arguing that per se enforceability of patent settlement agreements is the simplest and most efficient way to relieve the complexity in this area of the law).

IV. CIRCUIT COURT DETERMINATIONS OF JURISDICTION TO ENFORCE SETTLEMENT AGREEMENTS

A. *Accepting Federal Jurisdiction*

The Sixth Circuit consistently expresses the view that a settlement agreement is an outgrowth of the original lawsuit, and that federal district courts have inherent or derivative jurisdiction to enforce such agreements—regardless of whether the agreements were court approved or incorporated into a dismissal order.[71] In *Aro Corp. v. Allied Witan Co.*,[72] the Sixth Circuit held that the district court has inherent power to enforce a settlement agreement after the original action has been dismissed and then reopened under Rule 60(b)(6).[73] The court stated:

> A compromise or settlement of litigation is always referable to the action or proceeding in the court where the compromise was effective; it is through that court [that] the carrying out of the agreement should thereafter be controlled. Otherwise the compromise, instead of being an aid to litigation, would be only productive of litigation as a separate and additional impetus.[74]

The court reasoned that the result of allowing a lack of diversity to preclude the district court's jurisdiction to enforce settlement agreements in such cases would be "to exalt form over substance and to render settlement in such cases a trap for the unwary."[75]

Further, the court persuasively argued for federal jurisdiction by characterizing a settlement agreement as more than a simple contract negotiated in the free marketplace.[76] In the court's opinion, a settle-

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71 See, e.g., Kukla v. National Distillers Prods. Co., 483 F.2d 619, 621 (6th Cir. 1973) (district courts have inherent power to enforce settlement agreements in pending cases, even where agreement was neither reached in the presence of the court nor reduced to writing). The court further held that, where the material terms of the agreement are in dispute, an evidentiary hearing is required in the district court before the settlement can be enforced. Id.

72 531 F.2d 1368 (6th Cir.), cert. denied, 429 U.S. 862 (1976). *Aro Corp.* involved a suit for specific performance of a license agreement which was entered into in settlement of an action for patent infringement. When the defendant repudiated the agreement, the plaintiff filed a "Motion to Vacate Order Dismissing Suit Under Rule 60 and Order Specific Performance of Settlement Agreement." Id. at 1370. Specific performance was granted by the federal district court, and the Sixth Circuit affirmed the order on appeal. Id. at 1373; see also Note, supra note 70, at 724-26 (analyzing the court's reasoning in *Aro Corp.*).

73 *Aro Corp.*, 531 F.2d at 1371.

74 Id. (quoting Melnick v. Binenstock, 318 Pa. 533, 179 A. 77, 78 (1935)).

75 Id. The *Aro Corp.* court used the phrase "trap for the unwary" in the sense that a lack of diversity would not have divested the federal court of jurisdiction over the original action before settlement because the case involved patent infringement. Therefore, the court reasoned, settlement should not become a means for divesting the federal court of jurisdiction to enforce the settlement agreement, even though that agreement had been neither court approved nor made part of the dismissal order. Id.

76 Id.

ment agreement is a response to pending litigation, and cannot be viewed independently.[77] Therefore, one cannot regard an action to enforce a settlement agreement as a "mere contract dispute" without "clos[ing] one's eyes to the reason the agreement was formed."[78]

After finding the terms of the settlement agreement "clear and unambiguous," the court determined that the agreement was summarily enforceable "solely as a matter of law."[79] The court further noted that the public interest in settling litigation applies to both federal and state courts, and that transferring needless and fallacious litigation in either direction is equally damaging.[80] The Sixth Circuit has continued to adhere to the rationale expressed in *Aro Corp.*[81]

B. *Denying Federal Jurisdiction*

The leading decision by the Fourth Circuit, *Fairfax Countywide Citizens Ass'n v. County of Fairfax*,[82] directly conflicts with the Sixth Circuit's decisions. *Fairfax* rejected the *Aro Corp.* holding, and held that while a district court has authority under Rule 60(b)(6) to vacate

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77 Id.

78 Id. After noting the strong public policy in favor of settling litigation, the *Aro Corp.* court pointed to the defendant's having accepted all the benefits of the settlement agreement, including dismissal of the suit and release for past patent infringement, without performing its duty under the agreement. Id. at 1372.

79 Id. The court also found that the defendant's conduct throughout the proceedings evinced a "tactic of delay and confusion" which "border[ed] on bad faith by counsel." Id. at 1370 n.1.

80 Id. at 1373 n.4.

81 In Shelter-Lite, Inc. v. Reeves Bros., 611 F.2d 1179, 1180 (6th Cir. 1980), the Sixth Circuit held that *Aro Corp.* permits a district court to vacate a dismissal order pursuant to Rule 60(b)(6) and then enforce the settlement agreement which was executed in connection with the dismissal. The court affirmed this proposition in Hinsdale v. Farmers Nat'l Bank & Trust Co., 823 F.2d 993 (6th Cir. 1987). In *Hinsdale*, rather than seeking relief from a judgment dismissing the case by a Rule 60(b)(6) motion, the plaintiff directly petitioned the court to enforce the settlement agreement. The *Hinsdale* court found that the district court did not have jurisdiction to enforce the settlement agreement because the prior unconditional dismissal order was not vacated nor the proceedings reopened pursuant to Rule 60(b)(6). Id. at 998. The court confirmed *Aro Corp.*'s rationale by stating that the district court would have had inherent jurisdiction to enforce the settlement agreement had the plaintiffs moved to reopen the proceedings under Rule 60(b)(6) instead of directly seeking specific enforcement of the settlement agreement by the district court. Id.

More recently, the Sixth Circuit held that a district court may properly exercise its inherent authority to enforce a settlement agreement after vacating a prior order of dismissal, even though the written terms of the agreement were not formally adopted in the court. See Parker v. United States, No. 86-3799, 1987 U.S. App. Lexis 13138 at * 89 (6th Cir. 1987). The court noted that there was no dispute regarding any of the terms of the agreement, and that dismissal was based on the district court's belief that a settlement had been reached. Id. The court reasoned that the result of precluding enforcement would be to "allow [the defendant] to take full advantage of the dismissal of the [suit, while] repudiat[ing] the settlement in response to the [plaintiff's] attempt to receive the benefit of its bargain." Id. at 12.

82 571 F.2d 1299 (4th Cir.), cert. denied, 439 U.S. 1047 (1978).

its prior dismissal order for breach of a settlement agreement, the court may not enforce the agreement unless it has been approved or incorporated into the order of dismissal, or some independent ground for federal jurisdiction exists at the time enforcement is sought.[83] The court reasoned:

> A district court is a court of limited jurisdiction "[and] the fair presumption is (not as with regard to a court of general jurisdiction, that a cause is within its jurisdiction unless the contrary appears, but rather) that a cause is without its jurisdiction till the contrary appears." The burden of establishing jurisdiction is on the party claiming it.[84]

The *Fairfax* court further reasoned that Rule 60 does not supply a "grant of jurisdictional authority," but merely allows a district court to reopen the original litigation when justice requires.[85] The court rejected the Sixth Circuit's position that jurisdiction to enforce a settlement agreement is a derivative of the court's jurisdiction over the original action, stating that derivative jurisdiction should be based on more than a mere showing that the settlement agreement was a response to pending litigation.[86] The court characterized the plaintiff's enforcement action as a claim arising under state contract law[87] and concluded that the state forum was more appropriate for adjudication of the matter, particularly because of the complex state law questions involved.[88]

Although the Fourth Circuit has not ruled on this issue since its decision in *Fairfax*, the court has repeatedly upheld the existence of

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83 Id. at 1303. Several citizens associations filed civil rights actions in federal district court alleging racial discrimination in the delivery of public services. Id. at 1300. Following pretrial discovery, two settlement agreements were entered into and the case was dismissed. The dismissal order failed to mention that the parties had entered into settlement agreements, and neither settlement agreement was approved by the court nor incorporated into the order of dismissal. Id. at 1301. Upon repudiation of the settlements by Fairfax County, the plaintiffs petitioned the district court under Rule 60(b)(6) to vacate its prior dismissal order and to specifically enforce the settlement agreements. The district court ordered Fairfax County to perform its obligations under the settlement agreements. The Fourth Circuit reversed the order, concluding that the district court lacked subject-matter jurisdiction to issue an enforcement order. The Fourth Circuit stated: "In our view, the inherent power of a district court to enforce settlement agreements, like any other power inherently vested in a federal court, presupposes the existence of [independent] federal jurisdiction over the case or controversy." Id. at 1304.

84 Id. at 1303 (citations omitted).

85 Id. at 1304 n.11.

86 Id. at 1305.

87 Id. at 1303 n.9.

88 Id. at 1305 n.18. The court stated that it is "preferable, when a decision requires interpretation of statutes establishing a state administrative or regulatory regime, that such interpretation be authoritatively made in the state-court system." Id.

federal subject matter jurisdiction to enforce agreements settling actions that have not yet been dismissed by the federal court.[89] Moreover, the court has required the district court to apply federal law when ruling on an action to avoid an agreement entered into in settlement of pending litigation.[90] The court reasoned that agreements settling ongoing federal litigation involve federal procedural interests[91] and concluded that the standards for settlement of pending federal litigation should be determined by federal common law.[92]

Thus, the Fourth Circuit accepts the principle that federal interests are implicated in an action to enforce a settlement agreement where the original litigation has not been dismissed or the agreement has been incorporated into the dismissal order. Nevertheless, the Fourth Circuit rejects the contention that the same federal interests may be implicated where the original suit was dismissed pursuant to a settlement agreement which was neither approved by the court nor made a part of the order of dismissal.

C. *Variations on the Two Extremes*

Although the First,[93] Second,[94] and Third Circuits[95] have not yet ruled on the precise issue, these courts have affirmed the enforcement

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89 See, e.g., Gamewell Mfg., Inc. v. HVAC Supply, Inc., 715 F.2d 112 (4th Cir. 1983); Millner v. Norfolk & W. Ry., 643 F.2d 1005 (4th Cir. 1981).

90 *Gamewell*, 715 F.2d at 116.

91 Id.

92 Id. Since the original litigation had not been dismissed when the *Gamewell* plaintiff sought to rescind the settlement agreement, the court distinguished *Fairfax* and held that derivative jurisdiction over the settlement agreement existed in this case by virtue of the ongoing federal litigation. The court indicated, however, that such derivative jurisdiction would exist even if the original action had been dismissed, provided that the settlement agreement be incorporated into the dismissal order. See *Gamewell*, 715 F.2d at 115-16. The *Gamewell* court relied on Hester v. New Amsterdam Casualty Co., 268 F. Supp. 623, 627-28 (D.S.C. 1967), which equated standards for relief from an executory agreement related to an ongoing suit to Rule 60(b) standards for relief from a judgment based on an executed settlement agreement. See *Gamewell*, 715 F.2d at 116 n.10.

93 Several decisions imply that the First Circuit would find jurisdiction to enforce settlement agreements. See, e.g., Dankese v. Defense Logistics Agency, 693 F.2d 13, 16 (1st Cir. 1982) (trial court has inherent power to enforce agreements settling actions pending before court); Warner v. Rossignol, 513 F.2d 678, 683 (1st Cir. 1975) (nonbreaching party in diversity case may either seek order enforcing settlement agreement or attempt to reopen litigation).

94 The particular settlement agreements presented to the Second Circuit for enforcement had actually been approved by a district court or made a part of a dismissal order. In those Second Circuit opinions, jurisdiction was assumed to exist. See Kohl Indus. Park Co. v. County of Rockland, 710 F.2d 895, 900 (2d Cir. 1983); Sanchez v. Maher, 560 F.2d 1105, 1108 (2d Cir. 1977); see also Meetings & Expositions, Inc. v. Tandy Corp., 490 F.2d 714, 717 (2d Cir. 1974) (district court had duty to enforce settlement agreement it had approved).

95 Federal jurisdiction both to vacate a prior order of dismissal and to enforce the settlement agreement has been consistently upheld by the Third Circuit where the agreement was either approved by the court or entered as part of its dismissal order. See, e.g., Lasky v.

of settlement agreements which were either approved by a district court or incorporated into a dismissal order.[96] A recent case in the Southern District of New York, however, indicates that jurisdictional power to enforce a settlement agreement is lacking absent court approval of the agreement.[97] The court denied jurisdiction to enforce the settlement agreement even though the agreement was mentioned in the stipulation and order of dismissal.[98] The court noted, however, that a federal court's enforcement of a settlement agreement on a Rule 60(b) motion depends on the particular facts of the case.[99]

The Fifth Circuit has fashioned its own rule, holding that while federal courts possess inherent power to enforce settlement agreements, the enforcement of the agreements should be governed by state contract law.[100] More recently, the Fifth Circuit declined to follow the Fourth Circuit's rationale, stating that the *Fairfax* decision "may be contrary to Fifth Circuit opinions concerning the inherent power of a district court to enforce an agreement settling [pending]

Continental Prods. Corp., 804 F.2d 250 (3d Cir. 1986); Green v. Lewis, 436 F.2d 389 (3d Cir. 1970); Kelly v. Greer, 334 F.2d 434 (3d Cir. 1964).

96 See supra notes 93-95.

97 Musifilm, B.V. v. Spector, 568 F. Supp. 578, 580 (S.D.N.Y. 1983). Although this case did not involve Rule 60(b), the decision directly addresses the issue of whether a district court has jurisdiction to enforce a settlement agreement which was neither court approved nor made part of a dismissal order.

98 The court noted that the agreement was never approved, reviewed, or made a part of the record, stating that "the mere mention of an agreement in the Stipulation did not make the Agreement itself part of the Court's order." *Musifilm*, 568 F. Supp. at 580 & n.1. This statement directly conflicts with the Seventh Circuit's opinion in McCall-Bey v. Franzen, 777 F.2d 1178, 1189 (7th Cir. 1985), stating that a settlement agreement need not be filed in court or recited in a stipulation of dismissal to be enforceable. See infra notes 102-07 and accompanying text (discussing *McCall-Bey*).

Citing the Fourth Circuit's decision in *Fairfax*, the *Musifilm* court found that the enforcement action was "separate and distinct from the dispute underlying the original action," *Musifilm*, 568 F. Supp. at 583, and held that the defendants were required to institute a separate action, either in federal court—if they could meet the jurisdictional requirements—or in state court, to obtain the relief they sought. Id. The court did not think that the purpose and policies underlying settlement agreements would be harmed by its decision:

> It is unlikely that a party's willingness to enter into a settlement agreement will be adversely affected by the knowledge that, if the agreement is not in the record and ordered by the court, the settled action will not provide a forum for resolution of all subsequent disputes involving that agreement.

Id. at 582.

99 Id. The plaintiff's delay of more than eight years after dismissal of the original action before moving to reinstate it, and his insistence on the right to discovery, presentation, and cross-examination of witnesses, appears to have influenced the court's conclusion.

100 Lee v. Hunt, 631 F.2d 1171, 1173-74 (5th Cir. 1980), cert. denied sub nom. Hunt v. Hunt, 454 U.S. 834 (1981); see also Stipelcovich v. Sand Dollar Marine, Inc., 805 F.2d 599, 603 n.4 (5th Cir. 1986) (Louisiana law governs interpretation of settlement agreement executed in Louisiana).

litigation."[101]

In contrast, the Seventh Circuit recently held that there is no inherent federal jurisdiction to enforce agreements settling federal cases.[102] The court further held that there must be an independent basis of federal jurisdiction to seek enforcement of a settlement agreement in federal court—unless jurisdiction to enforce the settlement is specifically retained.[103] The court rejected the Sixth Circuit's position in *Aro Corp.* and stated that the effect of vacating a dismissal under Rule 60(b) is to restore the original suit to the docket, not to extend the court's authority to order a party to comply with the settlement which led to dismissal.[104] The court forcefully declared that it would not "use so formless a concept as inherent power to give the federal courts an indefinite jurisdiction over disputes in which the federal interest may be nonexistent. If the parties want the district judge to retain jurisdiction they had better persuade him to do so."[105]

The court specifically noted, however, that the district court need not make the agreement a part of the record of the case to retain jurisdiction to enforce the settlement. The court feared that this requirement might discourage settlements because parties often want

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101 *In re* Corrugated Container Antitrust Litig., 752 F.2d 137, 142 (5th Cir.), cert. denied, 473 U.S. 911 (1985).

102 McCall-Bey v. Franzen, 777 F.2d 1178, 1190 (7th Cir. 1985).

103 Id. at 1187. The Seventh Circuit previously appeared to have been leaning toward the Sixth Circuit's reasoning in *Aro Corp.* In Lyles v. Commercial Lovelace Motor Freight, 684 F.2d 501 (7th Cir. 1982), the court held that the parties were bound by the terms of a settlement agreement, stating that "[a]n oral agreement to settle the claims . . . is enforceable under federal law." Id. at 504. The settlement agreement in that case was never presented to the district court, nor was the court aware of the terms of the agreement. Rather, the court enforced the agreement on the basis of the parties' demonstrated intent to settle. See id. at 503.

In Cummins Diesel Michigan, Inc. v. The Falcon, 305 F.2d 721 (7th Cir. 1962), the Seventh Circuit affirmed the district court's enforcement of a settlement agreement and stated that "a settlement agreement or stipulation voluntarily entered into cannot be repudiated by either party and will be summarily enforced by the Court." Id. at 723. The plaintiff's original action, however, had not yet been dismissed by the district court. Similarly, in United States v. Orr Constr. Co., 560 F.2d 765 (7th Cir. 1977), the court held that district courts retain jurisdiction to enforce settlement agreements by virtue of their having jurisdiction over the original cause of action. Id. at 768. The agreement in *Orr* had not been submitted to the district court, however, it was interpreted and enforced as part of a single litigation. See Smith v. Widman Trucking & Excavating, 627 F.2d 792 (7th Cir. 1980).

104 *McCall-Bey*, 777 F.2d at 1186-87.

105 Id. at 1187. The *McCall-Bey* court distinguished *Lyles*, 684 F.2d 501, on the grounds that the original action in that case had been dismissed with "leave to reopen," and the defendant, rather than the plaintiff, relied on the settlement agreement as a bar to reopening the suit. *McCall-Bey*, 777 F.2d at 1188. The court stated that there was thus "no question of federal jurisdiction over the plaintiff's suit [in *Lyles*], which was not a suit to enforce the settlement agreement but a civil rights suit." Id. A dissenting opinion by Judge Swygert characterized the majority's distinction of *Lyles* as "fortuitous." Id. at 1197.

the terms of their agreements kept confidential.[106] The court concluded that it would be sufficient for the judge to read the settlement and issue an order retaining jurisdiction to enforce it.[107]

Similarly, both the Eighth and the District of Columbia Circuits have recently issued definitive statements disagreeing with the Sixth Circuit's rationale in *Aro Corp.* and its progeny. The Eighth Circuit held that the district court does not have inherent authority to enforce a settlement where the court did not incorporate the agreement into its dismissal order or expressly retain jurisdiction to enforce the agreement.[108] The District of Columbia Circuit held that there is no basis for district court jurisdiction to enforce a settlement agreement where the agreement was not formally approved by the court or made a part of a dismissal order.[109]

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106 Id. at 1189.

107 Id. Examining the particular facts of the case before it, the court determined that the judge did intend to retain jurisdiction to enforce the settlement. The facts given most weight were that the "judge had been kept apprised of the settlement negotiations [for] many months," and that "settlements between prisoners and prison officials contemplate a continuing supervisory role for the federal court." Id. Moreover, the court noted that the dismissal order was pursuant to a stipulation which was based on the terms and conditions of a settlement agreement. This "chain of incorporations" supported the inference that the judge intended to retain jurisdiction to enforce the settlement agreement. Id.

A strong dissent by Swygert, Senior Circuit Judge, sharply criticized the majority's approach to the issue as thwarting the purpose of settlement agreements, and stated that the district court should properly have exercised ancillary jurisdiction over the motion to enforce the agreement terminating the action over which it clearly had original jurisdiction. Id. at 1193 n.7. Moreover, the senior judge stressed the fact that the bulk of the majority's analysis is mere "dicta," given its actual holding that the court retained jurisdiction to enforce the settlement. Id. at 1195.

108 Adduono v. World Hockey Ass'n, 824 F.2d 617, 623 (8th Cir. 1987).

109 Village of Kaktovik v. Watt, 689 F.2d 222, 232 n.76 (D.C. Cir. 1982) (citing Fairfax Countywide Citizens Ass'n v. County of Fairfax, 571 F.2d 1299, 1304-06 (4th Cir.), cert. denied, 439 U.S. 1047 (1978)). Equitable considerations may have substantially influenced the court's decision, however, as the plaintiffs in that case had previously reopened the litigation, proceeded to trial on the merits and lost, and subsequently sought to enforce the settlement agreement. Id. at 231.

The District of Columbia Circuit has upheld the summary enforcement of settlement agreements while the original litigation is still pending before the district court. In Autera v. Robinson, 419 F.2d 1197 (D.C. Cir. 1969), the court asserted the "inherent authority" of the district court to summarily enforce a contract settling a dispute pending before it, stating that "so simple and speedy a remedy serves well the policy favoring compromise, which in turn has made a major contribution to its popularity." Id. at 1200 (footnote omitted). The court qualified its holding, however, by noting that summary enforcement of settlement agreements may not be appropriate in some cases. Id. at 1200. The court stated:

> The summary procedure is admirably suited to situations where, for example, a binding settlement bargain is conceded or shown, and the excuse for nonperformance is comparatively unsubstantial . . . . [I]t is ill-suited to situations presenting complex factual issues related either to the formation or the consummation of the contract, which only testimonial exploration in a more plenary proceeding is apt to satisfactorily resolve.

The Ninth,[110] Tenth,[111] and Eleventh[112] Circuits—like the First, Second, and Third—have not addressed the issue of federal jurisdiction to enforce settlement agreements after vacating dismissal orders under Rule 60(b)(6). The Federal Circuit,[113] however, has held that a district court retains jurisdiction to enforce a settlement agreement that was the basis for dismissal of the original action, even though the agreement was neither court approved nor incorporated into the dismissal order.[114] After noting the circuit split on this issue, the court concluded that there was no reason to disturb the district court's adoption of the Sixth Circuit's rationale in *Aro Corp.*[115]

Id. at 1200. The court indicated that a typical case for summary enforcement of a settlement agreement is one in which "there is no factual dispute or legal defense to enforcement," id. at 1200 n.11, and the problem presented is "capable of precise resolution without attendant hazard to the interests of the parties." Id. at 1200. Under this standard, the particular case before the court was deemed inappropriate for summary enforcement because substantial factual issues were in dispute, which were "material to the validity of any agreement on settlement." Id.

More recently, the court adhered to its reasoning in *Autera* by affirming the district court's granting of a plaintiff's motion to enforce a settlement agreement which had been entered as a district court judgment. American Sec. Vanlines, Inc. v. Gallagher, 782 F.2d 1056 (D.C. Cir. 1986). After stressing the strong public policy in favor of settlements, id. at 1060, the court noted that the particular facts of the case were such that summary enforcement of the settlement agreement was appropriate. Id. at 1060-64. The court emphasized the specific facts that the defendant admitted entering into the settlement agreement and did not raise any factual issues related to the agreement's formation that required testimonial exploration.

[110] The Ninth Circuit has held that a breach of a settlement agreement may constitute an "extraordinary circumstance" justifying vacation of a dismissal order pursuant to Rule 60(b)(6). Ackermann v. United States, 340 U.S. 193, 199 (1950). See, e.g., Arnold v. United States, 816 F.2d 1306, 1309-10 (9th Cir. 1987); United States v. Sparks, 685 F.2d 1128, 1130 (9th Cir. 1982).

[111] The Tenth Circuit, like the Ninth, has held that district courts have jurisdiction to vacate their own dismissal orders pursuant to Rule 60(b)(6) for repudiation of a settlement agreement. See Chief Freight Lines Co. v. Local Union No. 866, 514 F.2d 572 (10th Cir. 1975).

[112] The Eleventh Circuit is wavering between two conflicting rationales regarding federal jurisdiction to enforce settlement agreements in pending cases. Compare Kent v. Baker, 815 F.2d 1395, 1398 (11th Cir. 1987) (district court has jurisdiction to enforce settlement agreement before case is dismissed) with Londono v. City of Gainesville, 768 F.2d 1223, 1126-27 (11th Cir. 1985) (district court has no authority to enforce agreement settling pending case) and Cia Anon Venezolana De Navegacion v. Harris, 374 F.2d 33, 36 (5th Cir. 1967) (district court has inherent power to enforce agreement settling a pending case).

In Solaroll Shade & Shutter Corp. v. Bio-Energy Sys., Inc., 803 F.2d 1130, 1133 (11th Cir. 1986), the court imposed double costs on an appellant for filing a "frivolous" appeal from an order enforcing a settlement agreement, where the district court judge had retained jurisdiction to do so. Id. at 1131.

[113] See 28 U.S.C. § 1295 (1982). The Federal Circuit has jurisdiction over "appeals from the district courts throughout the country in patent cases; certain copyright and trademark cases; certain tax cases; appeals from the United States Court of Claims; and certain other specific classes of cases." J. Hazard, Civil Procedure § 1.14, at 37 (3d ed. 1985) (citing 28 U.S.C. §§ 1291-95 (1982)).

[114] Joy Mfg. Co. v. National Mine Serv. Co., 810 F.2d 1127, 1130 (Fed. Cir. 1987).

[115] Id. at 1128-29. The court further concluded that there is no contempt jurisdiction for

To summarize, the Federal Circuit—and possibly the Fifth Circuit—agrees with the Sixth Circuit's position that federal courts possess inherent jurisdiction to enforce settlement agreements which were neither court approved nor incorporated into an order of dismissal, after the court has vacated its prior dismissal order pursuant to Rule 60(b)(6). The Seventh, Eighth, and District of Columbia Circuits disagree, joining the Fourth Circuit in holding that federal jurisdiction to enforce a settlement agreement is lacking in such a situation—absent independent jurisdictional grounds.[116] Although the remaining circuits have not yet directly addressed the issue, the majority hold that federal courts have inherent or derivative jurisdiction to enforce settlement agreements which were court approved or made part of a dismissal order. Moreover, these courts do not require such approval or incorporation where enforcement of a settlement agreement is sought before the original litigation has been dismissed. Even the Fourth Circuit shares this view.

V. FEDERAL COURTS' DISCRETION TO ENFORCE AGREEMENTS SETTLING FEDERAL CASES

The circuit courts need uniform clarification of federal subject matter jurisdiction to enforce a repudiated settlement agreement after vacating a dismissal order under Rule 60(b)(6), where the agreement was neither approved by the court nor made part of its dismissal order. The decisive test must strike an appropriate balance between the strong policy favoring settlement and interests of judicial economy, on the one hand, and the well-established principle that federal courts are courts of "limited jurisdiction." A combination of the Sixth and the District of Columbia Circuits' approaches would accommodate the competing policies.[117]

Although federal courts may not adjudicate disputes which do not fall within the confines of article III and related federal statutes, federal courts often entertain jurisdictionally insufficient claims substantially related to an action presenting an independent basis for fed-

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the violation of a settlement agreement which was not made a part of the judgment or dismissal order. Id. at 1128 n.3. This conclusion spurred sharp criticism from the concurring judge, who emphasized that "a court's 'enforcement power' should not be diminished in such circumstances." Id. at 1131.

116 The Southern District of New York has taken this position one step further by suggesting that a settlement agreement must be read into the record of the case to be enforceable by the district court. See Musifilm, B.V. v. Spector, 568 F. Supp. 578, 580 (S.D.N.Y. 1983).

117 See Aro Corp. v. Allied Witan Co., 531 F.2d 1368 (6th Cir.), cert. denied, 429 U.S. 862 (1976) (discussed supra notes 72-80 and accompanying text); Autera v. Robinson, 419 F.2d 1197 (D.C. Cir. 1969) (discussed supra note 109).

eral jurisdiction. By invoking the doctrines of ancillary or pendent jurisdiction, federal courts are able to dispose of overlapping or logically dependent claims in one judicial proceeding, promoting efficiency interests by eliminating piecemeal litigation.

Under the standards utilized, courts have held that actions to enforce agreements settling federal cases are ancillary to the underlying suits. Such an expansion of federal subject matter jurisdiction has not been viewed as undermining the limited nature of federal jurisdiction in either of two situations: (1) where the settlement agreement was approved by the court or incorporated into a dismissal order;[118] and (2) where the original litigation is still pending before the federal court, although the settlement was never court approved.[119] However, problems of federalism might exist where parties seek federal enforcement of a settlement agreement that was neither court approved nor incorporated into a dismissal order, on vacating the dismissal order pursuant to Rule 60(b)(6).[120]

Significantly, the courts refusing jurisdiction in this situation do not explain the distinction between an action to enforce an agreement settling a pending case and an action to enforce an agreement settling a case which has been dismissed and then reopened under Rule 60(b)(6). After a case has been reopened, it is once again "pending" before the federal court, much as if it had never been dismissed. Thus, any distinction for jurisdictional purposes between agreements settling actions still pending before a federal court and those settling actions which were dismissed and subsequently reopened is artificial because it rests on fortuitous circumstances. In both instances, the court in which the original lawsuit is pending is the proper tribunal to enforce the settlement.[121] Moreover, such a distinction is futile if a party can reopen and proceed with her original lawsuit, enter into a new settlement agreement shortly thereafter, and successfully invoke the court's jurisdiction to enforce the new agreement by virtue of the pending litigation.

In addition, to distinguish between settlement agreements which have been court approved or incorporated into a dismissal order and

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118 See, e.g., cases cited supra note 48.

119 See, e.g., cases cited supra note 47.

120 See, e.g., the Fourth Circuit's rationale in Fairfax Countywide Citizens Ass'n v. County of Fairfax, 571 F.2d 1299 (4th Cir.), cert. denied, 439 U.S. 1047 (1978).

121 An agreement settling a federal case implicates federal procedural interests in that it is an outgrowth of the original federal suit. See infra note 127 and accompanying text. Therefore, the federal court should exercise jurisdiction to enforce the agreement where possible, regardless of whether the original suit is still pending or has been reopened under Rule 60(b)(6).

those which have not is to exalt form over substance—particularly when such approval or incorporation is neither required nor encouraged by the federal courts.[122] Although there may be advantages to having a settlement both approved by a district court and incorporated into its dismissal order, cases are nonetheless dismissed on the basis of settlement agreements when such "precautionary" action has not been taken. Some courts have reasoned that it is not placing too much of a burden on parties seeking enforcement of a settlement agreement by a federal court to require that the agreement be approved by the court or made part of its dismissal order.[123] On the other hand, such a judicially developed requirement may function merely as a "trap for the unwary"[124] lawyer, while being cloaked as a useful device to uphold principles of comity between state and federal courts.

If parties must fully execute a settlement agreement and have it approved and incorporated into the court order to receive an enforceable agreement, then the extended period of time before the case is dismissed will decrease the chances of peaceful termination of litigation.[125] In many instances, litigants do not want the terms of their settlement agreements disclosed. Requiring these agreements to be made part of the record to be enforceable will have the effect of "frustrat[ing] litigants' desire for confidentiality,"[126] inevitably discouraging rather than promoting the purposes underlying the strong public policy favoring efficient settlement.

Regardless of the particular procedural context of enforcement actions, agreements settling federal cases should be enforceable in fed-

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122 The justification offered for distinguishing between agreements which have been court approved or incorporated into a dismissal order and those which have not is that federal courts have inherent jurisdiction to enforce their own orders. This rationale is adhered to even where the dismissal order does not recite the terms of a settlement agreement, but merely mentions that dismissal is pursuant to a stipulation which is based on a settlement agreement. See McCall-Bey v. Franzen, 777 F.2d 1178 (7th Cir. 1985).

That approval of a settlement agreement by the federal court is explicitly required for certain actions, see supra note 23, implies that all other actions may be settled without court approval. It is therefore inequitable for the federal court to impose an "ex post facto" requirement that a settlement be court approved to be enforceable in federal court. Moreover, mere mention of a settlement in a dismissal order, without full recital of the terms, presents a particularly hollow basis for conferring federal jurisdiction to enforce the agreement. The jurisdictional distinction between this situation and that where the dismissal failed to mention the agreement is exceptionally weak, as the two contexts are substantively, if not procedurally, identical.

123 See, e.g., Musifilm, B.V. v. Spector, 568 F. Supp. 578, 582-83 (S.D.N.Y. 1983).

124 Aro Corp. v. Allied Witan Co., 531 F.2d 1368, 1371 (6th Cir.), cert. denied, 429 U.S. 862 (1976).

125 See *McCall-Bey*, 777 F.2d at 1200 (Swygert, J., dissenting).

126 Id.

eral court. Actions to enforce settlement agreements cannot be viewed simply as "mere contract disputes," in that the agreements would never have been made absent the underlying lawsuits.[127] This consideration justifies the exercise of ancillary or derivative jurisdiction by the federal court that was empowered to decide the original dispute.[128] The same justification applies regardless of whether the settlement was court approved or incorporated into a dismissal order. Further, this justification applies equally to actions still pending before the court and those which have been previously dismissed and then reopened pursuant to Rule 60(b)(6).[129]

Much time and effort is expended by lawyers and clients alike in reaching amicable resolutions to disputes that would otherwise be the subject of costly litigation. There is an inherent inequity present where parties enter into a settlement agreement, seemingly in good faith, and then the nonbreaching party is unable to invoke federal jurisdiction to enforce the agreement upon repudiation once the original litigation has been dismissed. "Defensive gamesmanship" must not be permitted to undercut the value of settlement agreements as an

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[127] *Aro Corp.*, 531 F.2d at 1371. As responses to pending litigation, settlement agreements are more than ordinary contracts negotiated in the free market place. They are outgrowths of the underlying federal lawsuits and, as such, implicate federal interests apart from those of the parties to the suit. In addition, the validity or conscionability of an agreement settling a federal case may involve issues of federal law which should be determined by a federal court, particularly where the case is one over which the federal court has exclusive jurisdiction.

[128] Id. On the other hand, several circuits—most notably the Fourth Circuit—have held that ancillary or derivative jurisdiction "should be grounded on something more substantial than a mere showing that the settlement agreement would not have been entered into but for the existence of litigation pending in federal court." Fairfax Countywide Citizens Ass'n v. County of Fairfax, 571 F.2d 1299, 1305 (4th Cir.), cert. denied, 439 U.S. 1047 (1978); see also supra notes 102-09 and accompanying text (discussing similar reasoning offered by the Seventh, Eighth, and District of Columbia Circuits).

Nevertheless, these courts have held that ancillary or derivative jurisdiction is justified where the original litigation has not been dismissed and where the settlement agreement was either court approved or incorporated into a dismissal order. See, e.g., supra note 89 and accompanying text (Fourth Circuit); supra note 102 (Seventh Circuit); supra note 109 (District of Columbia Circuit). These courts have not adequately distinguished between such contexts and that which is specifically addressed in this Note. Moreover, fortuitous procedural justifications offered for the exercise of ancillary or derivative jurisdiction in particular situations are not as compelling as a single policy formulation which applies to all procedural contexts in which an action to enforce a settlement agreement may be brought in federal court.

[129] Federal jurisdiction in this situation is analogous to a federal court's exercise of derivative jurisdiction to enforce a consent decree which was entered into in settlement of a case that had previously been pending before it. Consent decrees evince the parties' intent to settle litigation, and are considered adjudications with full res judicata effect. Note, supra note 52, at 720 (citations omitted). As formal judgments, they "cannot be ignored without undermining the authority of the courts and threatening res judicata principles." Id. at 720-21 (citation omitted). Since settlement agreements operate like consent decrees by terminating expensive litigation, they should similarly be considered as beyond "the realm of ordinary contract law." Id. at 721.

effective means of dispute resolution.[130]

Where there is no factual dispute as to whether a valid and binding settlement exists, district courts should exercise jurisdiction to enforce agreements entered into in settlement of litigation that had been pending before them.[131] Parties would thus be able to trust these

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130 Sidewinder Marine, Inc. v. Nescher, 440 F. Supp. 680, 682 (N.D. Cal. 1976) (parties should not be allowed to divest federal court of jurisdiction over suit by entering settlement in bad faith); see also *Aro Corp.*, 531 F.2d at 1373 ("Having negotiated its settlement license at arm's length over many months, [defendant cannot] start all over again . . . in the state courts, which are unfamiliar with the facts and circumstances surrounding the agreement."). The *Aro Corp.* court refused to "condone a kind of gamesmanship, wherein an alleged [patent] infringer, after employing the judicial system for months of discovery, negotiation and sparring . . . executes a license in settlement, and then repudiates the license and seeks to start the fight all over again in the courts." Id.

Similarly, in an admiralty case, the District Court for the Western District of Washington stated: "[T]he interests of justice and judicial economy demand that when a plaintiff properly invokes the admiralty jurisdiction and the parties subsequently agree to compromise their differences, the admiralty court should not abandon the parties by refusing to enforce such a compromise disposition." Pedersen v. M/V Ocean Leader, 578 F. Supp. 1534, 1535 (W.D. Wash. 1984); see also Joy Mfg. Co. v. National Mine Serv. Co., 810 F.2d 1127, 1133 n.3 (Fed. Cir. 1987) (Newman, J., concurring in part, dissenting in part) (parties to settlement agreements should not be "evicted from the equitable jurisdiction of the [federal] court, or obliged to start over as if there had been no lawsuit and no settlement before the district court").

To optimize judicial efficiency, an action to enforce a settlement agreement should be heard by the same judge that presided over the original litigation. He or she would be most familiar with the circumstances surrounding execution of the agreement, as well as the particular issues involved. Where this is not possible, however, the enforcement action should nonetheless be heard in the federal court in which the agreement was reached. The enforcement action is derivative to the underlying suit and implicates federal interests. See supra note 127 and accompanying text; see also Gamewell Mfg., Inc. v. HVAC Supply, Inc., 715 F.2d 112 (4th Cir. 1983) (adopting this rationale where original suit still pending).

Moreover, parties may be effectively precluded from enforcing an oral settlement agreement where the federal court has no jurisdiction to do so and enforcement of the agreement in state court is barred by a state statute of frauds. These circumstances mitigate in favor of federal jurisdiction to enforce the settlement agreement. On the other hand, an oral settlement agreement may not be enforceable in federal court where the federal court applies state law to such an enforcement action, under the doctrine of Erie R.R. v. Tompkins, 304 U.S. 64 (1938). See supra note 15.

131 Under the Sixth Circuit's rationale in *Aro Corp.*, 531 F.2d at 1372, district courts may exercise inherent or derivative jurisdiction to enforce a settlement agreement. However, under the District of Columbia Circuit's approach in Autera v. Robinson, 419 F.2d 1197, 1201 (D.C. Cir. 1969), the district courts should exercise their discretion in deciding whether or not to enforce a particular agreement. A federal court should not attempt to resolve a dispute over a settlement agreement where such resolution presents an "attendant hazard to the interests of the parties," id. at 1200, or where issues of state law predominate, indicating that the state court is the more appropriate forum for adjudication of the settlement dispute. See, e.g., Fairfax Countywide Citizens Ass'n v. County of Fairfax, 571 F.2d 1299, 1305 n.18 (4th Cir.), cert. denied, 439 U.S. 1047 (1978).

On the other hand, where summary enforcement of a settlement agreement is available solely as a matter of law, the district court should exercise its discretion to accept jurisdiction in the interests of judicial economy, convenience, and fairness to litigants. See *Aro Corp.*, 531 F.2d at 1372; *Autera*, 419 F.2d at 1201. Acceptance of federal jurisdiction in these circum-

agreements and would not be inclined to enter into them lightly for the purpose of delaying and confusing their adversaries, hoping to gain tactical advantages.

Nonetheless, district courts are not compelled to enforce inequitable agreements. On the contrary, district courts should have wide discretion—in keeping with both the principles of ancillary jurisdiction and the spirit of Rule 60(b)(6)—to enforce or refuse to enforce a settlement agreement, depending on the particular facts of each case.[132] Individual justice can thus be preserved on a case-by-case basis without sacrificing the federal courts' jurisdictional power to enforce a settlement agreement where such action is dictated by the circumstances of the particular case.[133]

In any event, a federal district court's jurisdiction to enforce a repudiated settlement agreement should not depend on which circuit one is in, but should be based on a uniform policy formulation. If the courts or Congress ultimately determine that a settlement agreement must be approved by the district court or incorporated into its dismissal order for the court to have jurisdiction to subsequently enforce the agreement, then it is imperative that Rule 60(b)(6)—or some related court rule or provision—be amended to so clearly state. Where a particular procedure is necessary to invoke something so vital to a party's

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stances would not subvert the specific statutory intent to limit the subject matter jurisdiction of the federal courts. See supra notes 42-45 and accompanying text (discussing standards for the exercise of ancillary and pendent jurisdiction).

132 Factors taken into consideration by the district court when deciding whether to exercise its discretion to enforce a settlement agreement may include:

(1) comity between the state and federal courts, i.e., whether state or federal interests are predominantly implicated;

(2) whether a factual dispute is presented regarding the existence and validity of a settlement agreement;

(3) the extent of the district court judge's involvement in the settlement negotiations;

(4) judicial efficiency and economy;

(5) convenience and fairness to litigants;

(6) amount in controversy;

(7) evidence of a party's bad faith in entering into or repudiating a settlement agreement;

(8) time elapsed since dismissal of the original action;

(9) time elapsed between breach of the settlement agreement and institution of an enforcement action;

(10) any other intervening equities or factors indicating the propriety of federal court enforcement.

133 As in any Rule 60(b) motion, the circuit courts would always be available to overturn decision that is considered an abuse of discretion. Moreover, as is true of any ancillary dispute, the federal court may dismiss a case at any time during the proceedings if it determines that the action presents issues which are more appropriate for adjudication in a state court. Under these circumstances, the action will be dismissed without prejudice to institute a separate action in state court. See supra note 45 and accompanying text.

interest as federal subject matter jurisdiction, the requirement should be explicit. This would eliminate any potential "malpractice trap" for the unwary attorney or possible harsh consequences for the unsuspecting litigant, and would facilitate an equitable, efficient, and effective judicial system.[134]

CONCLUSION

Federal district courts should have inherent or ancillary jurisdiction to enforce a repudiated settlement agreement on vacating a prior order of dismissal and reopening the original litigation, pursuant to a motion under Federal Rule of Civil Procedure 60(b)(6). In accordance with principles of ancillary jurisdiction and Rule 60(b) motions, federal courts should exercise discretionary power to either enforce the settlement agreement or remand the action to a state court if they deem that forum more appropriate. This view reflects the strong public policy favoring settlement, serves the interests of judicial efficiency, and does not subvert the well-established statutory intent to limit the subject matter jurisdiction of the federal courts. In addition, this view would curtail the defensive gamesmanship which may thwart the purpose of settlement agreements by allowing a party to divest the federal court of jurisdiction over an action by entering into a settlement in bad faith.

Further, the federal courts' jurisdictional power to enforce a repudiated settlement agreement should not turn on whether the settlement was approved by the court or incorporated into a dismissal order. Such a distinction is an exaltation of form over substance, particularly when such procedures are neither formally required nor encouraged by the federal courts. Similarly, no distinction should be drawn for jurisdictional purposes between actions to enforce agreements settling cases which are still pending before the federal court and those settling cases which have been dismissed and reopened under Rule 60(b). Such a distinction is an exercise in futility since there is no practical difference between these cases. Regardless of the

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134 Several commentators have suggested that Rule 60(b) be modified or amended to "avoid the traps of technical formalism and unguided discretion" resulting in confusion and uncertainty which surrounds the Rule's interpretation by the courts. Comment, Rule 60(b), supra note 52, at 569 (proposing amendment to Rule 60(b) which would make it clear that relief under clause 6 depends on facts of case); see also Kane, supra note 52, at 81-87 (arguing against case-by-case approach to interpreting Rule 60(b)). But see Comment, Equitable Power, supra note 52, at 439-41 (arguing that courts, rather than revising committee, should clarify interpretation of Rule 60(b) since courts are "the source of the confusion" surrounding it). See generally Note, supra note 52, at 83-85 ("the court should, in every case, construe the Rules in such a manner as '. . . to secure the just . . . determination of every action,' as required by the first Federal Rule of Civil Procedure").

specific procedural context, a settlement agreement should be uniformly viewed as an outgrowth of the underlying lawsuit, thus enabling federal courts to enforce such agreements when the interests of justice so command.

Alyson M. Weiss