Notre Dame Law Review

Volume 55 | Issue 4 Article 9

4-1-1980

Jurisdiction--A Stay of Federal Court Proceedings Involving an Issue within Exclusive Federal Jurisdiction, Pending Termination of a Parallel State Court Action, Is Justified When the Federal Suit Is Found to Be Vexatious

Paul S. Maurer

Jurisdiction—A Stay of Federal Court Proceedings Involving an Issue within Exclusive Federal Jurisdiction, Pending Termination of a Parallel State Court Action, Is Justified When the Federal Suit Is Found to Be Vexatious

Calvert Fire Insurance Co.
v.
American Mutual Reinsurance Co. *

I. Introduction

The dual judicial system which exists in the United States inherently causes friction when the federal and state courts meet in the exercise of their concurrent jurisdiction.[1] Each system is called upon to decide cases presenting multiple issues, some to be resolved according to state law and others according to federal law. Problems arising from this separation become particularly acute when a suit involving substantially the same parties and issues is litigated simultaneously in both federal and state courts. Since a judgment in one of the two "parallel" suits will be likely to have a res judicata effect in the other suit, the comity between the federal and state court in such situations becomes a crucial consideration.

Congress is empowered by the Constitution to establish the scope of the jurisdiction of the lower federal courts.[2] These courts, however, have often attempted independently to define the circumstances in which they may decline to hear a case which complies with the jurisdictional requirements formulated by Congress. Parallel litigation has often given rise to such attempts. One method commonly employed by the lower courts to deal with parallel suits has been the stay. A stay is a suspension of the case or some designated proceedings within it. It is a type of injunction with which a court freezes its proceedings at a particular point to await the occurrence of some stipulated act or contingency.

The Court of Appeals for the Seventh Circuit was recently presented with a parallel suit situation in *Calvert Fire Insurance Co. v. American Mutual Reinsurance Co.*[3] This appeal represented the latest move in a protracted legal battle which waged in the federal court system for nearly four and a half years without reaching trial on the merits. At issue was the power of a federal district judge to stay the decision in a federal suit on a question within the exclusive jurisdiction

---

* 600 F.2d 1228 (7th Cir. 1979).

1 *See, e.g.,* Lyons v. Westinghouse Elec. Corp., 222 F.2d 184, 194 (2d Cir.) (Medina, J., dissenting), *cert. denied,* 350 U.S. 825 (1955). "The existence of separate state and federal court systems multiplies the opportunities for artful maneuvers and procedural sallies which serve little purpose other than to throw sand in the judicial machinery."

2 U.S. CONST. art. III, § 1 provides in part: "The judicial Power shall be . . . in such . . . Courts as Congress may . . . establish."

3 600 F.2d 1228 (7th Cir. 1979).

of the federal courts in deference to a pending parallel state action in which the question had already been decided.

II. Statement of the Case

American Mutual Reinsurance Company (hereinafter referred to as Amreco) solicited Calvert Fire Insurance Company (hereinafter referred to as Calvert) to participate in its reinsurance pool. The reinsurance pool was composed of Amreco and 99 other insurance companies which shared the profits and losses of the pool. Calvert agreed to participate for the year 1974, but after learning that the pool would suffer heavy losses for that year, it attempted to terminate the agreement.

On July 3, 1974, Amreco sued Calvert in Illinois state court for a declaration that the reinsurance pool agreement was still in effect. Six months later, Calvert asserted in its defense that it had been misled by Amreco during the negotiations leading to the participation agreement and, accordingly, was entitled to rescission of the agreement. In support of this new argument, Calvert cited the state common law of fraud and the antifraud provisions of state and federal securities statutes, including the Securities Act of 1933 (hereinafter referred to as the 1933 Act) and rule 10b-5,[4] promulgated under the Securities Exchange Act of 1934 (hereinafter referred to as the 1934 Act). Securities law was invoked on the theory that a participatory interest in a reinsurance pool constituted a "security" which was "sold" to Calvert within the meaning of the securities acts.[5] Calvert also filed a counterclaim for two million dollars in damages on all the same legal theories asserted in its defense,[6] with the exception of rule 10b-5 under the 1934 Act.

On the same day that it filed its defense and counterclaim in the state action, Calvert filed suit against Amreco in federal court. Although it pleaded rule 10b-5 as grounds for rescission in both courts, Calvert cited rule 10b-5 as grounds for damages only in the federal suit.[7] Jurisdiction over claims for monetary damages under the 1934 Act is exclusively vested in the federal courts.[8]

Pursuant to Amreco's motion, the District Court for the Northern District of Illinois stayed all aspects of Calvert's federal suit concurrently before the state court, pending the outcome of the state action.[9] The stay expressly excluded the 10b-5 claim for damages. In May of 1975, the state court judge decided that a participatory interest in a reinsurance pool did not constitute a

4 17 C.F.R. § 240.10b-5 (1979).

5 600 F.2d at 1230.

6 This apparently was Calvert's estimate of its *pro rata* share of the pool's 1974 losses, though it had paid nothing to date. Calvert Fire Ins. Co. v. American Mut. Reins. Co., 459 F. Supp. 859, 860 n.1 (N.D. Ill. 1978).

7 Calvert explained its failure to remove the state suit to federal court by alleging that it did not think of the securities law claim until after the 30-day period for removal set out in 28 U.S.C. § 1446(b)(1976). 600 F.2d at 1232 n.10.

8 15 U.S.C. § 78aa (1976) provides, in pertinent part: "The district courts of the United States . . . shall have exclusive jurisdiction of violations of this title or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this title or the rules and regulations thereunder." The 1933 Act grants concurrent jurisdiction to the state and federal courts.

9 The order and memorandum opinion were unpublished.

security, and subsequently dismissed Calvert's defenses and counterclaim based on security laws.[10] Shortly thereafter, the district court judge decided informally on his own motion to postpone decision of this same threshold issue,[11] apparently to await a final decision of the state court before proceeding with any phase of the federal suit.

In August of 1977, the Court of Appeals for the Seventh Circuit granted a writ of mandamus ordering the district court judge to decide the 10b-5 claim for damages.[12] On writ of certiorari, the Supreme Court held that the mandamus order was inappropriate and remanded.[13] The Seventh Circuit decided that the district court should reexamine the stay order.[14] The district court subsequently continued the stay order,[15] but certified it for interlocutory appeal.[16]

The court of appeals, in its third confrontation with this case in two years, affirmed the continuation of the stay of all proceedings in the federal suit pending termination of the state action. The *Calvert* court held that when the district judge has found the federal suit to be vexatious, a limited power to stay proceedings until termination of a parallel state suit represents a reasonable accommodation of the conflict between the needs of wise judicial administration and the obligation of the federal courts to exercise their jurisdiction.[17]

III. Development of the Power to Stay

Historically, considerable uncertainty has prevailed concerning the power of a federal court to grant a stay in deference to a pending substantially similar state court action.[18] In 1821 the Supreme Court stated in rather obscure dictum that a federal court had "no right to decline the exercise of jurisdiction which is given."[19] Later Supreme Court decisions established in rather broad

10 The decision has since been affirmed on appeal. American Mut. Reins. v. Calvert Fire Ins., 52 Ill. App. 3d 922, 367 N.E.2d 104 (1977), *cert. denied,* 436 U.S. 906 (1978).

11 600 F.2d at 1231.

12 Calvert Fire Ins. Co. v. Will, 560 F.2d 792 (7th Cir. 1977), *rev'd,* 437 U.S. 655 (1978).

13 Will v. Calvert Fire Ins. Co., 437 U.S. 655 (1978). Four justices were of the opinion that mandamus was inappropriate. The district court had not so abused its discretion that Calvert's right to the writ was "clear and indisputable." *Id.* at 665-66. Four other justices were of the opinion that the writ was warranted. Justice Blackmun joined the first four on the ground that the writ should not have been issued before the district court had had an opportunity to reconsider the stay in light of the Supreme Court's decision in Colorado River Water Cons. Dist. v. United States, 424 U.S. 800 (1976), *reh. denied,* 426 U.S. 912 (1976), which had not been decided at the time the stay was instituted. 437 U.S. at 668.

14 Calvert Fire Ins. Co. v. Will, 586 F.2d 12 (7th Cir. 1978).

15 Calvert Fire Ins. Co. v. American Mut. Reins. Co., 459 F. Supp. 859 (N.D. Ill. 1978).

The district court gave its principal reasons for continuing the stay as follows: 1) Calvert had no actual claim to damages since it had paid nothing into the pool; 2) its perception of Calvert's continuing quest for federal adjudication as a delaying tactic, to postpone any possible obligation to pay money into the pool; and, 3) the state court had already disposed of the federal security issue. Calvert had a financial interest in delay, since the longer it could postpone a possible obligation to pay money into the pool, the longer it could benefit from the difference between the statutory interest rate and the prevailing commercial interest rate. *Id.* at 865.

16 *Id.* at 866. Certification was pursuant to 28 U.S.C. § 1292(b) (1976).

17 600 F.2d at 1236.

18 Such stays are supported by two policy considerations—the impropriety of a race for res judicata and the wastefulness inherent in concurrent proceedings. *See* Note, *Stays of Federal Proceedings in Deference to Concurrently Pending State Court Suits,* 60 COLUM. L. REV. 684, 698 (1960).

19 Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 404 (1821).

terms the duty of a federal court to hear and determine all cases properly brought before it.[20]

As the work load of the federal courts increased, pressure mounted on judges to better manage the flow of litigation pending before them. Doctrines of judicial origin were developed in response to this pressure. *Landis v. North American Co.*[21] provided language which somewhat ameliorated the strict duty of the courts to exercise properly invoked jurisdiction. The *Landis* court stated that "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants."[22]

The refusal to entertain a controversy was originally limited primarily to cases in which equitable relief was sought, because equitable relief was discretionary by nature.[23] The introduction of the doctrine of forum non conveniens in *Gulf Oil Corp. v. Gilbert,*[24] however, extended the right to decline jurisdiction to cases which sought only a legal remedy. Forum non conveniens allows a court to dismiss a case in the interests of fairness when there is an alternate forum which is significantly more convenient for the parties and witnesses. This doctrine helped establish a general discretionary power to stay or dismiss a case.

The doctrine of abstention has also been developed by the Supreme Court as an exception to the strict duty of the lower courts to exercise properly invoked jurisdiction. The doctrine allows a federal court, in the exercise of its discretion, to relinquish jurisdiction when necessary to avoid needless conflict with a state's administration of its own affairs.[25]

Abstention is grounded upon principles of comity and federalism and

---

20 *See* Kline v. Burke Construction Co., 260 U.S. 226 (1922); McClellan v. Carland, 217 U.S. 268 (1910).

> It . . . appeared . . . that the Circuit Court had practically abandoned its jurisdiction over a case of which it had cognizance, and turned the matter over for adjudication to the state court. This, it has been steadily held, a Federal court may not do.
>
> . . . .
>
> The rule is well recognized that the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction. . . .
> 217 U.S. at 281, 282.

21 299 U.S. 248 (1936). *Landis* involved actions pending in two different federal district courts, and it was held an abuse of discretion under the circumstances for one district court to stay proceedings before it pending the outcome of litigation in another district court involving different parties.

22 *Id.* at 254. The *Landis* court, however, went on to say: "Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both." *Id.* at 255.

23 *See* Brillhart v. Excess Ins. Co., 316 U.S. 491 (1942). The modern trend is to exercise the power to stay more readily in those areas where the relief sought is equitable in nature. *See, e.g.,* Weiner v. Shearson, Hammill & Co., Inc., 521 F.2d 817 (9th Cir. 1975); PPG Industries, Inc. v. Continental Oil Co., 478 F.2d 674 (5th Cir. 1973); Lear Siegler, Inc. v. Adkins, 330 F.2d 595 (9th Cir. 1964).

24 330 U.S. 501 (1947). Forum non conveniens is mainly a state doctrine now, as the federal courts use transfer jurisdiction under 28 U.S.C. § 1404(a) (1976).

25 *See* Colorado River Water Cons. Dist. v. United States, 424 U.S. 800, 813-17 (1976), *reh. denied,* 426 U.S. 912 (1976). The circumstances appropriate for abstention fall within three general categories: (1) in cases presenting a federal constitutional issue which might be mooted or presented in a different posture by a state court determination of pertinent state law. Railroad Commission v. Pullman Co., 312 U.S. 496 (1941); (2) where there have been presented difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case at hand. Louisiana Power & Light Co. v. Thibodaux, 360 U.S. 25 (1959); and, (3) where, absent bad faith, harassment, or a patently invalid state statute, federal jurisdiction has been invoked for the purpose of restraining state criminal proceedings. Younger v. Harris, 401 U.S. 37 (1971).

upon the prudential maxim that the federal courts should avoid unnecessary constitutional rulings. It is, however, "an extraordinary and narrow exception. Abdication of the obligation to decide cases can be justified under this doctrine only in the exceptional circumstances where the order to the parties to repair to the state court would clearly serve an important countervailing interest."[26]

The application of the abstention doctrine is distinguishable in two respects from the use of a stay in a situation involving parallel litigation. First, the operation of the abstention doctrine is usually not dependent upon the presence or absence of a concurrent state court action between the parties,[27] depending instead on a concern for whether the exercise of jurisdiction would create unwarranted friction between the federal and state sovereigns. Secondly, abstention is concerned with prudent constitutional adjudication and regard for federal-state relationships, whereas federal court stays in deference to pending state court proceedings rest on considerations of "wise judicial administration"[28] of the court system itself. Thus, the abstention cases cannot be viewed as precedent for such stays, except insofar as they indicate a departure from the general notion that the federal courts must exercise their jurisdiction when properly called upon.

A. *The Power to Stay in the Context of Federal-State Concurrent Jurisdiction*

The power to stay in federal-state concurrent jurisdiction situations evolved as one facet of the power of a federal court to decline jurisdiction. The evolution, however, was by means of exceptions to the general rule that federal jurisdiction, once established, must be exercised.

A broad discretionary standard governing the use of staying power was first set out in *Mottolese v. Kaufman,*[29] in which the Court of Appeals for the Second Circuit held that a federal district court had acted within its discretion in staying a stockholder's derivative suit brought under diversity jurisdiction when a prior suit on the same cause of action was pending before the state court. In approving the stay, the court addressed considerations of fairness and convenience comparable to those which had been discussed by the Supreme Court in *Gulf Oil.*[30] In addition, the court drew upon the inherent power of a court to control its docket which had been established in *Landis.*[31] The *Mottolese* court required a "positive reason"[32] to support a stay, which it said was supplied in the case before it by the mere fact that duplicate litigation was pending in state court.

In the years that followed, the lower federal courts, recognizing the inefficiencies of parallel litigation, liberally granted stays in deference to pending

26 424 U.S. at 813 (quoting Allegheny v. Frank Mashuda Co., 360 U.S. 185, 188-89 (1959)).
27 Weiner v. Shearson, Hammill & Co., Inc., 521 F.2d 817, 820 (9th Cir. 1975). The only situation in which the operation of abstention is dependent on the presence of an ongoing state proceeding is in the *Younger v. Harris* branch of the doctrine. *See* note 25 *supra.*
28 424 U.S. at 817.
29 176 F.2d 301 (2d Cir. 1949).
30 330 U.S. 501 (1947). *See also* note 24 *supra* and accompanying text.
31 299 U.S. 248 (1936). *See also* notes 21-22 *supra* and accompanying text.
32 176 F.2d at 303.

state court proceedings. Development of the stay doctrine was marked, however, by inconsistency and confusion that left the ambit of the power to stay unclear.[33]

The decision of the Supreme Court in *Colorado River Water Conservation District v. United States*[34] finally attempted to delineate the bounds of the power to stay in concurrent jurisdiction situations.[35] In that case, the United States brought suit in district court to adjudicate water rights claims based on federal and state law. A defendant in the federal suit moved in state court to have the United States served as a defendant in a state proceeding to adjudicate these same claims. The state court granted the motion, the United States having given its consent in the McCarran Amendment[36] to be sued in state water rights proceedings. Several federal defendants then moved to dismiss the federal suit on the ground that all the Government's claims, including those based on federal law, could be decided in state court. The district court granted the motion, and the Supreme Court sustained the dismissal, even though it found none of the traditional grounds for abstention applicable. Emphasizing the "virtually unflagging obligation of the federal courts to exercise the jurisdiction given them,"[37] the Court nonetheless acknowledged a limited power to stay proceedings in deference to a parallel state suit in order to promote "wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation."[38] The decision suggests the use of a balancing test to guide the lower courts in the exercise of the power to stay—stays may properly be granted only when exceptional circumstances outweigh the obligation to exercise federal jurisdiction. The Court enumerated several factors to be considered in making the determination of whether exceptional circumstances exist: the friction that attends the exercise by two courts of concurrent jurisdiction over a single res;[39] the relative inconvenience of the federal forum;[40] the desirability of avoiding piecemeal litigation;[41] and the order of commencement of the respective suits.[42]

Colorado River considerably circumscribes the power of the lower courts to stay a proceeding properly before it,[43] but offers little guidance as to how its

33 *See, e.g.*, Lutes v. United States Dist. Ct., 306 F.2d 948 (10th Cir.), *cert. denied*, 371 U.S. 941 (1962) (stays not justified unless explicitly warranted by Supreme Court precedent); Amdur v. Lizars, 372 F.2d 103 (4th Cir. 1967) (parallel litigation is an exceptional circumstance justifying a stay in view of the increasing work load of the courts); Thompson v. Boyle, 417 F.2d 1041 (5th Cir. 1969), *cert. denied*, 397 U.S. 972 (1970) (stay justified where the federal court could not completely dispose of the matters in controversy). *See also* note, *Federal Court Stays and Dismissals in Deference to Parallel State Court Proceedings: The Impact of Colorado River*, 44 U. CHI. L. REV. 641, 642 (1977).

34 424 U.S. 800 (1976), *reh. denied*, 426 U.S. 912 (1976).

35 Although the decision involves a dismissal, the analysis set forth by the Court is equally applicable to determining the propriety of a stay.

36 43 U.S.C. § 666 (1976).

37 424 U.S. at 817.

38 *Id.* (quoting Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co., 342 U.S. 180, 183 (1952)). *Kerotest* upheld a stay issued in deference to an action pending in another federal district court. The opinion emphasized the "ample degree of discretion . . . [which] must be left to the lower courts." 342 U.S. at 183-84.

39 424 U.S. at 818 (citing United States v. Bank of New York & Trust Co., 296 U.S. 463, 477 (1936)).

40 *Id.* (citing Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947). *See* text accompanying note 25 *supra*).

41 *Id.* (citing Brillhart v. Excess Ins. Co., 316 U.S. 491 (1942). *See* note 24 *supra* and accompanying text).

42 *Id.* (citing Pacific Live Stock Co. v. Lewis, 241 U.S. 440, 447 (1916)).

43 "[T]he circumstances permitting the dismissal of a federal suit due to the presence of a concurrent state proceeding for reasons of wise judicial administration are considerably more limited than the circumstances appropriate for abstention." 424 U.S. at 818.

balancing test is to be applied. Moreover, the factors set out above relevant to a balancing approach are not exhaustive.

One factor not addressed by *Colorado River* is the basis of jurisdiction. A Congressional grant of exclusive jurisdiction to the federal courts may simply override any other factor favoring a stay, and compel the district court to decide the case before it. The importance of exclusive jurisdiction is highlighted by the dissent of Justice Brennan in *Will v. Calvert Fire Insurance Co.*,[44] in which he emphasized that obedience to "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them . . . becomes all the more important when . . . Congress has made that jurisdiction *exclusive.*"[45]

B. *The Power to Stay in the Context of Exclusive Federal Jurisdiction*

Under the stay analysis outlined in *Colorado River,* when circumstances counterbalancing the obligation of the federal courts to exercise jurisdiction can be identified, there is an implicit assumption that the state forum is adequate. This assumption may not be warranted, however, if a claim is brought under a statute establishing exclusive federal jurisdiction. Such grants of jurisdiction have been employed by Congress to achieve uniform and effective implementation of specific federal policies.[46] To date, courts have generally shown steady adherence to the duties imposed by exclusive jurisdiction. Stays in deference to parallel state proceedings, where the federal action has involved claims or issues under an exclusive jurisdiction statute, have consistently been denied.[47] Two basic considerations support this result: the judgment preclusion effects of a prior state court decision;[48] and, the policy of confining the litigation to the forum best able to comprehensively dispose of the entire controversy.

---

44 437 U.S. 655, 668 (1978). *See* note 13 *supra* and accompanying text. This decision, which reversed and remanded the original mandamus order issued against the district court judge in the principal case, has been criticized as allowing a district court judge too much discretion to defer to a concurrent state proceeding if he wishes to avoid hearing the case. The continued vitality of the *Colorado River* decision (*see* notes 34-43 *supra* and accompanying text) has also been cast in doubt. *See, e.g.,* Comment, *Federal Jurisdiction—Abstention Doctrine—A Mandamus Directing a Federal Judge to Adjudicate a Claim That Is Concurrently Pending in State Court Impermissibly Interferes with the Discretion of a District Judge to Control His Docket,* 47 GEO. WASH. L. REV. 431 (1979); Comment, *Federal Courts—Appellate Jurisdiction—When a District Judge Has Stayed a Claim Involving Concurrent Jurisdiction, Issuance of a Writ of Mandamus Compelling Adjudication Is Improper,* 10 ST. MARY L. J. 641 (1979).

45 437 U.S. at 669 (Brennan, J., dissenting).

46 *E.g.,* Securities Exchange Act of 1934 (15 U.S.C. § 78aa (1976)); Clayton Act (15 U.S.C. § 15 (1976)); patents and copyrights (28 U.S.C. §1338 (1976)). Article III, § 1 of the Constitution states that "The judicial Power shall be . . . in such . . . Courts as Congress may . . . establish." Congress has made grants of exclusive jurisdiction to the federal courts since the first judiciary act. *See* Act of Sept. 24, 1789, § 9, 1 Stat. 76. Rep. Rayburn of Texas, speaking about the addition of the word "exclusive" to the jurisdiction section of the Securities Exchange Act of 1934, stated on the House floor, "We thought the bill as drawn meant exclusive, but in order that it be entirely clear we offer this amendment." 78 CONG. REC. 8099 (1934).

47 *E.g.,* Cotler v. Inter-County Orthopaedic Ass'n, P.A., 526 F.2d 537 (3d Cir. 1975) (securities act); McGough v. First Arlington Nat'l Bank, 519 F.2d 552 (7th Cir. 1975) (securities act); Lecor, Inc. v. United States Dist. Ct., 502 F.2d 104 (9th Cir. 1974) (securities act); Movielab, Inc. v. Berkey Photo, Inc., 321 F. Supp. 806 (S.D.N.Y. 1970), *aff'd,* 452 F.2d 662 (2d Cir. 1971) (securities act); Mach-Tronics, Inc. v. Zirpoli, 316 F.2d 820 (9th Cir. 1963) (antitrust laws); Lyons v. Westinghouse Elec. Corp., 222 F.2d 184 (2d Cir.), *cert. denied,* 350 U.S. 825 (1955) (antitrust laws); Simon & Schuster, Inc. v. Cove Vitamin & Pharmaceutical, Inc., 211 F. Supp. 72 (S.D.N.Y. 1962) (copyright laws).

48 Judgment preclusion effects encompass both res judicata and collateral estoppel.

1. Judgment Preclusion Effects

Res judicata and collateral estoppel are doctrines courts apply to give effect to prior decisions. Three policies underlie these doctrines: terminating litigation; preventing harassment of a party; and efficient use of judicial resources.[49] The application of res judicata influences subsequent litigation of the same cause of action in two ways. First, judgment on the merits is an absolute bar to a second action between the same parties on the same claim. Second, such judgment precludes litigation between the same parties on matters that should have been determined in the previous lawsuit.[50] Under the doctrine of collateral estoppel, an issue of fact determined in prior litigation is conclusive in a second suit between the same parties on a different cause of action.[51]

Normally the res judicata and collateral estoppel effects of a final state court judgment will preclude relitigation by the same parties of the same claim or question of fact in either a state or federal court. If jurisdiction over the claim is exclusively federal, however, a state court decision may have no judgment preclusion effect on a subsequent federal proceeding.

In *Lyons v. Westinghouse Electric Corp.*,[52] the plaintiff brought a treble damage action in federal district court alleging a violation of the antitrust laws. He had previously raised the same issue by way of defense in a pending state court action filed by the defendant Westinghouse.[53] In directing the district court to reverse its order staying the federal action pending the outcome of the state court suit, the Court of Appeals for the Second Circuit held that a judgment by the state court would have no res judicata effect in the federal court action. The court concluded that since a "grant to the district courts of exclusive jurisdiction . . . should be taken to imply an immunity of their decisions from any prejudgment elsewhere . . . ,"[54] there was no useful purpose to be served by staying the federal action.[55] *Lyons* recognized sound reasons for assuming that antitrust actions should not be subject to the decisions of state courts; the antitrust laws were national in scope, and it followed that they should be uniformly administered.[56] This, the court said, "would best be accomplished by an untrammeled jurisdiction of the federal courts."[57] Despite this seemingly

49 Note, *Res Judicata: Exclusive Federal Jurisdiction and the Effect of Prior State-Court Determinations,* 53 VA. L. REV. 1360, 1361-62 (1967).

50 RESTATEMENT OF JUDGMENTS §§ 45-46 (1942).

51 *Id.* § 68.

52 222 F.2d 184 (2d Cir.), *cert. denied,* 350 U.S. 825 (1955).

53 The reversal in posture of the parties, in going from state to federal court, is identical to that in the principal case.

54 222 F.2d at 189. Denying a state court decision res judicata effect as to an exclusively federal action is the prevailing trend. *See, e.g.,* McGough v. First Arlington Nat'l Bank, 519 F.2d 552 (7th Cir. 1975); Lewis v. Marine Midland Grace Trust Co., 63 F.R.D. 39 (S.D.N.Y. 1973); Kahan v. Rosenstiel, 285 F. Supp. 61 (D. Del. 1968); Simon & Schuster, Inc. v. Cove Vitamin & Pharmaceutical, Inc., 211 F. Supp. 72 (S.D.N.Y. 1962).

55 *See also* Cotler v. Inter-County Orthopaedic Ass'n, P.A., 526 F.2d 537 (3d Cir. 1975); Mach-Tronics, Inc. v. Zirpoli, 316 F.2d 820 (9th Cir. 1963).

56 222 F.2d at 189. *See also* Mach-Tronics, Inc. v. Zirpoli, 316 F.2d 820, 828 (9th Cir. 1963).

57 222 F.2d at 189. *Lyons* is especially instructive as to staying power in exclusive federal jurisdiction situations when it is considered that the Second Circuit also announced a broad power to stay in Mottolese v. Kaufman, 176 F.2d 301 (2d Cir. 1949), a case involving state-federal *concurrent* jurisdiction. *See* text accompanying note 29 *supra.*

clear pronouncement, the res judicata effect of a prior state court judgment on an exclusively federal claim remains an unsettled question.[58]

Precedent exists for giving collateral estoppel effect to specific findings of facts by a state court adjudicating an exclusively federal claim raised as a defense.[59] This may make sense for reasons of fairness and judicial economy, but there are at least equally compelling reasons why even such a limited preclusive effect should not be given state court determinations. In *Lecor, Inc. v. United States District Court,*[60] a stay of a federal suit involving federal securities laws violations pending the outcome of state court proceedings was vacated. The Ninth Circuit said that a federal court cannot "tie its own hands"[61] by allowing the state court to determine crucial factual issues. This "would fly in the face of the federal policy of entrusting the determination of such . . . suits exclusively to the federal courts."[62] It is a fair assumption that in creating and defining an exclusively federal claim, Congress intended that the claim would be litigated only in the context of federal court procedure. Congress may have thought that the liberal federal discovery procedures were crucial to the proper determination of the factual disputes underlying the federal claim.[63]

When Congress mandates exclusive federal jurisdiction, it should not matter whether a prior state court judgment would be given res judicata or collateral estoppel effect. The federal court should expeditiously adjudicate the exclusively federal claim in any event. If res judicata or collateral estoppel effect is accorded the prior state court judgment, the exclusive jurisdiction given the federal courts would essentially be thwarted, and the policy of uniform and effective federal administration and interpretation of the federal law would be frustrated. On the other hand, if the state court judgment is not given res judicata or collateral estoppel effect, the exclusively federal claim will have to be adjudicated in federal court anyway, and there would be no reason for staying the federal action since it would not be affected by anything that transpires in the state proceeding.[64] In short, a stay of a federal action involving an exclusively federal claim or issue will rarely, if ever, be justifiably predicated

58 *See* Comment, *Exclusive Federal Jurisdiction: The Effect of State Court Findings,* 8 STAN. L. REV. 439 (1956) (should be res judicata in a subsequent federal suit). *But see* Note, *Res Judicata: Exclusive Federal Jurisdiction and the Effect of Prior State Court Determinations,* 53 VA. L. REV. 1360 (1967); and Note, *The Res Judicata and Collateral Estoppel Effect of Prior State Suits on Actions Under SEC Rule 10b-5,* 69 YALE L. J. 606 (1960) (not res judicata in a subsequent federal suit).

In Cotler v. Inter-County Orthopaedic Ass'n, P.A., 526 F.2d 537 (3d Cir. 1975), the court said, "Litigation over the judgment preclusion effects of the state court decision in [an exclusive federal jurisdiction] context probably will be as complex as if the federal court had gone ahead with the entire case." *Id.* at 542.

59 *See, e.g.,* Becher v. Contoure Laboratories, 279 U.S. 388 (1929); Movielab, Inc. v. Berkey Photo, Inc., 321 F. Supp. 806, 810 (S.D.N.Y. 1970), *aff'd,* 452 F.2d 662 (2d Cir. 1971); Lyons v. Westinghouse Elec. Corp., 222 F.2d 184, 196 (2d Cir. 1955); Note, *Res Judicata: Exclusive Federal Jurisdiction and the Effect of Prior State Court Determinations,* 53 VA. L. REV. 1360, 1382 (1967).

60 502 F.2d 104 (9th Cir. 1974).

61 *Id.* at 106 (quoting Mach-Tronics, Inc. v. Zirpoli, 316 F.2d 820, 833 (9th Cir. 1963)). *Mach-Tronics* involved a federal antitrust action which was stayed by the district court pending resolution of a state court action instituted earlier. The Ninth Circuit issued a writ of mandamus commanding the district court to vacate the stay because the federal courts have exclusive jurisdiction in antitrust actions.

62 Mach-Tronics, Inc. v. Zirpoli, 316 F.2d 820, 833 (9th Cir. 1963).

63 Will v. Calvert Fire Ins. Co., 437 U.S. 655, 675 (1978) (Brennan, J., dissenting). *See* FED. R. CIV. P. 26-37. In Mottolese v. Kaufman, 176 F.2d 301 (2d Cir. 1949) (*see* text accompanying note 29 *supra*), the stay of the federal suit was conditioned on the use of the federal rules for discovery in the state proceeding.

64 437 U.S. at 675-76 (Brennan, J., dissenting).

upon the judgment preclusion effect that would be accorded a prior decision in a parallel state court suit.

2. Best Forum

Refusal to stay an action coming within the scope of exclusive federal jurisdiction is often based upon the desire to confine the litigation to the forum best able to dispose of the controversy. Claims for affirmative relief under an exclusive jurisdiction statute may be asserted only in a federal court.[65] Moreover, the federal courts have a duty to determine issues of state law not falling within the ambit of the abstention doctrine[66] whenever necessary to the rendition of judgment.[67] In contrast, the state court can hear only defenses raised under an exclusive jurisdiction statute,[68] as well as any state law claims. Thus, pursuant to the "principal inquiry . . . as to whether all of the issues can be disposed of in one jurisdiction . . . in the interest of avoiding multiplicity and of promoting efficiency and economy of effort,"[69] it has been recognized that the federal court is the better forum for comprehensively deciding all the issues.[70]

Whether the refusal to stay the federal action in deference to a pending state court proceeding is predicated upon the judgment preclusion effect of the state court decision, or upon considerations directed toward efficient utilization of the judicial system, the clear trend is to accord decisive weight to the Congressional grant of exclusive jurisdiction.[71] Consistent with the balancing ap-

65 *See, e.g.*, McGough v. First Arlington Nat'l Bank, 519 F.2d 552 (7th Cir. 1975); Clark v. Watchie, 513 F.2d 994 (9th Cir. 1975); Movielab, Inc. v. Berkey Photo, Inc., 321 F. Supp. 806 (S.D.N.Y. 1970), *aff'd*, 452 F.2d 662 (2d Cir. 1971).

66 *See* notes 25-28 *supra* and accompanying text.

67 *E.g.*, Meredith v. Winter Haven, 320 U.S. 228 (1943); Mach-Tronics, Inc. v. Zirpoli, 316 F.2d 820, 824 (9th Cir. 1963) (citing Meredith v. Winter Haven).

68 *E.g.*, Aetna State Bank v. Altheimer, 430 F.2d 750, 754 (7th Cir. 1970), *rev'd*, 560 F.2d 792, 796 n.5 (7th Cir. 1977) (based on the Supremacy Clause of the Constitution, this point remains good law. 600 F.2d at 1231 n.6); Weiner v. Shearson, Hammill & Co., Inc., 521 F.2d 817, 822 (9th Cir. 1975); Movielab, Inc. v. Berkey Photo, Inc., 321 F. Supp. 806, 810 (S.D.N.Y. 1970), *aff'd*, 452 F.2d 662 (2d Cir. 1971); Lyons v. Westinghouse Elec. Corp., 222 F.2d 184, 190 (2d Cir. 1955).

Where patent issues are involved, federal jurisdiction remains exclusive over *cases* arising under the patent laws, but suits involving patent licensing or other similar agreements, and patent questions raised either defensively or affirmatively as part of an otherwise state cause of action fall within state jurisdiction. *See* MacGregor v. Westinghouse Elec., 329 U.S. 402, 407-08 (1947); Becker v. Contoure Laboratories, 279 U.S. 388 (1929); Pratt v. Paris Gas Light & Coke Co., 168 U.S. 255 (1897). To date, stays in deference to the state action have only been granted where the state has had concurrent jurisdiction, *see, e.g.*, Milton Roy Co. v. Bausch & Lomb Inc., 418 F. Supp. 975 (D. Del. 1976) (contract action); Auditorium Conditioning Corp. v. Carrier Corp., 54 F. Supp. 99 (S.D.N.Y. 1943) (patent licensing agreement); or the relief sought has been injunctive or declaratory. *See, e.g.*, Lear Siegler, Inc. v. Adkins, 330 F.2d 595 (9th Cir. 1964) (declaratory relief); P. Beiersdorf & Co. v. McGohey, 187 F.2d 14 (2d Cir. 1951) (injunction).

69 Movielab, Inc. v. Berkey Photo, Inc., 321 F. Supp. 806, 810 (S.D.N.Y. 1970), *aff'd*, 452 F.2d 662 (2d Cir. 1971).

70 *See, e.g.*, McGough v. First Arlington Nat'l Bank, 519 F.2d 552, 556 (7th Cir. 1975); Lecor, Inc. v. United States Dist. Ct., 502 F.2d 104, 106 (9th Cir. 1974); Telechron, Inc. v. Parissi, 197 F.2d 757, 762 (2d Cir. 1952); Kahan v. Rosenstiel, 285 F. Supp. 61, 63 (D. Del. 1968).

71 The exceptions have been rare, and have not had a diversionary impact on the force of precedent. *See, e.g.*, Aetna State Bank v. Altheimer, 430 F.2d 750 (7th Cir. 1970), *rev'd*, 560 F.2d 792, 796 n.5 (7th Cir. 1977); Klein v. Walston & Co., 432 F.2d 936 (2d Cir. 1970). In both *Aetna* and *Klein*, federal relief was sought under the Securities Exchange Act of 1934, but the courts upheld a stay of the federal suit. Later decisions distinguished these cases by focusing on the fact that the plaintiff was the same in the state and federal actions, "in a posture that was inconsistent with the exclusive federal remedy concept of the Exchange Act." McGough v. First Arlington Nat'l Bank, 519 F.2d 552, 555 (7th Cir. 1975). *See also* Weisfeld v. Spartans Indus., Inc., 58 F.R.D. 570 (S.D.N.Y. 1972) (distinguishing *Klein*). The *Klein* court cited con-

proach of *Colorado River,*[72] exclusive jurisdiction should thus be sufficient to defeat a motion to stay the federal court proceeding regardless of the presence of other factors favoring a stay.

IV. The *Calvert* Stay: A Departure from Policy and Precedent

The Seventh Circuit decision in *Calvert* through its affirmance of the district court's stay, generally undermines the duty of a federal court to exercise exclusive federal jurisdiction when there is a parallel state court action pending.

The stay issued by the district court was predicated upon the assumption that the state court had fully concurrent jurisdiction.[73] Calvert admitted that it had no legitimate claim to damages under the 1934 Act because it had not yet paid anything into the reinsurance pool.[74] Calvert's 1934 Act claim for rescission was within the concurrent jurisdiction of the state court,[75] but had been dismissed in the state suit when the state court judge decided that a participatory interest in a reinsurance pool was not a "security" as defined in the federal securities acts.[76] Although the state court had to decide the security issue for purposes of the state proceeding, the possibility that Calvert could pursue its 1934 Act rescission claim in federal court remained open until the district court formally ruled that no security was involved.

The Third Circuit addressed a similar issue involving the definition of a security in *Cotler v. Inter-County Orthopaedic Association, P.A.*[77] In *Cotler,* a professional association brought suit against a member in state court. The member then sued the association in federal court to recover for violations of the 1934 Act, on the theory that stock in the association was a security as defined in the Act. The Third Circuit, in issuing a writ of mandamus directing the district court to vacate its stay order, held that only a federal court could decide the question of whether stock in a professional association was a security under the 1934 Act.[78] The court noted that a determination of this preliminary issue would govern the exercise of federal jurisdiction: if stock in the association was determined not to be a security, then the federal court would have had discretion to decline jurisdiction over any pendent state claims.[79]

The *Calvert* court applied the balancing test of *Colorado River,*[80] focusing on the district court's perception of Calvert's federal suit as a delaying tactic.[81] The Seventh Circuit concluded that the interest in preventing a vexatious suit

---

gested dockets in upholding the stay. The Supreme Court has since held that this is not grounds for a dismissal or stay. Thermtron Prod., Inc. v. Hermansdorfer, 423 U.S. 336, 344-45 (1976).

72 *See* notes 34-43 *supra* and accompanying text.

73 600 F.2d at 1234.

74 *Id.* at 1232.

75 *Id.* at 1231.

76 *See* note 10 *supra* and accompanying text.

77 526 F.2d 537 (3d Cir. 1975).

78 *Id.* at 542.

79 *Id.; see also* Movielab, Inc. v. Berkey Photo, Inc., 321 F. Supp. 806 (S.D.N.Y. 1970), *aff'd,* 452 F.2d 662 (2d Cir. 1971), wherein the court first established subject matter jurisdiction by determining whether the promissory notes in question were securities under the Securities Exchange Act of 1934.

80 *See* notes 34-43 *supra* and accompanying text.

81 *See* note 15 *supra.*

would outweigh the district court's obligation to exercise jurisdiction, and clearly justify the postponement of a decision on the security question.[82] However, since the district court would eventually have to decide the threshold issue of whether or not a security was involved, no purpose was served by postponement other than the possibility that Calvert might abandon the prosecution of its federal suit. Calvert was unlikely to do this if it was actually using the federal suit as a delaying tactic.

If the district court had expeditiously decided the security question in the negative, as did the state court, then Calvert's 1934 Act claim for rescission could have been dismissed. The delay of the district court is especially unfortunate when it is considered that the district court judge, in the opinion continuing the stay, informally expressed his agreement with the state court on the security matter.[83] A dismissal of the 1934 Act rescission claim may have prompted Calvert to apply its resources more vigorously in the state court proceeding, and almost certainly would have avoided the prolonged contest which evolved in the federal courts. By affirming the stay, the *Calvert* court condoned the district court's delay in deciding an issue within exclusive federal jurisdiction—a decision which eventually the district court would most likely have to make.

The district court also indicated that it would accord collateral estoppel effect to the state court decision on the security issue.[84] This would have been inconsistent with a prior Seventh Circuit case similar to *Calvert.* In *McGough v. First Arlington National Bank,*[85] the state court defendant sued the bank in federal court alleging fraud under the 1933 and 1934 Acts. On appeal, the Seventh Circuit reversed the district court's stay and affirmed its denial of a temporary restraint of the state action. The court held that the stay was improper because the federal court had exclusive jurisdiction under the 1934 Act, and that the temporary restraint was unnecessary because the state court decision would have no preclusive effect with respect to the exclusively federal issues.[86]

To allow the state court decision on the security issue to be given preclusive effect in the federal suit would frustrate the policy underlying the Congressional grant of exclusive federal jurisdiction—uniform federal administration and interpretation of the 1934 Act. The *Calvert* court should have prevented such a precedent from being established, but instead failed to address this aspect of the district court opinion.

Calvert was entitled to a federal court ruling on the security question. The district court should not have been able to avoid this obligation by labeling the federal suit as vexatious, especially when it appeared that the decision would have to be rendered eventually. To the extent that the Seventh Circuit failed to recognize this, the *Calvert* decision represented a departure from both the

82 600 F.2d at 1234. The Seventh Circuit also pointed out that the duty of the district court to promptly decide the security question was further attenuated by conditioning the continuation of the stay on fairness to the parties, and by the possibility that a final state court decision favorable to Calvert might obviate the need for a federal decision. *Id.* at 1235-36.

83 Calvert Fire Ins. Co. v. American Mut. Reins. Co., 459 F. Supp. 859, 865 n.8 (N.D. Ill. 1978).

84 *Id.* at 861.

85 519 F.2d 552 (7th Cir. 1975).

86 *Id.* at 555.

legislative policy and legal precedent that accompany a grant of exclusive federal jurisdiction.

V. Conclusion

An element of irony surfaces when viewing the protracted history of *Calvert.* After nearly four and a half years in the federal court system, having been reversed and remanded by the Supreme Court, and recently before the Seventh Circuit for the third time, the original stay was upheld as a compromise between the duty to exercise jurisdiction and the needs of wise judicial administration.[87] If delay was Calvert's objective, it employed the federal judicial machinery to that end most effectively in the extended litigation of the district court stay.

The *Calvert* decision has potentially broad implications. As the workload of the federal courts expands unrelentingly, the district courts may readily adopt any precedent that would support more discretion in the disposition of litigation before them. Discretionary stays can be an important means of regulating duplicative litigation and averting waste of judicial resources. Nonetheless, consideration of the vexatious or dubious nature of a claim as a factor favoring a stay of a federal action should be limited to situations of complete federal-state concurrent jurisdiction, so as not to deprive a litigant of at least one forum in which all his claims may be adjudicated. If a claim or issue is exclusively federal, then Congress has predetermined that a federal judge may not engage discretion to abdicate his responsibility to exercise jurisdiction.

Paul S. Maurer

87 *See* text accompanying note 17 *supra.*