A Theoretical and Empirical Study of Forum Shopping in Diversity Cases

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August 18, 2014

Abstract

An underappreciated consequence of diversity jurisdiction is that it can promote forum shopping within the federal court system. I develop a general model of forum shopping, which I then test with 532,097 federal diversity cases terminating between 1988 and 2011. Confirming a testable prediction of my model, I find that parties (particularly corporations) who litigate outside of their home state settle cases more often than parties who litigate at home. My results are robust under a variety of specifications, including ones with fixed effects for plaintiff home state, years of suit filing and termination, forum, and case type.

1 Introduction

A plaintiff’s choice of where to file suit is one of the earliest and most important strategic decisions in a lawsuit. This ability to select a forum, which is often pejoratively referred to as “forum shopping,” can substantially impact the outcome of a case. For example, Clermont and Eisenberg [1994] show the large negative impact on plaintiffs' win rates at trial when a federal court transfers a case away from a forum chosen by a plaintiff. They also note a fact well-known to litigators: “[t]he battle over venue often constitutes the critical issue in a case.”

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Despite the apparent importance of forum shopping, there is relatively little law and economics work on this topic.¹ The present Article makes three new contributions to this field — one legal, one theoretical, and one empirical.

First, the Article highlights an underappreciated but potentially important phenomenon: the potential for forum shopping among multiple venues in federal diversity cases. Diversity jurisdiction allows citizens of different states to sue one another on state law claims in federal court.² As this Article explains, diversity jurisdiction not only allows a plaintiff to bring a state law claim in one federal forum; it can open up multiple venues within the federal court system. This is because of the way diversity jurisdiction interacts with two other procedural requirements — venue under the federal venue statute, 28 U.S.C. § 1391, and personal jurisdiction. In particular, plaintiffs have more choice of federal forums if they sue defendants who are subject to personal jurisdiction in multiple venues, as is often the case for corporate defendants.

Second, the Article develops a formal model of forum shopping in courts. The model can be a general starting point for studying forum shopping in a variety of contexts, though the focus here is on forum shopping in diversity cases. It extends a case selection model developed by Eisenberg and Farber [2003] and Eisenberg and Farber [1997]. The plaintiff here optimizes an expected payoff by shopping among different forums. These forums may differ in litigation costs (which may depend on where the parties are from and where the suit is filed) and/or in expected probabilities of winning at trial. Importantly, the model shows how forum shopping can be profitable even when forums are identical except for differences in litigation costs.

The model also generates testable predictions on how forum shopping can affect settlement decisions. In particular, the model predicts that parties are more likely to settle when they litigate outside of their home state than at home, assuming parties' litigation costs are generally higher outside of their home state. The model also predicts that forum shopping might be more likely in diversity suits against corporate defendants, since they are generally subject to personal jurisdiction in more forums than individuals, and hence, can potentially be sued in more venues.

The third and final portion of the Article is empirical. It tests whether the model's settlement predic-

¹ Clermont and Eisenberg [1994] provide regression analysis showing how forum shopping might affect plaintiffs' trial win rates. Rubin et al. [2001] discuss how interest groups may choose between different forums when deciding whether to lobby or litigate for new precedent. White [2006] uses data from asbestos litigation to study how forum shopping enabled plaintiffs to boost expected returns from trial in six particularly plaintiff-friendly jurisdictions. Hubbard [2013] performs an empirical study of vertical forum shopping (choosing between federal and state court) in New York.

² Diversity jurisdiction also opens the federal courts to state law claims involving foreign nationals and foreign states. See 28 U.S.C. § 1332. The primary focus here, however, is on suits involving citizens of different states.
tions are consistent with data from 532,097 federal diversity cases that terminated between 1988 and 2011. The Article explains how settlement decisions can be estimated and parties’ citizenship can be determined using the dataset. It then presents regression results that support the model’s predictions: out-of-state defendants (and, to a lesser extent, out-of-state plaintiffs) settle federal diversity cases at a higher rate than home defendants (and home plaintiffs), regardless of the home/away status of the opposing party. This effect is stronger in suits involving corporate defendants, which also accords with the model’s predictions. These results are robust to the inclusion of various controls, including fixed effects for plaintiff home state, year of suit filing, year of suit termination, forum, and type of suit.

The empirical results are consistent with the Article’s legal and theoretical discussion: differences in litigation costs across forums can increase settlement rates and create a potential for forum shopping in federal diversity cases. The paper concludes by noting limitations of these results, and highlights further potential research topics.

2 Forum Shopping in Diversity Cases

Diversity jurisdiction is a centuries-old form of federal jurisdiction, dating back to the earliest days of the United States. Article III, § 2 of the United States Constitution explicitly authorizes Congress to create federal diversity jurisdiction over “Controversies . . . between Citizens of different States.” Congress immediately exercised this power by passing the Judiciary Act of 1789, which established diversity jurisdiction in the federal circuit courts. Today, diversity jurisdiction is governed by 28 U.S.C. § 1332(a), which gives district courts “original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between . . . citizens of different States.” Diversity cases remain an important part of the federal docket, as they constituted between 30 and 36% of federal cases filed between 2008 and 2012.

In the early Republic, the primary justification for diversity jurisdiction was that it cures biases that

3The full diversity jurisdiction clause reads: “The judicial Power shall extend . . . 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.”

4Although not the focus here, 28 U.S.C. § 1332(a) also extends diversity jurisdiction to suits in excess of the amount in controversy requirement that involve “citizens of a State and citizens or subjects of a foreign state [unless the subject is a U.S. permanent resident domiciled in the same State]; . . . citizens of different States and in which citizens or subjects of a foreign state are additional parties; and . . . a foreign state . . . as plaintiff and citizens of a State or of different States.”

litigants, particularly plaintiffs, might face when forced to litigate in state courts away from their home. The idea was that diversity jurisdiction enables these plaintiffs to sue in federal court instead of being stuck in a state court that might be hostile to them and favor home-state defendants. A particular concern was that out-of-state creditors might have difficulty recovering from debtors in the debtors' state courts. By providing a federal forum for state law claims, diversity jurisdiction was supposed to provide a neutral place where out-of-state plaintiffs would be treated fairly. And regardless whether local bias existed, diversity jurisdiction was intended to assuage litigants' fears of prejudice, as Chief Justice John Marshall noted:

However true the fact may be, that the tribunals of the states will administer justice as impartially as those of the nation, to parties of every description, it is not less true that the constitution itself either entertains apprehensions on this subject, or views with such indulgence the possible fears and apprehensions of suitors, that it has established national tribunals for the decision of controversies between aliens and a citizen, or between citizens of different states.6

Although it was innovative at the time of the founding, diversity jurisdiction has been controversial over the years. Indeed, "[p]roposals to curtail or abolish federal diversity jurisdiction have been made ever since diversity jurisdiction was conferred upon federal courts by the Judiciary Act of 1789." Flango and Boersema [1989]. Most prominently, scholars have argued that the local bias concern that undergirded its establishment is antiquated in today's modern era. See, e.g., Pound [1906]; Sheran and Isaacman [1978]. Moreover, the increase in federal caseload over the years has furthered calls for the curtailment, reform, or abolition of diversity jurisdiction. See, e.g., Bassett [2003].

But there is another potential problem with diversity jurisdiction. Diversity jurisdiction was intended to protect litigants from biased state courts; instead, it often gives plaintiffs more than they bargained for. By opening the door to a federal forum for state claims, diversity jurisdiction can also open to door to forum shopping among federal venues. In other words, once a plaintiff gains entry to the federal courts via a federal diversity claim, the plaintiff often has a substantial choice of the federal forum in which to sue.7

Plaintiffs could still forum shop among state courts in the absence of diversity jurisdiction, since the personal jurisdiction of a federal court sitting in diversity is generally the same as the corresponding state court. See Fed. R. Civ. Proc. 4(k)(1)(A). But federal diversity jurisdiction can double the number of potential forums, giving the plaintiff parallel federal forums in which to sue. Although a federal court sitting in diversity is supposed to apply the same substantive law as the corresponding state court (see, e.g.,

6Bank of the United States v. Deveau, 5 Cranch 61, 87 (U.S. 1809). See also Friendly [1928].

7Clermont and Eisenberg [1994] is one of the rare articles that explicitly discusses this phenomenon, as it briefly mentions that diversity jurisdiction might encourage forum shopping as part of a discussion on transfer rates in diversity cases. See id. at 1523.
Erie v. Tompkins, 304 U.S. 64 (1938)), there might be procedural or other differences that make a federal forum more appealing for certain plaintiffs. For example, a federal court might be more plaintiff-friendly than its corresponding state court. The availability of diversity jurisdiction would benefit a plaintiff in such a scenario.

The potential for forum shopping in diversity cases stems from the way venue is governed under 28 U.S.C. § 1391. That statute provides that a suit can be brought in a venue where a “substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.” Id. § 1391(b)(2). Alternatively, proper venue may be in “a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located.” Id. § 1391(b)(1). Finally, “if there is no district in which an action may otherwise be brought as provided in this section, [proper venue lies in] any judicial district in which any defendant is subject to the court’s personal jurisdiction with respect to such action.” Id. § 1391(b)(3).

A key inquiry in determining proper venue, therefore, turns on where a defendant “resides.” An individual defendant is deemed to reside “in the judicial district in which that person is domiciled.” Id. § 1391(c)(1). So we can see how some minimal forum shopping might occur in cases involving individuals. Suppose an individual from Montana wants to sue an individual from California for a car crash that occurred in Nevada. The venue provision would give the plaintiff a choice whether to sue the individual in either California (where the defendant is domiciled), or in Nevada (where the events at issue in the suit occurred). Allowing such a choice might not be troubling, since both California and Nevada have some legitimate connection to the case at hand. Moreover, depending on the states’ choice of law rules, the actual substantive law that is applied might be the same in either venue.

The real potential for forum shopping, however, involves corporate defendants. This is because of the way the venue statute relates to personal jurisdiction. 28 U.S.C. 1391(c)(2) states that a defendant company (“an entity with the capacity to sue and be used in its common name under applicable law, whether or not incorporated”) is deemed to reside “in any judicial district in which such defendant is subject to the court’s
personal jurisdiction with respect to the civil action in question."\textsuperscript{11}

Personal jurisdiction limits the power of courts to decide disputes against litigants. While the doctrine is nuanced, personal jurisdiction in essence protects people from being sued in random jurisdictions to which they have little connection. For example, it might be unfair to require an Illinois resident to defend a suit in Connecticut, if the individual has no connection with that state. These protections against suit do not apply if a defendant has "sufficient minimum contacts" that are "purposefully directed" toward the forum state such that a suit "does not offend traditional notions of fair play and justice."\textsuperscript{12}

Where a defendant is subject to personal jurisdiction is a case-specific inquiry, but companies are often subject to personal jurisdiction in multiple venues. If a company is headquartered in one state but incorporated in another, then the company is already subject to personal jurisdiction in two venues.\textsuperscript{13} More importantly, companies that conduct business in multiple states will likely be subject to personal jurisdiction in all of those states. For example, a company that wants to sue a competitor that conducts business in ten states can likely pick among those forums when deciding where to file the suit.\textsuperscript{14}

This may all be perfectly fair — after all, a corporate defendant that has "purposefully availed" itself of multiple forums has presumably yielded concrete benefits from doing so. Moreover, as compared to an individual defendant, a corporate defendant might be better capable of defending itself regardless of the forum that is chosen. Nonetheless, it seems odd that the federal system would enable or even encourage this kind of forum shopping, given that the primary purpose of diversity jurisdiction was to protect plaintiffs

\textsuperscript{11}28 U.S.C. 1391(c) reads in full:

(c) Residency.— For all venue purposes— (1) a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled; (2) an entity with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question and, if a plaintiff, only in the judicial district in which it maintains its principal place of business; and (3) a defendant not resident in the United States may be sued in any judicial district, and the joinder of such a defendant shall be disregarded in determining where the action may be brought with respect to other defendants.

\textsuperscript{12}\textit{Int'l Shoe v. Washington}, 326 U.S. 310, 316, 319 (1945) (internal quotation marks omitted). Regardless of minimum contacts, an individual defendant can also be sued in any forum in which he is physically present and is served. See \textit{Burnham v. Sup. Ct.}, 495 U.S. 604, 619 (1990).

\textsuperscript{13}Of course, some companies strategically plan where to incorporate and place their headquarters to mitigate their potential future liability.

\textsuperscript{14}There is some doubt that "doing business" jurisdiction survived recent Supreme Court decisions in \textit{Goodyear Dunlop Tire Operations}, S.A. \textit{v. Brown}, 131 S. Ct. 2846 (2011) (holding that North Carolina courts did not have personal jurisdiction over a foreign Goodyear subsidiary that did not directly conduct business there) and \textit{Daimler A.G. v. Bauman}, 134 S. Ct. 746 (2014) (holding that California courts did not have personal jurisdiction over Daimler, a German company based on the actions of its U.S. subsidiary, Mercedes-Benz U.S.A.). See, e.g., Meir Feder, \textit{Goodyear, "Home," and the Uncertain Future of Doing Business Jurisdiction}, 63 S. Cal. L. Rev 671 (2012) ("Goodyear seems likely to have far-reaching effects on both the doctrine and theory of general jurisdiction[, which] is the branch of personal jurisdiction that allows a forum state to assert judicial authority over 'any and all claims' against a defendant that has a sufficiently close connection to the state . . . .")
from local bias in state courts, not to give them an advantage by enabling them to pick the most favorable federal forum.\textsuperscript{15}

Of course, a defendant is not necessarily stuck in a “bad” forum; he may move to transfer the case under 28 U.S.C. § 1404(a) to another viable venue, arguing that is is “for the convenience of parties and witnesses [and] in the interest of justice.” As a practical matter, however, venue transfers are relatively rare. For example, only 1.2% of terminated diversity cases in 2011 involved a transfer.\textsuperscript{16} For better or worse, there is a strong presumption in favor of a plaintiff’s initial choice of forum.

3 General Model of Forum Shopping

The previous section described how a plaintiff might forum shop among federal venues in diversity cases. This section formalizes some of the earlier discussion by introducing a new model for studying forum shopping. This general model builds directly on Eisenberg and Farber \textsuperscript{2003} by adding forum-specific components to plaintiff’s and defendant’s perceived probabilities of winning, as well as forum-specific costs. The new model can generate predictions on the likelihood of settlement depending on where a plaintiff files suit. In particular, the model describes how differences in settlement probabilities can stem from differences in litigation costs across otherwise identical forums.

Note that the present model is limited to the most common situation in which a plaintiff chooses the forum in which to bring suit. Situations in which a defendant may choose the forum (e.g., when the plaintiff is actually a defendant filing a counterclaim, the defendant is filing a declaratory judgment action, or the defendant has the ability to remove a case from state court to federal court) are not covered here, though the model could be extended to analyze such cases.

The model begins with a pool of potential plaintiffs and a separate pool of potential defendants. These potential plaintiffs and potential defendants are risk-neutral and hence maximize expected returns.

\textsuperscript{15}Another type of forum shopping involves a plaintiff who wants to be in state court, so she sues a defendant in his home state court, thereby preventing him from removing the case to federal court. See 28 U.S.C. § 1441(b)(2) (limiting removal to cases in which no defendant is a citizen of the state in which the action is brought). The model and empirical work in this Article focus on cases originally filed in federal court, so this type of forum shopping is not analyzed here.

\textsuperscript{16}The percentage of transferred diversity cases appears to be relatively stable over the years, as Clermont and Eisenberg \textsuperscript{1994} reported that 2.0% of diversity cases that terminated between 1979 and 1991 were transfer cases. See also id. ("Diversity jurisdiction is most likely to produce a transfer, and the transfer effect on win rate is pronounced. This result suggests that forum-shopping is common in diversity cases, in which choice of venue was wide."). Note that the discussion here does not relate to cases transferred by federal courts as part of multidistrict litigation.
Each potential plaintiff has a choice of \( n \) potential forums in which to sue.\(^{17} \) Conditional on winning, the plaintiff’s expected damages at trial in all forums are \( W \geq 0 \).

For each of the \( n \) forums, the plaintiff draws a case of a certain quality \( Q \), which has three dimensions:

1. the plaintiff’s probability of winning at trial, \( 0 \leq \pi(f) \leq 1 \), where \( f \) is a forum in which the plaintiff may file;
2. the plaintiff’s cost of litigation, \( C_p(f) \geq 0 \); and
3. the defendant’s cost of litigation, \( C_d(f) \geq 0 \).

The model assumes the parties must pay these costs, \( C_p(f), C_d(f) \), if and only if the case proceeds to trial instead of settlement. \( Q \) has an unspecified joint distribution, but I assume the marginal distributions for \( C_p(f), C_d(f) \) and \( \pi(f) \) are not degenerate. Each draw is assumed to be independent and identically distributed. In deciding whether and where to sue the defendant, the potential plaintiff does not consider the draws of other potential plaintiffs/defendants.

The focus here is on one plaintiff/defendant combination. This plaintiff resides in a forum \( P \) (which can be thought of as a state \( P \)) and the defendant resides in a forum \( D \) (which can be thought of as a state \( D \)). Assuming the plaintiff decides to bring suit, he will choose the forum \( f \) in which to bring the case. If \( P \) differs from \( D \), the plaintiff can bring the case in his home forum \( P \), he can bring it in the defendant’s home forum \( D \), or he can bring it in some forum that is home to neither the plaintiff nor the defendant, which can generically be referred to as forum \( Z \).\(^{18} \) So \( f \in \{P, D, Z\} \). If \( D \) is the same as \( P \), then the plaintiff chooses \( f \in \{P, Z\} \).

The plaintiff’s decision on where to sue (or whether to sue in the first place) will depend on his pre-filing expectation as to the value of the lawsuit, \( E(V_p(f)) \). The pre-filing value of the lawsuit, \( V_p(f) \), is assumed to be continuous and satisfy all the normal conditions for having an interior maximum value. The expected value depends only on the four variables drawn by the plaintiff: \( \pi(f), W, C_p(f) \) and \( C_d(f) \). So \( E(V_p(f)) = V_p(\pi(f), W, C_p(f), C_d(f)) \), and the choice of forum will indirectly affect the expected value of suit.

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\(^{17}\)The number of potential forums \( n \) from which the plaintiff can choose could be modeled as a random draw from an unspecified, non-degenerate distribution with positive integer support.

\(^{18}\)Forum \( Z \) need not be just one forum and could be used to represent a set containing multiple forums. For example, \( Z \) might comprise a set of \( m \) different forums, \( Z_1, Z_2, \ldots, Z_m \in Z \)
The plaintiff will file a lawsuit if and only if $E (V_p(f)) \geq 0$ for some $f$ — that is, the expected value of suit in that forum $f$ is non-negative.\(^\text{19}\) Moreover, the plaintiff will optimize in his choice of $f$:

$$\max_{f \in \{P, D, Z\}} E (V_p(f))$$

The plaintiff’s expected value of suit is a weighted average of two quantities: the plaintiff’s expected return if the case goes to trial, $Y_T(f)$, and the plaintiff’s expected return if the case settles, $Y_S(f)$. These two outcomes are weighted by the plaintiff’s forum-specific expectation of the probability of going to trial, $T(f)$, and the plaintiff’s forum-specific expectation of the probability of settlement, $1 - T(f)$. So this yields:

$$E (V_p(f)) = T(f) * Y_T(f) + (1 - T(f)) * Y_S(f)$$  \hspace{1cm} (1)

The probability of winning at trial in forum $f$, $\pi(f)$, is not known for certain by the plaintiff; rather he only knows his expected probability of winning, $0 \leq \pi_p(f) \leq 1$, which is modeled as:

$$\pi_p(f) = \pi(f) + \theta_p$$

where $\theta_p$ is the plaintiff’s idiosyncratic component of his expected probability of winning. Similarly, the defendant’s expected probability of plaintiff victory, $0 \leq \pi_p(f) \leq 1$, is:

$$\pi_p(f) = \pi(f) + \theta_p$$

where $\theta_p$ is the defendant’s idiosyncratic component of her expected probability that she will lose at trial. Neither party knows either of these idiosyncratic values, $\theta_p$ or $\theta_D$. However, the plaintiff knows the CDF $F(\cdot)$ for the difference between these quantities, $\theta_p - \theta_D$. Also, the model restricts $\theta_p$ and $\theta_D$ such that they

\(^{19}\)Lawsuits with a negative expected value are often categorized as frivolous lawsuits. A number of papers have generated models to study these kinds of suits, such as Rosenberg and Shavell [1985] and Bebchuk [1988].
are never so large as to lead to irrational beliefs, such as where \( \pi_p(f) > 1 \) or \( \pi_d(f) > 1 \). This implies the following inequalities, which should hold across all forums: \(-\pi(f) \leq \theta_p, \theta_d \leq 1 - \pi(f)\).

The difference between the plaintiff's and defendant's expected probabilities of winning \((\theta_p - \theta_d)\) is what drives the potential for trial. If both parties knew the actual probability of winning, \(\pi(f)\), the case would never make it to trial, since the parties could reach the same outcome (i.e., the plaintiff receives \(\pi(f) \ast W\)), without the parties having to pay litigation costs \(C_p\) and \(C_d\).

Next, I determine the contract zone, which is the range of potential settlements that the parties might agree to in lieu of a trial. The outcome expected by the plaintiff if the case goes to trial is:

\[
Y_T(f) = \pi_p(f) \ast W - C_p(f)
\]

That is, \(Y_T(f)\) is the plaintiff's expected return at trial minus his costs of litigation. On the other side, the defendant has an expected net loss of:

\[
\pi_d(f) \ast W + C_d(f)
\]

which reflects her expected loss from the trial and her costs of litigation.

So the contract zone is defined by the following range:

\[
\pi_p(f) \ast W - C_p(f) \leq Y_S(f) \leq \pi_d(f) \ast W + C_d(f)
\]

In other words, any expected settlement for the plaintiff \(Y_S(f)\) must be at least as large as what he would expect at trial (otherwise he would not agree to it) and at most what the defendant would expect to pay at trial. Accordingly, the size of the contract zone is:

\[
CZ = (\pi_d(f) - \pi_p(f))W + (C_p(f) + C_d(f)) = (\theta_d - \theta_p)W + (C_p(f) + C_d(f))
\]
One can see that the contract zone does not depend on the forum-specific component of the expected probabilities, $\pi(f)$, which is shared by the plaintiff and the defendant. Forum-specific costs for the plaintiff, $C_p(f)$, and the defendant, $C_D(f)$, remain in the expression.

Following Eisenberg and Farber [2003], I assume that a necessary and sufficient condition for settlement is that the contract zone is weakly positive. That is, if there is any potential for settlement between the two parties, it will occur. So trial will occur only when $C_Z < 0$. Given non-negative costs $C_p(f)$ and $C_D(f)$, this will happen only when $\theta_p \geq \theta_D$ (i.e., where the plaintiff is more optimistic about winning than the defendant is pessimistic about losing).

Since trial will occur if and only if $C_Z < 0$, we can use the above expression to derive the probability of trial as expected by the plaintiff, $T(f)$. I assume that the plaintiff knows $\pi_p(f)$ but does not know $\pi_D(f)$ or $\pi_D(f)$. Rather, the plaintiff only knows that the difference between the parties' expectation, $\theta_p - \theta_D$, is a random variable drawn from a distribution with CDF $F(\cdot)$, where $F(\cdot)$ is differentiable with respect to $C_D(f)$ and $C_p(f)$. This leads to the following:

\[
\begin{align*}
(\pi_p(f) - \pi_D(f))W + (C_p(f) + C_D(f)) &< 0 \\
\iff & \theta_p - \theta_D > \frac{(C_p(f) + C_D(f))}{W} \\
\iff & T(f) = 1 - F\left(\frac{(C_p(f) + C_D(f))}{W}\right) \quad (2) \\
\iff & 1 - T(f) = F\left(\frac{(C_p(f) + C_D(f))}{W}\right) \quad (3)
\end{align*}
\]

So as the cost of trial increases (as $C_p(f)$ and/or $C_D(f)$ increase), the CDF $F(\cdot)$ increases. This means that the plaintiff's expected probability of trial, $T(f)$, decreases and hence, the plaintiff's expected probability of settlement, $1 - T(f)$, increases. Accordingly, the model indicates that forums with higher total costs should have higher settlement rates than forums with lower total costs. This makes intuitive sense: if it costs more to litigate in a forum, it is more likely that the parties will settle to avoid these costs.\(^{20}\)

Next, to calculate the plaintiff's expected value from suit in forum $f$, $E(V_p(f))$, one must determine the plaintiff's expectation of a settlement in forum $f$, $Y_S(f)$. This requires us to calculate a specific solution

\(^{20}\)Since $0 \leq \pi_p(f), \pi_D(f) \leq 1$, the support of $F(\cdot)$ will be between $s - 1$ and $1 - s$, where $s$ is the difference between the forum with the highest $\pi(f)$ (most plaintiff-friendly forum) and the forum with the lowest $\pi(f)$ (least plaintiff-friendly forum). The distribution of $F(\cdot)$ itself is the same across all forums. So when comparing settlement rates across different forums, the expected probabilities $\pi_p(f), \pi_D(f)$, and the true probabilities $\pi(f)$ do not come into play.
to the bargaining problem between the parties. Following Eisenberg and Farber [2003] once more, I assume that the negotiated outcome is a solution to a Nash bargaining problem. This Nash solution solves an optimization problem in which the parties choose a settlement value that maximizes the product of the difference in payoffs between the parties’ threat points (i.e., the amount they would get if the case proceeded to trial) and the amount they get in the settlement:

\[
max \quad (Y_s(f) - (\pi_p(f) \cdot W - C_p(f))) \cdot (-Y_s(f) - (-\pi_p(f) \cdot W - C_D(f)))
\]

\[
Y_s(f)
\]

Taking the first order condition with respect to \(Y_s(f)\) yields the expected settlement for the plaintiff:

\[
Y_s(f) = \pi_p(f) \cdot W + \frac{C_D(f) - C_p(f)}{2}
\]

(4)

Note that regardless of forum, \(Y_s(f) \geq Y_T(f)\). Plugging in this value along with the value for \(Y_T(f)\) into equation (1) yields:

\[
E(V_p(f)) = T(f) \cdot (\pi_p(f) \cdot W - C_p(f)) + (1 - T(f)) \cdot \left(\pi_p(f) \cdot W + \frac{C_D(f) - C_p(f)}{2}\right)
\]

\[
= W \cdot \pi(f) + \left(\frac{1 - T(f)}{2}\right) C_D(f) - \left(\frac{1 + T(f)}{2}\right) C_p(f) + \theta_p W
\]

(5)

When choosing forum \(f\), a plaintiff chooses a triple \((\pi(f), C_D(f), C_p(f))\) of values. The plaintiff optimizes by choosing the triple that yields the highest expected value. Partial differentiation of the expected value function, \(E(V_p(f))\), in equation 5 reveals the following:

\[
\frac{\partial E(V_p(f))}{\partial \pi(f)} = W \geq 0
\]

(6)

\[
\frac{\partial E(V_p(f))}{\partial C_D(f)} = \left(\frac{1 - T(f)}{2}\right) + \left(\frac{C_D(f) + C_p(f)}{2W}\right) \left(\frac{\partial F(\cdot)}{\partial C_p(\cdot)}\right) \geq 0
\]

(7)

\[
\frac{\partial E(V_p(f))}{\partial C_p(f)} = -\left(\frac{1 + T(f)}{2}\right) + \left(\frac{C_D(f) + C_p(f)}{2W}\right) \left(\frac{\partial F(\cdot)}{\partial C_p(\cdot)}\right)
\]

(8)
Equation 6 shows that the impact of a higher expected probability of winning is straightforward — it increases the expected return from filing suit, so long as there are positive expected damages conditional on the plaintiff winning (i.e., $W > 0$). This makes sense — whether the parties settle or go to trial, a plaintiff is better off in terms of his final expected payout if his probability of winning at trial in the forum is higher.

Both equations 7 and 8 decompose the impact of increased costs into two terms. The first term is a direct effect of increasing a cost; the second term is an indirect effect, based on the impact of the increased cost on the probability of settlement, $F(\cdot)$. In equation 7, the direct effect of increasing $C_D(f)$ is $\left(\frac{1-T(f)}{2}\right) \geq 0$ and the indirect effect is $\left(\frac{C_D(f)+C_P(f)}{2W}\right) \left(\frac{\partial F(\cdot)}{\partial C_D(f)}\right) \geq 0$. An increase in $C_D(f)$ has both positive direct and indirect effects, because it increases the expected settlement for the plaintiff, $Y_S(f)$, and increases the probability of settlement, $F(\cdot) = 1 - T(f)$. So it is clear that increasing $C_D(f)$ always increases the expected return from suit in this model.

This effect of increasing $C_D(f)$ holds true regardless the set of forums that is available to the plaintiff. Put another way, all else being equal, plaintiffs do better when they sue in a forum in which a defendant has higher litigation cost. So for forum shopping to be profitable, there need not be any difference in the probability of winning across different forums; all that is needed is variation in defendant's litigation costs.

Turning to equation 8, we can see things are not so simple with respect to $C_P(f)$. The direct effect of increasing $C_P(f)$ is $-\left(\frac{1+T(f)}{2}\right) \leq 0$ but the indirect effect is $\left(\frac{C_D(f)+C_P(f)}{2W}\right) \left(\frac{\partial F(\cdot)}{\partial C_P(f)}\right) \geq 0$. This difference in signs is because an increase in $C_P(f)$ lowers the expected settlement for the plaintiff, but it also increases the probability of settlement, which always yields a higher payoff than trial regardless of the forum. Accordingly, there might be situations in which an increased $C_P(f)$ will result in a higher expected return for the plaintiff, but one cannot make a clear prediction on this point.

Putting this all together, one can see the plaintiff has an incentive to choose a forum in which his probability of winning, $\pi(f)$, is high, and cost to the defendant, $C_D(f)$, is high, since increasing those values increases his expected return from suit. It is less clear what a plaintiff will choose regarding his costs, $C_P(f)$, as either an increase or decrease in those values might increase his expected return from suit. How the plaintiff balances these factors in choosing a forum will depend on which triples $(\pi(f), C_D(f), C_P(f))$ are available, as well as the particular functional forms that the CDF $F(\cdot)$ takes.

Having generated these equations, we can now use them to evaluate the forum choices a plaintiff might make. First, I allow for the plaintiff and the defendant to face different litigation costs that also vary across forums. I allow for these costs to vary depending on where the plaintiff files suit. In particular, I
assume that the plaintiff will face lower costs if he sues in his home state and higher costs if he sues outside of his home state. Similarly, I assume that the defendant will face lower costs if she is sued in her home state and higher costs if she is sued outside of her home state. These costs might vary across jurisdictions (e.g., some forums might have lower costs than others), but an identifying assumption is that parties face the lowest costs when they litigate at home. This assumption reflects the hassle of having to litigate a case away from home, perhaps in an unfamiliar court and with the additional cost of local counsel, as compared to the relative ease of going to court near home.\footnote{Of course this will sometimes not be true — for example, a plaintiff may benefit from having filed suit multiple times previously in a foreign jurisdiction with more plaintiff-friendly laws. Or a defendant may get used to being sued multiple times in a foreign jurisdiction on similar claims. But as a general matter, it seems reasonable to assume that litigation costs are lower when litigating at home.}

Given these assumptions, our simple model allows us to generate some predictions, some of which are testable. First, as noted earlier in equation 3, an increase in defendant litigation costs, $C_D(f)$, or plaintiff litigation costs, $C_P(f)$, increases the expected probability of settlement, $1 - T(f)$, since they both increase the value of the CDF $F(\cdot)$. Therefore, the model generates the following predictions: (1) defendants who are sued outside of their home forums should settle at higher rates than defendants sued in their home forum; (2) plaintiffs who file suit outside of their home forum should settle at higher rates than plaintiffs who sue at home. Additionally, we should expect that all else being equal, plaintiffs have a higher total expected value of suit (and expected value of settlement) when (3) they file suit in plaintiff-friendly jurisdictions as compared to plaintiff-unfriendly jurisdictions and (4) they sue defendants outside of their home forum as compared to suing defendants at home.

Predictions (3) and (4) are hard to verify, as data on settlement values are generally not available. Predictions (1) and (2), however, deal with settlement rates and can be tested, and that is the focus of the following section.

Before proceeding, one should note that increases in $C_P(f)$ and $C_D(f)$ need not have precisely the same effect when it comes to observed settlement rates. This is because their marginal distributions — which are unspecified in the model — need not be the same. For example, if defendant costs $C_D(f)$ vary more across forums than plaintiff costs $C_P(f)$, then we would expect defendant costs to have a greater effect on settlement rates than plaintiff costs. Alternatively, if $C_D(f) > C_P(f)$ for all $f$, then we would expect that a 10% change in defendant costs will have a greater impact on settlement rates than a 10% change in plaintiff costs. In the following section, we will test the relative effect of defendant costs and plaintiff costs on settlement rates.
4 Empirical Test of Forum Shopping Model in Diversity Cases

To test the forum shopping model derived above, I need case data with information on settlement rates and the home/away status of parties, which are used to determine whether the parties are litigating at home or on the road. Such data are generally not available, but they have been collected by the Administrative Office of the United States Courts for 532,097 federal diversity cases that terminated in federal district court between 1988 and 2011 ("AO data"). I use the AO data to test the forum shopping model here.

This section begins with some background on federal diversity cases. I then describe the methodology I use in determining home/away status and settlement rates. The section concludes with the results of various regressions testing the predictions of the forum shopping model.

4.1 Determining Litigant Home/Away Status

As discussed in section 2, federal diversity jurisdiction allows citizens of different states to sue one another in federal court on state law claims. For a federal court to hear such claims, "complete diversity" between the parties is required — that is, none of the plaintiffs can be citizens of the same state as any of the defendants. In addition, the amount in controversy in the lawsuit must exceed a certain threshold, which is currently set at $75,000.²²

The Administrative Office collects information on the citizenship of litigants in diversity jurisdiction cases, since this information is crucial to determining whether a federal court has jurisdiction over such a case. Accordingly, I limit my sample to cases where diversity jurisdiction is the coded basis for jurisdiction.²³ I also generate separate dummy variables for plaintiffs and defendants indicating whether each party is at home or on the road in a particular case.

The AO data code individuals as having citizenship in one state, which is their state of domicile. It codes corporations as having citizenship both in the state in which they have their primary place of business and the state in which they are incorporated. So an Illinois corporation based in New Jersey would be coded as being at home if the suit was in either state, whereas a California individual would be coded as being at

²²This amount-in-controversy threshold has been increased twice during the time frame at issue here — in 1989 from $10,000 to $50,000, and in 1997 from $50,000 up to the current value of $75,000.

²³It is possible for a case to have multiple bases for jurisdiction. For example, if a Maine citizen sues a New Hampshire citizen on a federal law claim exceeding $75,000, there would be both diversity jurisdiction and federal question jurisdiction over such a claim. The AO might code such a claim as being either "diversity" or "federal question," depending on this coding, it may or may not appear in the sample here. There is no reason to believe this should bias the present results, however, since there is no indication this coding decision introduces a systematic bias that is not being controlled by other observable variables.
home only if the suit were in California. As individuals and corporations might differ in their willingness to go to trial (see Eisenberg and Farber [1997]), I control for individual/corporate status in most of my regression specifications, as discussed in more detail below.

I also limit the sample to cases that are original proceedings in federal court, thereby excluding cases that might have originated in state court but are removed by a defendant to federal court, or cases that have been remanded from an appellate court back to federal district court. Excluding these kinds of proceedings allows me to more cleanly test the forum shopping model developed above, in which the plaintiff chooses the forum. Additionally, I limit my sample to cases involving domestic litigants rather than litigants from other countries, since it seems plausible that foreign litigants might be systematically different from domestic litigants and have unobservables that bias regression results.

After filtering the data set, I categorize suits based on whether the litigants are at home or away. As Table 1 in the Appendix shows, in most suits, the plaintiff or the defendant (but not both) were away from home. Note that about 3.66% of the suits had both the defendant and the plaintiff coded as being home for the suit. This seems incongruous with the fact that the cases here are federal diversity suits, in which all plaintiffs must be from a different state from any defendant in order for the court to have jurisdiction.

One possible explanation for this is that these cases have been miscoded by the AO. Such a miscoding might occur in two ways — either the plaintiff or defendant may be incorrectly coded as being at “home,” or the case may be incorrectly coded as being a diversity jurisdiction case. If the former is true, then cases that should fall into another category (i.e., where at least one party is “away”) are instead coded as cases in which both parties are home. The presence of these cases in the wrong category is a measurement error that biases any effect of litigant citizenship on settlement rates toward zero. This is because litigants who are “away” (and have higher settlement rates according to the model) are improperly grouped with the litigants who are “home”. If these individuals had been properly sorted into an “away” category, then we would find a greater, not lesser, effect of home/away status on settlement rates. Put differently, if we find any effect of home/away status on settlement rates, it will be in spite of this miscoding, not because of it.

Alternatively, if the cases are incorrectly coded as being diversity cases, but the citizenship of the parties is correct (i.e., they are both at home), then the forum shopping model should still apply to them, as the model is not limited to diversity cases. According to the model, whether the parties are at home or away is what determines their costs and hence the probability of settlement. Therefore, this kind of error should not be problematic, as there is no indication that it introduces some form of selection on unobservables.
that biases regression results.\footnote{Regardless, in the specifications presented here, I exclude the cases in which both parties are coded as being at home. My results are similar if these cases are included.}

Additionally, in many cases, the plaintiff is away but the defendant is at home. This might seem odd — if the forum shopping model is correct, then one might expect a plaintiff to rarely sue in a defendant's home forum, since a defendant's litigation costs are assumed to be lowest at home. It is possible plaintiffs file these suits because doing so accords them an advantage via a heightened probability of winning or a lowered litigation cost. It is more likely, however, that this is an artifact of personal jurisdiction, as discussed above in section 2.

The mere possibility that some of the cases were filed in the defendant's home jurisdiction because of personal jurisdiction requirements does not, on its own, bias regression results. Under the forum shopping model, it is the litigants' citizenship that affects the probability of settlement. If a plaintiff is forced to bring a case in the defendant's home jurisdiction because of personal jurisdiction, then the model predicts that the case would be less likely to settle than if the plaintiff had brought the case elsewhere. The fact that a plaintiff was limited in his choice of jurisdiction does not affect this result.

A more serious potential issue is that personal jurisdiction somehow changes the composition of cases in a way that affects the settlement rate across litigant citizenship categories. This concern can be somewhat addressed through the use of fixed effects, which are used extensively in the regressions below. In particular, fixed effects for case type might be particularly useful if the effect of personal jurisdiction is disparate across case types with different settlement rates. Moreover, personal jurisdiction might affect corporations and individuals differently (the doctrine is generally more protective of individuals), so the regressions typically include dummy variables controlling for individual/corporate litigant status.\footnote{The AO data also include a code for cases that were dismissed for lack of jurisdiction. Those cases have been excluded from the sample, making it less likely that personal jurisdiction affects the results here.}

### 4.2 Case Settlement Measurement

In constructing a settlement measure, I begin by excluding cases that are dropped or litigated outside the federal district court in which the case was filed, as they are not ideal for testing the forum shopping model. These include cases that are transferred, dismissed for lack of jurisdiction, sent to an arbitrator, or remanded to a U.S. Agency or state court. Following Clermont and Schwab [2009], such cases are considered neither trial nor settlement outcomes, and they fall outside the scope of the present model.
Next, determining what constitutes a "settled" case requires addressing some potential coding issues in the AO data. As noted in Eisenberg and Lanvers [2009], although the AO data include a code for cases that have "settled," it is possible this coding might be inaccurate or incomplete, as litigants often settle cases without informing the court of the details of the settlement. Such cases might appear as voluntary dismissals, dismissals for want of prosecution, or fall into another coded category of case.

I account for these ambiguities by testing the model with two different measures of settlement. The first treats cases that are coded as dismissed voluntarily, dismissed as settled, or decided by a consent judgment as "settled." The second takes a broader view of settlement and follows the lead of Clermont and Schwab [2009], who also include the following four AO categories in the "settled" group: dismissals for (1) want of prosecution or (2) other; and judgments by (3) default or (4) statistical closing. As discussed later in the Article, the main results here are similar regardless of the choice of settlement measure.

The remaining categories of cases — those that receive a judgment via a pre-trial motion, a jury verdict, a directed verdict, or a court trial — are treated as "litigated" cases. These are the cases where the parties are most likely to spend significant resources and hence, they provide a good comparison group with the settled cases for purposes of testing the forum shopping model.26

Before continuing to the regression analysis, I note the possible effect of data censoring on measured settlement rates. The AO data are reported on a yearly basis for cases that terminated during that year. That we are only observing terminated cases leads to possible censoring: since cases that proceed to trial typically last longer than cases that settle, we might be observing a skewed sample in favor of cases that settle. Such a sample might result in an estimate of the settlement rate that is biased upward.

Following Eisenberg and Farber [1997], I deal with censoring in two ways. First, in most regressions I include a fixed effect for the year in which a suit was filed, which is a rough control for censoring in the data. Second, in some regressions I limit my sample to cases filed in 2004 or before, which is seven years prior to the last year for which I have case termination data.

More fundamentally, our analysis should not be affected greatly by censoring or other data issues that only affect the measured settlement rate. This is because what matters here is the relative difference in settlement rates when litigants are away versus at home, not the absolute rates in these forums. In other words, as long as there is no systematic difference in how court clerks encode settlement or case termination for cases involving out-of-state litigants as compared to cases with in-state litigants, there should be no bias

26The results here remain robust if one limits the litigated class of cases to only those cases that went to trial.
introduced even if the settlement rates are censored or otherwise somewhat inaccurately measured.

4.3 Regression Analysis of Settlement Probability on Litigant Home/Away Status

The forum shopping model presents two testable predictions: (1) defendants who are sued away from home settle cases at a higher rate than defendants who are sued at home; and (2) plaintiffs who file suit away from home settle cases at a higher rate than plaintiffs who sue at home. Table 2 in the Appendix presents a number of basic linear regressions to test these predictions under a variety of different specifications. Table 3 then presents the same regressions using a logit. Both sets of regressions yield similar results and align with the model's predictions.\textsuperscript{27}

The dependent variable in all of these regressions is an indicator for whether a case settles or instead proceeds in litigation. I use two different measures of settlement (see section 4.2, \textit{supra}). The first measure (used in all specifications except (3) and (6)) treats cases dismissed voluntarily, dismissed as settled, or decided by a consent judgment as settled. The second measure is more inclusive and follows Clermont and Schwab [2009].

The key regressors are dummy variables for whether the plaintiff files the lawsuit outside of his home state (plaintiff away) and whether the defendant is sued outside of her home state (defendant away). A defendant's corporate status might affect plaintiffs' ability to forum shop, and individual/corporate status might affect trial rates, so I typically include individual/corporate dummies for plaintiffs and defendants as control variables.

I also include a number of fixed effects in the regression to control for other possible systematic effects on settlement rates. These include fixed effects for the year in which the suit was filed, the year in which the suit terminated, the type of case (42 different categories of suits are coded in my sample), the plaintiff's home state, and the federal district court in which the suit was filed.\textsuperscript{28} Additionally, all specifications (but one)\textsuperscript{29} have robust standard errors or standard errors clustered at the federal district court level.

\textsuperscript{27}All coefficients and standard errors are scaled by 100 so they can be interpreted as percentage increases, since the regressors of interest (plaintiff and defendant home/away status) are binary, as is the dependent variable (whether a case settles).

\textsuperscript{28}Other specifications (not shown below) included various interactions of these fixed effects. These variations did not yield materially different results. Additionally, I excluded suits in which both defendants and plaintiffs were coded as being at home, but including these suits did not materially affect the results either.

\textsuperscript{29}The exception is specification (9) in Table 2, which uses a technique for multi-way clustering of non-nested categories as described by Cameron et al. [2011]. In particular, I cluster at the federal district court level and the type of suit level in this specification. I also tested a variety of other clustered groups, none of which appeared to have a significant impact on the results.
In specifications (5) and (6), I exclude cases filed after 2004 to deal with potential censoring issues (see section 4.2, supra). To tease out the effect of corporate status on settlement rates, in specification (7), I limit my sample to cases involving a corporate defendant, and in specification (8), I limit my sample to cases involving a corporate plaintiff.

As the tables show, the results are almost identical under the linear probability model and the logit. Under both models, the coefficient on the defendant away dummy variable is positive and significant at the 99% level in all of specifications. The linear probability model (logit) shows that defendants who are sued on the road are between 1.53 and 5.05 percentage points (1.49 and 5.19 percentage points) more likely to settle their cases than defendants sued at home.

The coefficient on the plaintiff away dummy variable is also positive and significant in all specifications, and it is less in magnitude than the defendant coefficient. The linear probability model (logit) indicates that plaintiffs who sue away from home are between 1.07 and 3.63 percentage points (1.00 and 4.04 percentage points) more likely to settle their cases than plaintiffs who file suit at home.

Additionally, corporations (and in particular, corporate defendants) are more likely to settle cases than individuals. In particular, the linear probability model (logit) shows a highly significant coefficient for corporate defendants, indicating that they are between 1.27 and 4.18 percentage points (1.19 and 3.92 percentage points) more likely to settle than individual defendants. The results are less definitive for corporate plaintiffs, though they also appear more likely to settle than individual plaintiffs in most specifications.\(^\text{30}\)

Accordingly, the results here are consistent with the theoretical predictions of the model. Litigants are more likely to settle when they are away from home. This effect is stronger for defendants as compared to plaintiffs, and it is particularly strong for corporate defendants.

5 Conclusion and Further Research

This Article makes three new contributions to the study of forum shopping. First, the Article explores how diversity jurisdiction creates the potential for forum shopping across federal venues. The Article explains how venue rules often give a plaintiff, once he has access to the federal courts via a diversity claim, a choice

\(^{30}\)The results are similar when including various interactions between individual/corporate and home/away dummies.
of multiple federal venues, particularly when suing corporate defendants. The heightened ability to forum shop in diversity cases is arguably antithetical to the original rationale behind diversity jurisdiction.

Next, the Article presents a general model of forum shopping. The model allows for heterogeneous costs and varying expectations of trial outcomes, which enable it to generate two testable predictions: (1) defendants who are sued outside of their home state settle cases more often than defendants sued at home; and (2) plaintiffs who sue away from their home state settle cases more often than plaintiffs who sue at home. The model also shows how forum shopping can be profitable even when forums are identical except for differences in litigation costs.

Finally, the Article provides an empirical test of the forum shopping model using data from 532,097 federal diversity cases terminated between 1988 and 2011. Two different measures of settlement rates are constructed and regressed on litigants' home/away status. These results are consistent with the model’s predictions — “away” litigants are more likely to settle cases than “home” litigants, with the effect more pronounced for defendants. Moreover, corporate defendants (and to a lesser extent, corporate plaintiffs) are more likely to settle than individuals, which is consistent with the relative ease of forum shopping in suits against corporate entities. These results are robust to the inclusion of various controls, including fixed effects for plaintiff home state, year of suit filing, year of suit termination, federal district court, and case type.

Despite the model's success in predicting the effect of forum selection on settlement rates, there are many caveats to note. First, although the variety of specifications and controls suggest the present findings are robust, the AO data are far from perfect and it is possible, particularly due to miscodings in the data, that the results are inaccurate.

Second, case heterogeneity on an unobserved dimension might drive some results here. It is possible the cases where litigants are away from home might differ in some systematic, unobserved way that increases their settlement rate vis a vis cases where one party is at home. For example, if cases with “away” litigants involve systematically higher stakes (something that cannot be easily measured), and higher stakes leads to more settlement (perhaps because of some element of risk aversion), then that might explain some of the results here. Although I use fixed effects to control for case type, the sheer variation among cases makes it impossible to control for all case heterogeneity.

Finally, it is possible that an identifying assumption — that litigants face higher costs outside of their home forum — is not true. Although my assumption is intuitive and commonly believed, it is possible
that forum choice does not affect litigation costs to the extent necessary to affect settlement decisions. See Klerman [2014]. Further empirical work needs to be conducted to test this assumption.

Regardless of these limitations, the present Article still provides a new, formal framework for studying forum shopping. The main idea — that diversity jurisdiction enables forum shopping and that litigant costs affect whether parties settle — is intuitive and supported by the regression results.

Additionally, the model provides a basis for future research on forum shopping. Many related topics are difficult to study, because of the absence of settlement data and the presence of selection concerns that complicate efforts to draw conclusions from plaintiff win rate data. But ideally one could test the other two (currently non-testable) predictions made here — that plaintiffs receive higher settlement values when they sue in plaintiff-friendly jurisdictions, and when they sue a defendant outside of his home forum. Data that support these contentions would further validate the present model.
References


## Appendix

### Table 1: Diversity Suits by Litigant Home/Away Status (1988-2011)

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### Table 2: Linear Regression - Home/Away Status on Settlement Dummy

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<td>261,271</td>
<td>351,260</td>
<td>206,251</td>
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<td>R-squared</td>
<td>0.002</td>
<td>0.003</td>
<td>0.002</td>
<td>0.051</td>
<td>0.053</td>
<td>0.046</td>
<td>0.050</td>
<td>0.052</td>
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Dep. var. in cols. (3) and (6) is a settlement dummy following Clermont and Schwab [2009]. Dep. var. in all other cols. is a dummy that marks settled cases as those dismissed voluntarily, dismissed as settled, or decided by a consent judgment. Robust standard errors in cols. (1)-(3); standard errors clustered at federal district court level in ( ) in cols. (4)-(8). Two-way clustered standard errors in ( ) in col. (9) at federal district court and type of lawsuit levels, as discussed in Cameron et al. [2011]. Fixed effects are for type of lawsuit, federal district court, year of lawsuit termination, year of lawsuit filing, and plaintiff’s home state. Censored data limited to cases filed before 2004. Coeffs. and standard errors *100. <sup>a</sup>P<0.01, <sup>b</sup>P<0.05, <sup>c</sup>P<0.1
<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
<th>(7)</th>
<th>(8)</th>
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<tbody>
<tr>
<td>Def. Away</td>
<td>5.19&lt;sup&gt;a&lt;/sup&gt;</td>
<td>4.08&lt;sup&gt;a&lt;/sup&gt;</td>
<td>4.26&lt;sup&gt;a&lt;/sup&gt;</td>
<td>2.51&lt;sup&gt;a&lt;/sup&gt;</td>
<td>2.04&lt;sup&gt;a&lt;/sup&gt;</td>
<td>1.61&lt;sup&gt;a&lt;/sup&gt;</td>
<td>3.00&lt;sup&gt;a&lt;/sup&gt;</td>
</tr>
<tr>
<td>(0.22)</td>
<td>(0.23)</td>
<td>(0.18)</td>
<td>(0.67)</td>
<td>(0.51)</td>
<td>(0.56)</td>
<td>(0.84)</td>
<td>(0.45)</td>
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<tr>
<td>Pl. Away</td>
<td>2.67&lt;sup&gt;a&lt;/sup&gt;</td>
<td>2.58&lt;sup&gt;a&lt;/sup&gt;</td>
<td>4.04&lt;sup&gt;a&lt;/sup&gt;</td>
<td>2.22&lt;sup&gt;a&lt;/sup&gt;</td>
<td>1.75&lt;sup&gt;a&lt;/sup&gt;</td>
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<td>2.89&lt;sup&gt;a&lt;/sup&gt;</td>
</tr>
<tr>
<td>(0.22)</td>
<td>(0.22)</td>
<td>(0.17)</td>
<td>(0.80)</td>
<td>(0.64)</td>
<td>(0.56)</td>
<td>(1.07)</td>
<td>(0.51)</td>
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<td>2.56&lt;sup&gt;a&lt;/sup&gt;</td>
<td>1.38&lt;sup&gt;a&lt;/sup&gt;</td>
<td>2.29&lt;sup&gt;a&lt;/sup&gt;</td>
<td>2.29&lt;sup&gt;a&lt;/sup&gt;</td>
<td>1.19&lt;sup&gt;a&lt;/sup&gt;</td>
<td>–</td>
<td>3.92&lt;sup&gt;a&lt;/sup&gt;</td>
</tr>
<tr>
<td>(0.14)</td>
<td>(0.10)</td>
<td>(0.27)</td>
<td>(0.33)</td>
<td>(0.36)</td>
<td>–</td>
<td>(0.50)</td>
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</tr>
<tr>
<td>Corp. Pl.</td>
<td>-1.48&lt;sup&gt;a&lt;/sup&gt;</td>
<td>-0.11</td>
<td>1.31&lt;sup&gt;b&lt;/sup&gt;</td>
<td>1.15&lt;sup&gt;c&lt;/sup&gt;</td>
<td>1.22&lt;sup&gt;b&lt;/sup&gt;</td>
<td>2.42&lt;sup&gt;a&lt;/sup&gt;</td>
<td>–</td>
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<tr>
<td>(0.14)</td>
<td>(0.10)</td>
<td>(0.60)</td>
<td>(0.62)</td>
<td>(0.50)</td>
<td>(0.59)</td>
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<td>No</td>
<td>Yes</td>
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<td>No</td>
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<td>261,268</td>
<td>351,257</td>
<td>206,248</td>
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Dep. var. in cols. (3) and (6) is a settlement dummy following Clermont and Schwab [2009]. Dep. var. in all other cols. is a dummy that marks settled cases as those dismissed voluntarily, dismissed as settled, or decided by a consent judgment. Clustered standard errors at federal district level court in ( ) in cols. (4)-(8). Fixed effects are for type of lawsuit, federal district court, year of lawsuit termination, year of lawsuit filing, and plaintiff home state. Censored data limited to cases filed before 2004. Coeffs. and standard errors *100.

<sup>a</sup> P<0.01, <sup>b</sup> P<0.05, <sup>c</sup> P<0.1