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Miller v. Davis: The Sixth Circuit Applies Interest Analysis to an Erie Problem

By John R. Leathers*

Introduction

The decision of the Court of Appeals for the Sixth Circuit in Miller v. Davis furnishes new support for the earlier contentions of this author that the solution to Erie problems must come from an analysis of the policies behind competing rules of law rather than from reliance on labels or "magical" tests. The opinion in Miller will be examined in the context of my previous analysis in the hope of further illustrating the workings of that approach. Hopefully, this consideration of Miller will cast additional light on the technique formerly explicated and provide an approach to the unraveling of Erie questions.

Before beginning an examination of Miller, it is necessary to restate my earlier conclusions concerning the methodology for dealing with Erie problems. Solutions cannot be found by the application of labels such as "substance-procedure" or the use of formulas such as "outcome-determination." When a federal rule of law is in apparent conflict with a state rule, an interest analysis must be used to choose between them. This methodology is borrowed from modern interstate choice of law systems because federal-state conflicts display problems similar to those involved in choosing between competing state laws. Analysis has replaced rules of thumb in state choice of law

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1 507 F.2d 308 (6th Cir. 1974).


problems and there is no reason why this growing body of knowledge should not be used to good advantage in the area of conflicting state and federal law. In either situation, an intelligent decision would seem to demand that the policies behind the competing rules be identified in order to determine if those policies will be furthered by application of one rule or another to the fact pattern at hand. If an underlying policy will not be served by a law’s application to a given set of facts, the sovereign furnishing the rule has no legitimate interest in having that rule applied and the conflict is illusory. If there is a legitimate state interest and no legitimate federal interest, the state interest must prevail under the command of the tenth amendment. Conversely, if there is a legitimate federal interest and no legitimate state interest, the federal interest must prevail under the mandate of the supremacy clause. In both of these situations, any apparent conflict dissolves with the realization that one of the competing policies would not be furthered by that sovereign’s law being applied to the particular fact pattern. A true conflict is presented, however, if both federal and state rules promote legitimate interests, the normal presumption being that federal law must prevail under the command of the supremacy clause. There are, however, instances in which the federal interest is weak when compared to the state interest. In such cases, it is permissible to defer to the state interest after a careful weighing. The power to weigh and balance, which on its face seems incompatible with the supremacy clause, has two sources: the Rules of Decision Act, where a

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4 U.S. Const. amend. X. This amendment provides: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

5 U.S. Const. art. VI, § 2. This clause provides: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

6 28 U.S.C. § 1652 (1970). The statute provides: “The laws of the several states, except where the constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.” Similar provisions have been in effect since the Federal Judiciary Act of 1789, in which § 34 contained substantially the same provision.
federal rule of civil procedure is not in issue, and the Rules Enabling Act\(^7\) in cases involving a federal rule of civil procedure. Deference to the state interest is unlikely when a procedural rule is directly on point, but will more likely occur when a rule must be construed. This brief view of my earlier conclusions depicts what is hopefully a truly analytical choice of law system.

It is, in short, an interest analysis, controlled by the parameters of both constitutional and legislative directives and spawned from the decision in *Guaranty Trust Co. v. York*.\(^8\) Although there is no express indication that the Sixth Circuit followed such a choice of law analysis in *Miller v. Davis*, such as that outlined here, its decision conforms to the result which an interest analysis would necessarily produce. The court in *Miller* considered the policies behind competing rules in a manner consistent with this proposed interest analysis and it is for that reason that *Miller* provides an excellent example of how federal courts should resolve *Erie* problems.

I. Miller and the Erie Problem It Presented

*Miller v. Davis* was a suit brought by Kentucky citizens\(^9\) against the trustees of the United Mine Workers of America Welfare and Retirement Fund [hereinafter referred to as the Fund], wherein the plaintiffs alleged that the Fund wrongfully withheld their benefits. Although it cannot be verified from the opinion, it appears that the trustees of the Fund were not citizens of Kentucky; this discussion will proceed on the assumption that the basis of subject matter jurisdiction in the suit was

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\(^7\) 28 U.S.C. § 2072 (1966). The statute provides in part as follows:

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure of the district courts and courts of appeals of the United States in civil actions. . . .

Such rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as at common law and as declared by the Seventh Amendment to the Constitution.

\(^8\) 326 U.S. 99 (1945). It is my belief that *Guaranty Trust* was so intended, though it has not necessarily been interpreted in this light.

\(^9\) This fact is not clear at this point in time, but was assumed by the Sixth Circuit in its opinion. *Miller v. Davis*, 507 F.2d 308, 311 (6th Cir. 1974).
Although there is some confusion as to the basis of subject matter jurisdiction, it does not affect the manner in which the Sixth Circuit dealt with the *Erie* problem presented. Even if the case were dismissed on remand for lack of subject matter jurisdiction, the technique of the court is worthy of discussion. In such event, the decision in *Miller* might be of dubious value as precedent but would still provide valuable insight into the methodology for dealing with such problems. Thus, these technical difficulties will be ignored and attention will be focused on the *Erie* issue and the Sixth Circuit’s technique in solving it.

The *Erie* problem in *Miller* had its genesis in an earlier case considered by the Kentucky Court of Appeals, *Wilder v. United Mine Workers of America.* Like *Miller,* the *Wilder* case involved a suit against the Fund by a Kentucky citizen alleging wrongful deprivation of pension benefits. The Kentucky Court dismissed the claim on the ground that the state courts lacked subject matter jurisdiction. This decision, then, created an *Erie* problem when the *Miller* suit was brought in the Kentucky federal system. The *Erie* issue was whether a federal court can assert jurisdiction over a diversity claim which the state courts of the forum would dismiss for lack of jurisdiction. Had the *Miller* case been filed in the Kentucky state courts, it would, subject to a possible qualification to be discussed later, have been dismissed by those state courts for lack of jurisdiction. There is no doubt that federal courts often hear claims which the state courts cannot hear, but the question is whether a court can do so when its basis of federal subject matter jurisdiction is diversity. The Sixth Circuit concluded, and I believe correctly so, that the federal court could exercise jurisdiction despite a different result in the state system.

It should first be noted that the court in *Miller* did not hold

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10 The plaintiffs in the action asserted subject matter jurisdiction under 29 U.S.C. § 185(c), but the Sixth Circuit found this not to be a jurisdictional statute. The Court allowed time on remand for amendment showing subject matter jurisdiction under the diversity provisions of 28 U.S.C. § 1332. *Miller v. Davis,* 507 F.2d 308, 311 (6th Cir. 1974).

11 346 S.W.2d 27 (Ky. 1961).
that the federal court in Kentucky had in personam jurisdiction over the Fund or the Trustees. This was a question which was expressly not answered and left open for determination on remand.\textsuperscript{12} The \textit{Wilder} decision predated the enactment of the Kentucky long arm statute, and it is quite conceivable that the decision of the Kentucky Court in \textit{Wilder} rested at least in part on the lack of in personam jurisdiction over the Fund or the Trustees. Should this in personam jurisdiction position (if indeed it existed at all) not be changed by the subsequent enactment of the Kentucky long arm statute,\textsuperscript{13} the federal system would be obliged to dismiss for lack of in personam jurisdiction. It has been well settled since \textit{Arrowsmith v. United Press International}\textsuperscript{14} that a federal district court sitting in diversity litigation must adhere to the long arm provisions of the state in which it sits.\textsuperscript{15} Although it is not clear that the relevant portion of the Kentucky long arm statute\textsuperscript{16} will give in personam jurisdiction over the Fund or Trustees in a case like \textit{Miller}, only competence would be lacking since there would appear to be no due process objections to the exercise of in personam jurisdiction in such a case.\textsuperscript{17} In any case, the federal

\textsuperscript{12} Miller v. Davis, 507 F.2d 308, 315 n.14 (6th Cir. 1974).

\textsuperscript{13} Ky. REV. STAT. § 454.210 (1973) [hereinafter cited as KRS].

\textsuperscript{14} 320 F.2d 219 (2d Cir. 1963).

\textsuperscript{15} Although the Supreme Court has not ruled specifically on the point, a federal court in Woods v. Interstate Realty Co., 377 U.S. 535 (1949) was required to follow a Mississippi statute that was a portion of a primitive long arm scheme. The Mississippi statute involved in the case required that for a foreign corporation to have access as a party plaintiff to the courts of the state it must appoint an agent to accept service of process.

\textsuperscript{16} KRS § 454.210 (1973). Relevant portions of the statute are as follows:

\begin{enumerate}
\item Transacting any business in this commonwealth;
\item Contracting to supply services or goods in this commonwealth;
\item Contracting to insure any person, property or risk located within this commonwealth at the time of contracting.
\end{enumerate}

It seems possible that any or all of these sections would confer in personam jurisdiction over the Fund or the Trustees and there would seem to be no viable due process objection to such jurisdiction.

\textsuperscript{17} In a similar fact pattern, a California court exercised quasi in rem jurisdiction on the basis of minimum contacts and did not run afoul of constitutional complications. Atkinson v. Superior Court, 316 P.2d 960 (Cal. 1957).
district court in Kentucky must follow the state position on in personam jurisdiction. Hopefully, on remand the federal district court will have no difficulty finding that the Kentucky long arm statute extends to the defendants in *Miller*.

If the decision of the Kentucky Court of Appeals in *Wilder* rested entirely on lack of in personam jurisdiction, the problem in *Miller* could be easily solved. It would simply involve application of the long arm statute. There would be no problem with a federal court deciding to ignore a state court decision such as *Wilder* when it concluded that the state law contained therein would no longer be followed in that state.\(^8\) In fact, a concurring opinion in *Miller* advocated ignoring *Wilder* on the basis that it was no longer good law in the Kentucky courts.\(^9\) This same approach could have been taken to settle even the more difficult problems posed by *Wilder*. The majority in *Miller* did not adopt this position and was very careful to say that it would not express an opinion on whether the additional grounds of the *Wilder* decision would still be followed in the Kentucky state courts. It must, however, be conceded that the general tone of the decision implies that the majority believed *Wilder* to be of dubious value even in the Kentucky courts. Some may question the wisdom of the court in not simply ignoring *Wilder*. Had it rested its decision on this ground, the Sixth Circuit would not have had to discuss the extent to which a divergence of results between the state and federal systems was possible. Having rejected this approach, the court had to face the question of the extent to which a federal court in Kentucky could ignore the policy grounds of the *Wilder* decision.

II. THE SIXTH CIRCUIT'S APPROACH TO THE ERIE PROBLEM

Having chosen the more difficult path to a solution of the *Miller* case, the Sixth Circuit did not deal with the issue of permissible divergence in terms of facilely applied labels or formulas. The court analyzed the policies underlying the state

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\(^8\) The Supreme Court seems not to have ruled directly that a federal court may ignore state law which it feels would no longer be followed in state court, but there is dicta to that effect in some opinions. *See*, e.g., *Bernhardt v. Polygraphic Co. of America*, 350 U.S. 198 (1956).

\(^9\) *Miller v. Davis* 507 F.2d 308, 318 (6th Cir. 1974) (McCree, J., concurring).
decision in *Wilder* to determine if those policies were relevant to an action being tried in the federal courts rather than in the state courts. Finding some aspects of *Wilder* to be valid in a suit in federal court, the Sixth Circuit weighed these considerations against the federal interests present in the case. It is exactly this type of analysis which is needed to solve the difficult problems of the application of state law in a federal forum.

The Sixth Circuit first identified the policy bases of the Kentucky Court of Appeals decision in *Wilder*. The court found these to have been personal jurisdiction, choice of law, and venue. To the extent that *Wilder* rested on personal jurisdictional problems, the answer to the propriety of jurisdiction in *Miller* must await remand for construction and application of the Kentucky long arm statute. As noted, the federal court will follow that statute. It is the handling of the other two policies of *Wilder*, choice of law and venue, which makes the decision in *Miller* noteworthy.

A. Venue Policies

Although considered last by the Sixth Circuit, the venue policies of *Wilder* will be considered first here because the problems raised are more easily disposed of than those presented by the choice of law issue. The Kentucky Court of Appeals in *Wilder* reached the conclusion that the Kentucky state courts could not adjudicate the controversy because of the following portion of the *Restatement (First) of Conflicts*: "The administration of a trust of movables is supervised by the courts of that state only in which the administration of the trust is located." This meant in *Wilder*, and it was argued that it meant in *Miller*, that the courts (whether state or federal) located in Kentucky would not adjudicate legal disputes concerning a trust of movables situate in the District of Columbia. The court noted that the *Restatement* section was based on the concept of venue and that it may have had some relationship to forum non conveniens. In either event, these poli-

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20 Id. at 315.
21 *RESTATEMENT (FIRST) OF CONFLICT OF LAWS* § 299 (1934).
22 *Miller v. Davis*, 507 F.2d 308, 316 n.17 (6th Cir. 1974). The Sixth Circuit indicated that these policies behind § 299 of the *Restatement (First)* could be ascertained
cies are not relevant to an action being heard in federal court. The state interest in venue and forum non conveniens concerns ease in the conduct of litigation and does not relate to the merits of the litigation. Analysis reveals that the issue presents a false conflict, since only the federal forum has a legitimate interest in convenience and propriety of trial location when the chosen forum is federal. The federal courts should, then, be free to ignore the state decision in *Wilder* to the extent that it was based on venue and forum non conveniens considerations. To summarize briefly, the Sixth Circuit disposed of the venue and convenience questions, left open the personal jurisdiction problems for a determination on remand, and then dealt with the most difficult issue, that of choice of law.

B. *The Choice of Law Issue*

The United States Supreme Court with its decision in *Klaxon Co. v. Stentor Electric Manufacturing Co.* has left no doubt that federal district courts must follow the choice of law rules of the state in which they sit. Despite much agitation for change from this rigid position, it would seem to be as stringent a requirement now as ever. Thus, if *Wilder* is a Kentucky choice of law case, the Sixth Circuit was treading on very thin ice in allowing a district court to reach a result contrary to that of *Wilder*. The court at this point in its decision seems to have skirted the issue by casting doubt on the probability of Kentucky's future adherence to the *Restatement (First)* position followed in *Wilder*. The court reasoned that the *Restatement* position lost much of its attraction when the uniformity for which it strove began to break down as many states abandoned the vested rights approach to choice of law. The *Restatement (First)'s* rigid deference to the courts of the trust situs was not followed in the *Restatement (Second)* and the Sixth Circuit from the comments to the *Restatement*. In candor, there is nothing in those comments to so indicate although it is likely that the policies identified by the court are correct.

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23 313 U.S. 487 (1941).
24 Miller v. Davis, 507 F.2d 308, 315-16 (6th Cir. 1974).
25 *Restatement (Second) of Conflict of Laws* § 267 (1971). This section would indicate that supervision is possible where the trustee has qualified as trustee or where the trust is to be administered. The comments of this section indicate a departure from
indicated that this might be a factor inducing Kentucky to abandon the *Wilder* position.

However, to the extent that the court wanted to explore the possibility that Kentucky would no longer adhere to the *Restatement (First)* position taken in *Wilder*, it was on safe ground. As noted before, federal courts can ignore state decisions if they feel such decisions would no longer be followed in the state system. Recent events in the choice of law area in Kentucky leave little doubt that the least the Kentucky courts would do is abandon § 299 of the *Restatement (First)* as the rationale for the access result reached in *Wilder*.26 It is possible, though not likely, that the *Wilder* result would be reached in a new case, but it is certain that the reason for the decision would not be the *Restatement (First)*. The Kentucky courts might go a good bit further, in light of the connection of the Fund to Kentucky domiciliaries. Given the apparent determination of the Kentucky courts to apply their own law to litigation whenever it is possible for them to do so,27 in a new case the Kentucky state courts might apply Kentucky law rather than District of Columbia law to the merits of the litigation. Even though the Sixth Circuit's conclusion concerning the status of the *Restatement (First)* is sound, the court should be very careful of basing its evaluation of Kentucky conflicts law on the *Restatement (Second)*. It has been made quite clear in recent Kentucky cases that the state will not adhere to the *Restatement (Second)*.28

Once again in *Miller*, then, there was for the Sixth Circuit an easy solution to the *Erie* problem posed by *Wilder*—ignore

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26 Kentucky abandoned the vested rights position of the *Restatement (First)* in regard to choice of law for tort cases in *Wessling v. Paris*, 417 S.W.2d 259 (Ky. 1967). Since that time the interest analysis applied by the Kentucky Court of Appeals has shown a definite preference for forum law. This led to a choice of law in favor of the forum in the very close case of *Arnett v. Thompson*, 433 S.W.2d 109 (Ky. 1968).

27 See, e.g., cases cited in notes 26 & 28.

28 *Foster v. Leggett*, 484 S.W.2d 827 (Ky. 1972). The Court of Appeals in that case said explicitly that it was not making a choice of law based on the "most significant contacts" (which would have been the *Restatement (Second)* position) but on *sufficient* contacts. This indicates a definite preference for forum law, a preference not contained in the *Restatement (Second)*.
an aspect of *Wilder* as no longer being good law in the Kentucky courts. Once again the Sixth Circuit was very careful not to second-guess the continued validity of *Wilder* in the Kentucky courts. The Sixth Circuit does not favor the *Wilder* decision, but its decision in *Miller* did not rest on the assumption that Kentucky would no longer follow that opinion.

If *Miller* stands for the proposition that a federal court may ignore the choice of law rules of the state in which it sits, the decision is both erroneous and dangerous. The policies behind the *Klaxon* decision, such as avoidance of intrastate forum shopping, are so clear that the federal courts must follow those state rules no matter how weak they perceive the policy behind a particular rule to be. The choice of law situation in a federal forum, in terms of the analysis developed herein, represents a true conflict, since the federal system, through full faith and credit, has the ability to control the choice of law area. Congress has directed in the Rules of Decision Act\(^2\) that the weak federal interest in this area be subordinated to the very substantial state interest.\(^3\) It might be added that such deference furthers a federal policy against forum shopping. This message was made extremely clear in *Klaxon* and has not been departed from since that decision was handed down. Consequently, had *Miller* been ignoring the Kentucky choice of law rule articulated in *Wilder*, it would be violative of *Klaxon*. But, though *Miller* may appear at first glance to have done exactly that, it did not do so and is not violative of *Klaxon*. Rather, *Miller* was correctly decided on the facts presented because neither *Miller* nor *Wilder* represented the application of a choice of law rule.

C. *The Real Issue: Access to Kentucky Courts*

The issue in both *Miller* and *Wilder* was that of access to the courts located in the state of Kentucky, and, on the issue of access, *Klaxon* is inapplicable. Although the Sixth Circuit in *Miller* incorrectly identified the issue at hand as one of choice of law, they handled the question as if it were one of

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\(^3\) Leathers, *supra* note 2.
access, and in a correct fashion. The only caveat here is that the distinction between access and choice of law must not be forgotten. The res judicata difference between the two is crucial. Miller cannot and should not be cited for the premise that a federal court can ignore the choice of law rules of the state in which it sits, because the real issue in Miller was whether a federal court may ignore the access rule of the state in which it sits.\footnote{For a detailed discussion of the dichotomy between access and choice of law, see Leathers, Dimensions of the Constitutional Obligation to Provide a Forum, 62 Ky. L.J. 1 (1973).}

There is little doubt that Wilder was an access case rather than a choice of law case. Even ignoring the in personam jurisdictional aspects of the decision, it cannot seriously be contended that the decision in Wilder settled the merits of the plaintiff's claim for pension benefits. The Wilder decision did not approach the substance of the plaintiff's claim, but simply determined that, regardless of the validity of the claim, it would not be adjudicated in the Kentucky state courts. This left the plaintiff in Wilder free to bring the claim elsewhere. Only an access decision would leave the plaintiff's claim in this posture; a choice of law decision would not have done so. It is clear from the decision in Miller that the Sixth Circuit was cognizant of these aspects of Wilder, even if the Court did not articulate the distinction between access and choice of law. The entire discussion in Miller centered around the policy of "door-closing" in Kentucky. The principal cases which the Sixth Circuit distinguished in order to allow the federal court to reach a result different from that of the state court were cases involving door-closing statutes. It is in the handling of those door-closing cases, Woods v. Interstate Realty Co.\footnote{337 U.S. 535 (1949).} and Angel v. Bullington,\footnote{330 U.S. 183 (1947).} that the interest analysis of the Sixth Circuit was especially impressive.\footnote{Both Angel and Woods involved strong state policies that would have been frustrated if suit were permitted in federal court. North Carolina had a clear policy in favor of debtors by forbidding deficiency judgments; hence the result in Angel. In Woods, the Court recognized Mississippi's legitimate policy of encouraging foreign corporations doing business in Mississippi to register in that state.}
An initial distinction between *Woods, Angel* and *Miller* could be made from the fact that the first two cases involved door-closing based on statutory law while the door-closing in *Miller* sprang from the decisional mandate of *Wilder*. This is not a material distinction since *Erie* put to rest the notion that the federal courts might ignore state decisional law while being bound by state statutory law. It would not even be correct to draw comparisons between the relative strengths of decisional and statutory door-closing law. It is the nature and strength of the policy behind a door-closing requirement which determines whether a federal court must follow it, the source of the policy being immaterial. The Sixth Circuit was quite correct in pointing to *Szantay v. Beech Aircraft Corp.*\(^{35}\) as support for the principle that where a door-closing requirement is based on a policy not relevant to suit brought in federal court, it may be ignored even though it is a requirement mandated by state statute. This would indicate that in the absence of a relevant policy, the state rule, regardless of its source, could be ignored in favor of a legitimate federal policy. In terms of interest analysis, this would present a false conflict in which there is a legitimate federal interest and no state interest. Naturally, the choice would be in favor of the federal policy, for the supremacy clause will tolerate no other result. It would also seem that a weak state policy on door-closing would allow the assertion of a stronger federal interest in favor of access. This result, made possible by the Rules of Decision Act, is precisely what the Sixth Circuit accomplished when faced with a weak state interest in *Miller*.

D. The Court’s Analysis of the Conflicting State and Federal Policies on Access

The policy behind the Kentucky access denial in *Wilder* may have involved some notions of venue and forum non conveniens. These policies are not relevant to a suit brought in the federal system, which has its own venue and transfer provisions. Kentucky’s access denial may also have had fairness considerations designed to protect the trustees in such cases

\(^{35}\) 349 F.2d 60, 64-5 (4th Cir. 1965).
from being sued away from the trust situs. This policy is much weakened by the fact that other states no longer adhere to it, allowing their citizens to sue in courts away from the trust situs.\textsuperscript{38} A third rationale for the Wilder decision may have been to insure uniformity by making all persons with claims against the Fund assert such claims before the same court, that of the District of Columbia.\textsuperscript{37} This policy, too, is weakened by the fact that other states are now allowing their citizens to sue the Fund outside the District of Columbia. The Sixth Circuit concluded that the desire for uniformity would best be served by allowing suit in a federal forum since such suits were being brought in federal courts in other states.\textsuperscript{38} Federal courts cannot dictate this policy to the states but the Sixth Circuit did consider this possibility in weighing the strength of the state policy behind its door-closing rule.

Another possible rationale for the Wilder decision may have been the apparent inability of the state to exercise quasi in rem jurisdiction over a trust situate in the District of Columbia. Such jurisdiction was available in fact, even when Wilder was decided, if only the traditional limited view of quasi in rem jurisdiction had been put aside.\textsuperscript{39} But whatever the status then or now of such jurisdiction, the policy behind it would be irrelevant to an in personam action such as Miller. All of these factors point out that the state interest in closing the forum doors to such suits was either irrelevant or weak. The policies of venue, forum non conveniens, and quasi in rem jurisdiction would be irrelevant when the suit was brought in federal court in personam; the policies of fairness and uniformity would be weak no matter what the forum, due to changes in the law of other jurisdictions since Wilder was decided. Despite all these considerations however, there was present in Miller a legitimate state interest that required the court to weigh the relative merits of Kentucky's door-closing policy against the federal interests in hearing the suit.\textsuperscript{40}

\textsuperscript{38} See, e.g., Rittenberry v. Lewis, 333 F.2d 573 (6th Cir. 1964). This case involved a suit against the Fund in Tennessee.

\textsuperscript{37} Miller v. Davis, 507 F.2d 308, 315 (6th Cir. 1974).

\textsuperscript{39} Id. at 318.

\textsuperscript{40} Atkinson v. Superior Court, 316 P.2d 960 (Cal. 1957).

\textsuperscript{40} It should be noted that the discussion of Kentucky state interests assumes that
The federal interest in reaching a result different from that which would have been reached by the Kentucky state courts was correctly identified by the Sixth Circuit as being the provision of a forum for claims between parties of diverse citizenship. Although there has been much said and written over the years about federal diversity jurisdiction existing to protect the nonresident suitor against local bias, local citizens with claims against nonresidents have always had access in the bringing of an action on the same basis as nonresident plaintiffs. Having failed to restrict the access of a resident as a party plaintiff, it must be reasoned that Congress intended for local residents to have access on the same basis as nonresidents. Access for local residents may be especially important in a case, such as Miller, where a local resident finds his claim looked upon with disfavor in terms of access in the state courts of his residence. Once

the door-closing rule of Kentucky was constitutional when applied by the Kentucky Court of Appeals in Wilder. Since the result in Wilder was a denial of access to a claim based on the law of the District of Columbia, the validity of such denial would have to be measured against legislation calling for full faith and credit to the laws of the District. 28 U.S.C. §1738 (1964). A more in-depth examination of the access requirements of full faith and credit has already been made elsewhere. See Leathers, supra note 2. There is no need to repeat that discussion, except to note that those requirements are applicable to Wilder. The Sixth Circuit was correct in assuming that the door-closing statute in Woods was permissible since it was important to the implementation of the Mississippi long arm scheme. The court was also correct in assuming the door-closing in Szantay to have been permissible since it had been based on a policy of forum non conveniens. Recall that the federal courts were required to adhere to the door-closing of Woods, but not of Szantay. The Sixth Circuit was on much weaker ground, however, in assuming the door-closing statute in Angel v. Bullington to have been constitutional. See Leathers, supra note 2, at 20 n.92. The court said that the North Carolina denial of access to suits for deficiency judgments was upheld in Angel and that the denial was to be followed in the federal courts as well as in the state courts. The problem with this conclusion is that the decision in Angel rested on the alternate grounds of Erie and res judicata considerations, the issue of the constitutionality of the state statute never being decided by the United States Supreme Court. Thus it is unclear whether or not the door-closing policy of North Carolina was violative of the full faith and credit clause. Assuming it to have been constitutional, there is little doubt that it should be followed in the federal courts because of the strength of the North Carolina policy against suits for deficiency judgments. Therefore, despite the weakness of at least one precedent upon which it relied, the Sixth Circuit was correct in its conclusion that Kentucky could, if it wished, close its doors as it had done in Wilder. The policies behind the Kentucky door-closing rule were different from those which led the Supreme Court to overrule a door-closing scheme as unconstitutional in another case. See Hughes v. Fetter, 341 U.S. 609 (1951).

41 Miller v. Davis, 507 F.2d 308, 316-18 (6th Cir. 1974).
again it must be remembered that the Kentucky bias against the claim was not sufficient to go to the merits of the claim but only to the provision of a forum for the claim. Furnishing a forum for parties of diverse citizenship\footnote{The rationale of diversity jurisdiction is discussed in BATOR, MISHKIN, SHAPIRO, & WECHSLER, HART AND WECHSLER'S THE COURTS AND THE FEDERAL SYSTEM 1051-53 (2d ed. 1973).} to litigate a claim based on the law of another jurisdiction of the United States is the interest which the federal system had in ignoring the \textit{Wilder} door-closing requirement in \textit{Miller}.

In terms of an interest analysis, the Sixth Circuit in \textit{Miller} was faced with a true conflict, a fact which seems to have been reflected in the general criteria under which the court decided the case. An extended discussion of the court’s rationale will follow, because that rationale is much more important than the conclusion which was reached by the court. First, the result is justifiable in terms of the interest analysis previously developed for handling \textit{Erie} issues.\footnote{Leathers, \textit{supra} note 2. This system of analysis is outlined briefly at the beginning of this article.} \textit{Miller} presented a true conflict since both the state and federal systems had policies behind their rules which were applicable to the facts at hand. In the true conflict situation, the federal interest would normally prevail because the supremacy clause\footnote{U.S. Const. art. VI, § 2.} tolerates no other result in a situation involving a legitimate federal interest. In cases involving a legitimate state interest as well as a legitimate federal interest, however, the Rules of Decision Act\footnote{28 U.S.C. § 1652 (1970).} has a tempering effect in allowing the federal courts to weigh the strength of the federal interest against the strength of the state interest. Without the Rules of Decision Act, no such weighing would be possible.

The state interest in having the \textit{Wilder} rule followed in \textit{Miller} was legitimate in some respects but appeared very minimal. The weakness of the state interest allowed the federal interest in \textit{Miller} to prevail. This is an entirely different situation from the one in \textit{Szantay},\footnote{Szantay v. Beech Aircraft Corp., 349 F.2d 60 (4th Cir. 1965).} where no true conflict existed due to the lack of a state interest other than forum non convenien-
iens. Nevertheless, the result in the two cases was the same—federal law prevailed. Miller also differs from Woods\textsuperscript{47} and Angel.\textsuperscript{48} In both of those cases the state policy was sufficiently strong and due to the tempering effect of the Rules of Decision Act on the supremacy clause, managed to overcome the legitimate federal interest in provision of a forum for claimants of diverse citizenship. This view of Woods is a change from my previous position regarding Woods as a false conflict with no legitimate federal interest. This change is necessitated by the now apparent federal interest in providing a forum for litigants of diverse citizenship.\textsuperscript{49} Although the result in Miller can be justified by interest analysis, the same can be said of all the Erie cases discussed in my previous article.\textsuperscript{50} There is one important difference which sets Miller apart from the previous cases. The methodology used in reaching a decision in Miller was substantially interest analysis, and the use of the correct technique is much more important than simply having reached the correct result.

The Sixth Circuit's handling of the crucial issues in Miller began with a recognition that the result in Erie did a good deal more than simply put state decisional law on an equal footing with state statutory law.\textsuperscript{51} Erie brought an entirely new outlook to the relationship between state and federal law. The court also recognized under a strict adherence to the outcome-determination test the facts in Miller were indistinguishable from Woods and Angel and hence a result in favor of access would have been incorrect. This may be too harsh a reading of the outcome-determination aspects of Guaranty Trust Co. v. York,\textsuperscript{52} since I believe it was the intent of that decision to set up an interest analysis similar to that adopted by the Sixth


\textsuperscript{49} Leathers, supra note 2, at 805. It is unfortunate that I did not recognize the federal interest at the time of writing the earlier article. Woods furnished one of the few good examples of a true conflict with a legitimate federal interest being deferred to a strong state interest under the mandate of the Rules of Decision Act.

\textsuperscript{50} Leathers, supra note 2.

\textsuperscript{51} Miller v. Davis, 507 F.2d 308, 312 (6th Cir. 1974).

\textsuperscript{52} For the formulation of this test, see Guaranty Trust Co. v. York, 326 U.S. 99 (1945).

\textsuperscript{53} 326 U.S. 99 (1945).
Circuit in Miller.\textsuperscript{54} It still seems to me that the difficulties with Guaranty Trust come from incorrect interpretations of the decision rather than any fault inherent in the decision. In any event, the Sixth Circuit noted that the strict outcome-determination view of Guaranty Trust had been modified by the United States Supreme Court in Byrd v. Blue Ridge Rural Electric Cooperative, Inc.\textsuperscript{55} and Hanna v. Plumer.\textsuperscript{56} This modification allowed the court to take a slightly different look at the Rules of Decision Act than would have been possible under a strict view of outcome-determination.\textsuperscript{57}

The Byrd and Hanna cases led the Sixth Circuit to view the Rules of Decision Act "as mandating strict adherence to state law which had substantive content, but not requiring mimickery [sic] of state procedural rules which had little substantive content and were designed primarily for purposes of state judicial administration."\textsuperscript{58} The key to fitting this conclusion into an interest analysis is the recognition, apparent in

\begin{itemize}
\item \textsuperscript{54} Leathers, supra note 2, at 802.
\item \textsuperscript{55} 356 U.S. 525 (1958).
\item \textsuperscript{56} 380 U.S. 460 (1965). In both Byrd and Hanna, the Supreme Court explained that there were considerations other than "outcome" involved in the decision of whether or not to follow state practice.
\item "Outcome-determination" analysis was never intended to serve as a talisman. . . . Indeed, the message of York itself is that choices between state and federal law are to be made not by application of any automatic "litmus paper" criterion, but rather by reference to the policies underlying the Erie rule.

Hanna v. Plumer, 380 U.S. 460, 466-67 (1965) (citation omitted). In Byrd, the Court conceded that jury determination rather than judge determination of an issue in the case may well affect the "outcome", but stated that
\item . . . there are affirmative countervailing considerations at work here. The federal system is an independent system for administering justice to litigants who properly invoke its jurisdiction. An essential characteristic of that system is the manner in which, in civil common-law actions, it distributes trial functions between judge and jury and, under the influence—if not the command—of the Seventh Amendment, assigns the decisions of disputed questions of fact to the jury. The policy of uniform enforcement of state-created rights and obligations . . . cannot in every case exact compliance with a state rule—not bound up with rights and obligations—which disrupts the federal system of allocating functions between judge and jury.

\item \textsuperscript{57} 507 F.2d 308, 313.
\item \textsuperscript{58} Id.
Miller, that there may be rules which have both substantive and procedural dimensions. The labels, as used in Miller, are not mutually exclusive but may overlap in some respects. In cases of overlapping state policies which conflict with federal policies (in terms of interest analysis, these would be true conflicts), the policies behind the rules must be weighed to determine if state interests prevail. The court in Miller weighed the policy behind the Kentucky door-closing requirement of Wilder and found it to be too weak to outweigh the federal interest in providing a forum for a diversity action. Therefore, the federal court could hear a case which the state courts would not have heard. This careful analysis and evaluation of the policies in light of each other is exactly the manner in which courts ought to decide Erie problems. Any other approach is too simplistic to solve the very difficult issues of federalism involved.

III. The Sixth Circuit Guidelines

In addition to developing an interest analysis for determination of Erie issues, the Sixth Circuit in Miller adopted some general guidelines to balance the interests identified. Although a pattern of case law might eventually emerge, permitting the formulation of rules to displace ad hoc weighing of interests in particular cases, Miller seems a very early case for such an undertaking. The analysis at work there seems to be at too early a stage for generalizations about its future implementation. In any case, the court seems to have done a commendable job of formulating guidelines. Although caution should be exercised in the future when relying on guidelines developed at this early point, the guidelines are certainly worthy of careful consideration.

The first guideline formulated by the Sixth Circuit was that when "the state provision is the substantive right or obligation being asserted, the federal court must apply it." In terms of interest analysis, there would be no conflict because there would be no legitimate federal interest present. The notion that federal law could be the source of substantive liability

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59 Id. at 318.
60 Id. at 314 (emphasis added).
was discarded with the *Erie* decision. Both *Erie* and *Guaranty Trust*\(^1\) illustrate the situation envisioned by the court’s first guideline. It is workable as long as the determination of what is a substantive right is made by an analysis of policies rather than by the use of labels. Given the handling of the issues in *Miller*, it is clear that the Sixth Circuit will require analysis rather than labels for application of this guideline.

The second guideline of *Miller* required that when “the state provision is a procedural rule which is intimately bound up with the substantive right or obligation being asserted, the federal court must apply it.”\(^2\) In terms of a conflict analysis, this situation would present a true conflict in which federal interests are deferrable to strong state interests. Examples of such cases include *Woods* and *Klaxon*. Again, this guideline simply cannot function if it is applied blindly and without a thorough analysis of underlying policies, for state substantive and procedural interests often intertwine. Weighing is impossible without analysis, and analysis is what the Sixth Circuit intends. Neither this guideline nor the first have any application to the facts in *Miller* and are at best dicta; they are, however, indicative of the approach favored by the Sixth Circuit, and it would do the practitioner well to give them careful consideration.

The court’s third guideline controlled the *Miller* case and provides as follows:

If the state provision is a procedural rule which is not intimately bound up with the substantive right or obligation being asserted, but its application might substantially change the outcome of the litigation, the federal court should determine whether state interests in favor of applying the state rule outweigh countervailing federal considerations against application of the rule. If the state interests predominate, the state rule should be adopted.\(^3\)

This guideline covers the case of the true conflict in which the state interest is not strong enough to overcome the federal in-

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\(^1\) For a discussion of these cases as false conflicts, see *Leathers*, *supra* note 2.
\(^2\) 507 F.2d 308, 314.
\(^3\) Id.
terest. It may also control the case of the false conflict in which a legitimate state interest is lacking, as in *Szantay*. This third formulation, like the first two, clearly calls for an analysis and weighing of interests. Also of great importance is its indication that a state interest *may* prevail over a countervailing federal interest. The ability to weigh and defer the legitimate interests of the forum can only come, according to Currie,\(^4\) from the legislature. That authority in the federal system comes from the Rules of Decision Act. In the situation envisioned by the court's third guideline, then, as in the others, analysis of policies must replace the application of facile tests.

**Conclusion**

The decision in *Miller* represents a great step forward in the solution of *Erie* issues. Although the case could have been decided on a much easier basis, the Sixth Circuit chose the difficult route of allowing a federal court to diverge from the result that would have been reached in a state court. Its technique for reaching the correct result is commendable in that it utilizes analysis in an area in which courts have traditionally been content to dispense with any searching examination of the problems at hand. The failure of the court to develop fully the dichotomy between access and choice of law makes a portion of *Miller* rather dangerous as precedent, but the discussion of the issue in the opinion seems sufficient to overcome that drawback for readers alert to the distinction. The guidelines set up for weighing competing interests are arguably premature, but at the present time seem to fit well with prior case law. With a correct result and a step forward in methodology, the Sixth

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\(^4\) The interest analysis advocated by the late Brainerd Currie is the foundation for the interest analysis which I set up for choosing between competing state and federal rules. It was his contention that in a true conflict a court of the forum could not defer the forum interest to a competing interest, regardless of the relative strengths of the two. Only the legislature would have the power to defer a forum interest. It seems to me that the compulsion in favor of forum law operates in *Erie* cases by virtue of the supremacy clause. Yet there are instances in which in federal interest has been deferred (*Woods* and *Angel*). This must be due to the influence of some legislative command. The only possible source of that command is the Rules of Decision Act in some cases, and the Rules Enabling Act in others. The works of Currie are compiled in B. Currie, *Selected Essays on the Conflict of Laws* (1963).
Circuit has made a genuine contribution to the solution of *Erie* issues. The issues have been difficult ones, but their resolution will be less difficult and more sound if other courts follow the approach outlined by the Sixth Circuit Court of Appeals in *Miller v. Davis*. 