COMMENT

IN CONTROVERSY: THE MAGNUSON-MOSS WARRANTY ACT'S FEDERAL JURISDICTION REQUIREMENTS AND WHY THE 9TH CIRCUIT IS RIGHT THAT REASONABLE ATTORNEYS' FEES SHOULD COUNT TOWARDS THE AMOUNT IN CONTROVERSY

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The Ninth Circuit's decision in Shoner v. Carrier Corp. *illuminated a circuit split in the interpretation of the Magnuson-Moss Warranty Act's amount in controversy requirement provision. Most circuits that have addressed this issue interpret the provision to never include attorneys' fees towards the amount in controversy requirement. The Ninth Circuit came to a different conclusion, holding that attorneys' fees can count towards the amount in controversy requirement when the recovery of attorneys' fees is authorized by the action's underlying contract or statute. This Comment argues that canons of statutory interpretation, including the well-settled interpretations of similar provisions in other federal statutes, show that the Ninth Circuit's interpretation is correct. Further, this Comment considers how the Ninth Circuit's interpretation is superior from a policy perspective.*

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INTRODUCTION

Imagine you purchase that new car you have been wanting for years. You pay $49,000 for the car. Pricey, but you have been saving and planning for years and decided to finally treat yourself. Much to your dismay, since the day you drove the car off the lot you have experienced defect after defect. It has been months, and your shiny new car has spent more time in the shop than it has spent with you on the road. You are devastated and are starting to believe that your new car may never work as you expected it to, all while continuing to dutifully pay your pricey monthly payment for a car that has never worked properly.

At your wits' end, you think of how to remedy the situation. You contact a lawyer who informs you that in your state, the law shows that new car sales have "warranties." There are both implied warranties and express warranties. Express warranties are the promises that the dealership specifically represented to you, such as protection on certain parts of your car for a specific period of time in your sales

contract.[1] Implied warranties protect consumers like you, even if your sales contract did not expressly include them.

One of these implied warranties is the implied warranty of fitness, which means that the car should function as intended.[2] Another is the implied warranty of merchantability, which means that the car should have been "merchantable" when the dealership sold it to you.[3] For a car to be merchantable, it must both be fit for cars' ordinary purpose and be of fair quality.[4] Other implied warranties could have arisen during your sales negotiation based on the actions of the dealership.[5] Based on your lawyer's advice, you feel hopeful, because you know the car you purchased from the dealership meets none of these conditions.

You decide with your attorney that you want to file a lawsuit against the car dealership for breach of the express and implied warranties related to the sale of the car. There is one problem though; the car dealership is incorporated in your state and has a huge presence in the community. Worried about whether the state court would be a truly neutral forum for your lawsuit because of the dealership's popularity, you and your attorney consider your options. You and your attorney decide that filing the lawsuit in federal court is the best option for your lawsuit to achieve forum neutrality.

Your attorney files the complaint in the appropriate federal district court, pleading $49,000 in consequential damages for the full purchase price of your new car[6] and estimating $5,000 in reasonable attorneys' fees. The state law upon which your action is based allows for the recovery of attorneys' fees, so your lawyer argues that the total amount in controversy is $54,000. This amount comfortably exceeds the $50,000 minimum amount in controversy required to bring a Magnuson-Moss Warranty Act ("MMWA")[7] claim for breach of

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1. *See* 1 THE LAW OF PROD. WARRANTIES § 4:2 (discussing the different ways that parties to a sales contract can manifest express warranties when selling a product).

2. U.C.C. § 2-315 (AM. L. INST. & UNIF. L. COMM'N 2021) ("Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be reasonably fit for such purpose.").

3. U.C.C. § 2-314(1).

4. U.C.C. § 2-314(2)(b)–(c).

5. U.C.C. § 2-314(3).

6. Note that you have not had to pay for any of the warranty repairs on your car thus far.

7. Magnuson-Moss Warranty Act, Pub. L. No. 93-637, 88 Stat. 2183 (1975) (codified at 15 U.S.C. §§ 2301–2312).

warranties in federal court.[8] However, your case is dismissed for lack of subject matter jurisdiction at the motion to dismiss stage because the court holds that attorneys' fees cannot count towards the amount in controversy requirement for claims brought under the MMWA. Has justice been served? You certainly do not think so.

Before the MMWA, federal law offered no product warranty protections to consumers, and warranties provided to consumers by commercial actors were regulated only by state law.[9] At that time, most states had adopted the less than consumer-friendly Uniform Commercial Code provisions on product warranties.[10] In 1975, Congress enacted the MMWA, providing consumers with federal causes of action and remedies under both state and federal law.[11] Congress's goal was to provide consumers with warranty protections under federal law.[12] However, Congress included an amount in controversy requirement in the MMWA, which limited the actions that consumers could bring in federal courts.[13]

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8. *See* 15 U.S.C. § 2310(d)(3)(A)–(C) (providing that a plaintiff cannot bring a claim in federal court if the amount in controversy of an individual claim is less than $25, if the total amount in controversy of all claims is less than $50,000 (excluding "interests and costs"), or if it is a class action and there are fewer than 100 named plaintiffs).

9. *See* Janet W. Steverson, *The Unfulfilled Promise of the Magnuson-Moss Warranty Act*, 18 LEWIS & CLARK L. REV. 155, 161 (2014) (discussing how, prior to the MMWA, regulation of warranties fell onto the states, which almost uniformly adopted the merchant-friendly Uniform Commercial Code warranty protections).

10. *See id.* (discussing how commercial actors could easily work around the Uniform Commercial Code warranties by "providing written warranties that seemed to promise much, but actually provided little and . . . disclaimed the [Uniform Commercial Code] implied warranties").

11. *See* § 2310(d)(1) (providing that "a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract" can bring suit in a state court with appropriate jurisdiction or in the appropriate federal court when the amount in controversy requirements are met).

12. *See* S. Rep. No. 93-151, at 2 (1973) ("[T]his bill aims to increase the ability of the consumer to make more informed product choices and to enable him to economically pursue his own remedies when a supplier of a consumer product breaches a voluntarily assumed warranty or service contract obligation."); Steverson, *supra* note 9, at 160 (citing S. Rep. No. 93-151, at 2) (noting the MMWA's purpose of improving the FTC's ability to regulate warranties to protect consumers).

13. *See* § 2310(d)(3)(A)–(C) (providing that a plaintiff cannot bring a claim in federal court if the amount in controversy of an individual claim is less than $25, if the total amount in controversy of all claims is less than $50,000 (excluding "interests and costs"), or if it is a class action and there are fewer than 100 named plaintiffs).

In April 2022, the Ninth Circuit ruled in *Shoner v. Carrier Corp.*[14] that attorneys' fees can count towards the minimum amount in controversy required for federal subject matter jurisdiction over claims brought under the MMWA.[15] The Ninth Circuit decision in Shoner might result in more actions being brought under the MMWA in federal court because it allows plaintiffs to tack their reasonable attorneys' fees onto damages to more easily exceed the $50,000 amount in controversy threshold.[16]

Forty years before *Shoner*, the Fourth Circuit reached the opposite conclusion in *Saval v. BL Ltd.*[17] Between 1984 and 1998, the Fifth, Third, and Eleventh Circuits followed the Fourth Circuit, holding that attorneys' fees may not count towards the minimum amount in controversy required for federal subject matter jurisdiction over claims brought under the MMWA.[18] These circuits argue that the construction of the MMWA supports such a reading because they read 15 U.S.C. § 2310(d)(2) to refer to attorneys' fees as a "cost and

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14. 30 F.4th 1144 (9th Cir. 2022).

15. *Id.* at 1148 (holding that attorneys' fees are not costs within the meaning of the MMWA and, thus, may be included in the amount in controversy calculation when authorized by underlying state statute or agreement between the parties); *see also* Jacklyn Wille, *Carrier Defective Air Conditioner Suit Booted from Federal Court*, BLOOMBERG L. NEWS (Apr. 14, 2022, 3:42 PM), https://news.bloomberglaw.com/class-action/carrier-defective-air-conditioner-suit-booted-from-federal-court? [https://perma.cc/C9HY-3GKQ] (stating that despite the Ninth Circuit's ruling, the case was dismissed from federal court because the underlying Michigan consumer protection laws did not allow prevailing plaintiffs to recover attorneys' fees).

16. Whether allowing the federal courts to include attorneys' fees within the amount in controversy calculation for claims under the MMWA would meaningfully affect the number of such claims in the federal courts is beyond the scope of this article. As discussed *infra* notes 40–44 and accompanying text, the MMWA is underutilized. Some scholars believe this underutilization is due to the issues in the MMWA's construction and interpretation. *See* Robert A. Riegert, *An Overview of the Magnuson-Moss Warranty Act and the Successful Consumer-Plaintiff's Right to Attorneys' Fees*, 95 COM. L.J. 468, 468–69 (1990) (stating how in the first fifteen years of the MMWA's existence, only 180 appellate decisions discussed it at all).

17. 710 F.2d 1027, 1033 (4th Cir. 1983) (per curiam) (holding that attorneys' fees are costs within the meaning of the MMWA and, thus, are excluded from the amount in controversy calculation).

18. *See id.* (holding that attorneys' fees are costs within the meaning of the MMWA and, thus, are excluded from the amount in controversy calculation); Ansari v. Bella Auto. Grp., Inc., 145 F.3d 1270, 1271–72 (11th Cir. 1998) (per curiam) (incorporating the Fourth Circuit's reasoning and excluding attorneys' fees from MMWA amount in controversy calculus); Suber v. Chrysler Corp., 104 F.3d 578, 588 n.12 (3d Cir. 1997) (same); Boelens v. Redman Homes, Inc., 748 F.2d 1058, 1069 (5th Cir. 1984) (same).

expense[ ]" that is part of the "interests and costs" excluded by the amount in controversy provision.[19] These circuits further claim that the exclusion of attorneys' fees from the amount in controversy calculation is the position most aligned with the legislative intent behind the amount in controversy requirement.[20]

The Seventh Circuit was the only circuit to depart from the Fourth Circuit's consensus before *Shoner*.[21] In its departure, the Seventh Circuit held that attorneys' fees can count towards the minimum amount in controversy required for federal subject matter jurisdiction over claims brought under the MMWA, but it did not provide reasoning.[22] Accordingly, the Ninth Circuit was the first circuit to disagree with the Fourth Circuit's reasoning in *Saval* and explain why the minimum amount in controversy required for federal subject matter jurisdiction over claims brought under the MMWA should include attorneys' fees.[23]

This Comment will argue that the Seventh and Ninth Circuits' position that attorneys' fees should count towards the MMWA's amount in controversy requirement for federal jurisdiction is correct because of the structure and goals of the MMWA. Next, this Comment will argue that the Supreme Court's prior interpretation of the federal

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19. *See* 15 U.S.C. § 2310(d)(2) (allowing for the recovery of "cost[s] and expenses (including attorneys' fees based on actual time expended)" in successful MMWA claims); *Saval*, 710 F.2d at 1033 (discussing the purported impact of 15 U.S.C. § 2310(d)(2) on the court's interpretation of the MMWA's amount in controversy requirement).

20. *See Saval*, 710 F.2d at 1033 (discussing how the exclusion of attorneys' fees from the amount in controversy calculation is the proper interpretation of the MMWA because it is the option that is more restrictive to federal court access).

21. *See* Gardynski-Leschuck v. Ford Motor Co., 142 F.3d 955, 958 (7th Cir. 1998) (stating fee awards under the MMWA are included in the judgement rather than the cost); Burzlaff v. Thoroughbred Motorsports, Inc., 758 F.3d 841, 845 (7th Cir. 2014) (including attorneys' fees in the MMWA's amount in controversy requirement calculus, again without much explanation on why it departs from the Fourth Circuit's reasoning).

22. *See Gardynski-Leschuck*, 142 F.3d at 958–59 (including attorneys' fees in the MMWA's amount in controversy requirement calculus, without any explanation on why it departs from the Fourth Circuit's reasoning); *Burzlaff*, 758 F.3d at 845 (stating that, for purposes of determining the amount in controversy under diversity jurisdiction, attorney fees can be included if they are part of damages, but the amount is limited to the amount accrued at the time of removal).

23. *See* Shoner v. Carrier Corp., 30 F.4th 1144, 1148 (9th Cir. 2022) (holding that attorneys' fees are not costs within the meaning of the MMWA and thus are not excluded from the amount in controversy calculation).

diversity jurisdiction amount in controversy requirement is analogous to the MMWA's amount in controversy requirement. Further, this Comment will argue that the way the Eighth and Ninth Circuits have interpreted the amount in controversy requirement in the Class Action Fairness Act ("CAFA") is analogous to how the MMWA's amount in controversy requirement should be read. This Comment then concludes that the Supreme Court, should it grant a writ of certiorari, should rule that the MMWA's amount in controversy requirement is inclusive of attorneys' fees.[24]

Part I will provide background on the MMWA and its goals and jurisdictional requirements, the history, goals, and jurisdictional requirements of federal diversity jurisdiction and the CAFA, and background on the circuit split and relevant tools of statutory interpretation.[25] Section II.A will analyze the background, goals, and statutory interpretation of the MMWA, and Sections II.B and II.C will compare the same with the background, goals, and statutory interpretation of federal diversity jurisdiction and the CAFA's jurisdictional requirements respectively.[26] Section II.D will examine the policy argument regarding why Congress has had ample opportunity to amend the MMWA, but has chosen not to explicitly bar or further restrict plaintiffs' access to federal courts when their claims, inclusive of reasonable attorneys' fees, exceed the amount in controversy requirement.[27] Finally, this Comment will conclude that without amendment from Congress, should the Supreme Court grant a writ of certiorari on this issue, the Court should rule that the amount in controversy requirement of the MMWA should include attorneys' fees if permitted by the underlying statute or contract because such is the case with federal diversity jurisdiction and the CAFA.[28]

I. BACKGROUND

The proper interpretation of the MMWA's amount in controversy requirement is shown through its construction and similarity provisions in other federal statutes. The essential background on this issue includes background on the MMWA, the federal diversity jurisdiction statute, the CAFA, the existing circuit split regarding the

24. *See infra* Conclusion.
25. *See infra* Part I.
26. *See infra* Sections II.A–C.
27. *See infra* Section II.D.
28. *See infra* Conclusion.

interpretation of the MMWA's amount in controversy requirement, and the relevant tools of statutory interpretation. Section I.A will discuss the MMWA and its history, construction, and goals. Section I.B and Section I.C will discuss the same regarding the federal diversity jurisdiction statute and the CAFA, respectively. Section I.D will discuss the existing circuit split and the history of the competing positions of the Ninth and Fourth Circuits. Finally, Section I.E will address the relevant tools of statutory interpretation.

A. The Magnuson-Moss Warranty Act

The MMWA introduced the regulation of product warranties into federal law, but it curiously limited federal jurisdiction with a $50,000 amount in controversy requirement.[29] The MMWA provides a federal cause of action for "a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract" to bring suit in a state court with appropriate jurisdiction or in the appropriate federal court when the amount in controversy requirement is met.[30] Circuit courts disagree regarding what to include in that amount in controversy.[31] To properly consider how Congress intended the courts to interpret and apply the amount in controversy provision of the MMWA, it is important to understand the MMWA and its history, construction, and goals. This Part will address each in turn.

Congress enacted the MMWA in 1975 to further the purpose of protecting consumers from misleading warranties and provide federal minimum standards for product warranties.[32] The MMWA provides consumers with a remedy for any "failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract,"

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29. *See* Riegert, *supra* note 16, at 479 (discussing how few cases under the MMWA can meet the amount in controversy provision, forcing most suits into state courts, which may not be best option for uniform interpretation and application of the Act).

30. 15 U.S.C. § 2310(d)(1).

31. *See infra* Section I.D (discussing the existing circuit split regarding whether to include attorneys' fees in the MMWA amount in controversy calculation).

32. Magnuson-Moss Warranty Act, Pub. L. No. 93-637, 88 Stat. 2183 (1975) (defining the MMWA's purpose as being "[t]o provide minimum disclosure standards for written consumer product warranties; to define minimum Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes").

permitting them to "bring suit for damages and other legal and equitable relief."[33]

Further, the MMWA "directs the [Federal Trade] Commission to establish disclosure standards for written warranties, specifies standards for 'full' warranties, limits disclaimer of implied warranties, and establishes consumer remedies for breach of warranty or service contract obligations."[34] The MMWA also provides for the recovery of attorneys' fees by consumers who bring a successful action against a seller under the Act. This possibility makes it more practicable for attorneys to take on warranty cases, particularly because "in practice courts almost invariably award such fees."[35]

Before the MMWA was established, it was up to the states to regulate warranties.[36] At that time, all states except for Louisiana followed the Uniform Commercial Code,[37] which was deficient in consumer goods protection because it allowed sellers to "bypass the UCC warranties by providing written warranties that seemed to promise much, but actually provided little and that, at the same time, disclaimed the UCC implied warranties."[38] Accordingly, warranties were often confusing to consumers and did not contain any real protection to the consumer prior to the MMWA.[39]

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33. § 2310(d)(1).

34. *Magnuson Moss Warranty-Federal Trade Commission Improvements Act*, FTC, https://www.ftc.gov/legal-library/browse/statutes/magnuson-moss-warranty-federal-trade-commission-improvements-act [https://perma.cc/RB84-BDCH].

35. *See* Riegert, *supra* note 16, at 474–78 (discussing the requirements for recovering attorneys' fees in an action brought under the MMWA).

36. *See* Steverson, *supra* note 9, at 161 (discussing how many states adopted the Uniform Commercial Code, but many commercial sellers adapted to avoid U.C.C. enforcement).

37. *See* U.C.C. §§ 2-314–18 (governing implied warranties applicable to the sales of goods).

38. *See* Steverson, *supra* note 9, at 161 (stating how the U.C.C. did not "discuss, create, or regulate written warranties," but did allow for the creation of express and implied warranties).

39. *See id.* at 162–63 ("Given the ease with which the implied warranties could be disclaimed, it is not surprising that the majority of warranties prior to the enactment of the MMWA contained a disclaimer of implied warranties. Further, the written warranty that was ostensibly given in place of the implied warranties was often not worth the paper on which it was printed. Unfortunately, the written warranties often used complex language to hide this lack of any real warranty protection.").

Even with its strengthening of consumer protections, the MMWA is not utilized often.[40] Some scholars believe the MMWA is underutilized because of its organization and language, which make it complex at times and encourage a strange interaction between state and federal law.[41] For example, even though the MMWA is a federal statute that creates causes of action for consumers, it primarily grants jurisdiction to state courts due to the amount in controversy provision.[42] Furthermore, while the MMWA does add rights and remedies to consumer warranty rights via federal law, it does not purport to invalidate any right or remedy provided to consumers under other state or federal laws. As a result, it is often interpreted by state courts in conjunction with state law claims.[43] The MMWA builds on the existing rights of consumers under state laws and therefore often involves both state and federal law claims, but these cases being primarily heard in state courts leads to interpretation issues.[44]

The MMWA provides that "a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract" can bring suit in a state court with appropriate jurisdiction or in the appropriate federal court when certain requirements are met.[45] The jurisdictional requirements provision of the MMWA at issue in this circuit split states that a plaintiff cannot bring a claim in federal court if the amount in controversy of an individual claim is less than $25,[46] if the total amount in controversy of all claims is less than $50,000 (excluding "interests and costs"),[47] or

40. *See* Riegert, *supra* note 16, at 468–69 (discussing how in the first fifteen years of the MMWA's presence, only 180 appellate decisions discussed the Act at all).

41. *Id.* at 469.

42. *See id.* at 473, 479 (discussing how few cases under the MMWA can meet the amount in controversy provision, forcing most suits into state courts which may not be best option for a uniform interpretation and application of the Act).

43. *See id.* at 469–70, 479 (explaining that state warranty laws do not have the same interpretation issues as the MMWA because they tend to be interpreted by state courts that have controlling authority on those laws' interpretation, whereas the MMWA is a federal statute whose interpretation by state courts is non-binding).

44. *See id.* at 473, 479 (discussing how few cases under the MMWA can meet the amount in controversy provision, forcing most suits into state courts which may not be best option for a uniform interpretation and application of the Act).

45. 15 U.S.C. § 2310(d)(1).

46. § 2310(d)(3)(A).

47. § 2310(d)(3)(B).

if it is a class action and there are fewer than 100 named plaintiffs.[48] Notably, the $50,000 total amount in controversy requirement of 15 U.S.C. § 2310(d)(3)(B) excludes "interests and costs" while the $25 individual claim requirement of 15 U.S.C. § 2310(d)(3)(A) does not exclude "interests and costs."[49]

The definitions section of the MMWA does not define the term "interests and costs."[50] Accordingly, courts disagree on what "interests and costs" means, namely whether attorneys' fees should be regarded as an interest or cost and thus be excluded, or if attorneys' fees should count towards the amount in controversy requirement.[51]

Section 2310(d)(2) of the MMWA, which does not discuss jurisdictional requirements, states that:

> If a consumer finally prevails in any action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.[52]

Prevailing consumers can recover "cost[s] and expenses (including attorneys' fees . . .)" under the MMWA, and expenses are not excluded from the MMWA's amount in controversy calculation like "interests and costs" are.[53] However, costs and expenses are not defined within the MMWA.[54] Thus, the main dividing factor regarding whether attorneys' fees should be included in the MMWA's federal jurisdiction

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48. § 2310(d)(3)(C).

49. The MMWA appears inconsistent in allowing the individual claim to include attorneys' fees but not allowing the amount in controversy to include attorneys' fees. § 2310(d)(3)(A)–(B).

50. *See* 15 U.S.C. § 2301 (providing definitions for various terms used throughout the MMWA but not defining interests and costs).

51. *Compare* Saval v. BL Ltd., 710 F.2d 1027, 1033 (4th Cir. 1983) (per curiam) (holding that attorneys' fees are costs within the meaning of the MMWA and thus should be excluded from the amount in controversy calculation), *with* Shoner v. Carrier Corp., 30 F.4th 1144, 1148 (9th Cir. 2022) (holding that attorneys' fees are not costs within the meaning of the MMWA and thus should be included in the amount in controversy calculation).

52. § 2310(d)(2).

53. § 2310(d)(2)–(3).

54. *See* § 2301 (providing definitions for various terms used throughout the MMWA but not defining costs and expenses).

amount in controversy requirement is whether the language of section 2310(d)(2) determines that attorneys' fees are both a cost and an expense, rather than just an expense.[55] For example, the court in *Shoner* held that attorneys' fees can count toward the MMWA's amount in controversy requirement due to section 2310(d)(2)'s language classifying attorneys' fees as an expense, not a cost.[56]

The MMWA was intended to help consumers by encouraging easier-to-understand warranties and providing a remedy for consumers who are harmed by breached warranties.[57] Congress intended that the MMWA allow consumers to pursue remedies in either state or federal court.[58] Ultimately, Congress's goals were to prevent misleading warranties that do not actually protect consumers and to increase the federal government's authority to regulate the adequacy of warranties on consumer goods, ensuring that commercial actors provide warranties that consumers can understand during the growth of mass production.[59] The commonly accepted goal of the MMWA's amount in controversy requirement for federal jurisdiction was to prevent the federal courts from being overwhelmed with trivial actions.[60]

B. Federal Diversity Jurisdiction

The federal diversity jurisdiction statute provides for federal jurisdiction over state law causes of action when the plaintiff and defendant are from different states, so long as the amount in

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55. *Compare Saval*, 710 F.2d at 1033 (holding that costs and expenses are to be read together in 15 U.S.C. § 2310(d)(2) and attorneys' fees are an example of both), *with Shoner*, 30 F.4th at 1148 (holding that 15 U.S.C. § 2310(d)(2) is only referring to attorneys' fees as expenses, not costs, and, thus, since the federal jurisdictional amount in controversy requirement only excludes interests and costs, attorneys' fees can count towards the MMWA's amount in controversy requirement).

56. *Shoner*, 30 F.4th at 1148.

57. S. Rep. No. 93-151, at 2 (1973) ("[T]his bill aims to increase the ability of the consumer to make more informed product choices and to enable him to economically pursue his own remedies when a supplier of a consumer product breaches a voluntarily assumed warranty or service contract obligation.").

58. *See* § 2310(d)(1)(A)–(B) (providing that a consumer may bring a suit for damages under the MMWA "in any court of competent jurisdiction in any State or the District of Columbia" or "in an appropriate district court of the United States, subject to paragraph (3) of this subsection").

59. H.R. Rep. No. 93-1107, at 22–24 (1974) (discussing the need for consumer product warranty reform in the age of the assembly line and mass production).

60. *See Saval*, 710 F.2d at 1030 (citing H.R. Rep. No. 93-1107 (1974)); H.R. Rep. No. 93-1107, at 42 ("The purpose of these jurisdictional provisions is to avoid trivial or insignificant actions being brought as class actions in the federal courts.").

controversy of such claims exceeds $75,000, excluding interests and costs.[61] Interpretation of the federal diversity jurisdiction statute's amount in controversy requirements is instructive when analyzing the MMWA because the language of both statutes is so similar. Thus, it is important to understand the federal diversity jurisdiction statute and its history, construction, and goals.

Article III of the United States Constitution provides that Article III courts' judicial power extends to cases between citizens of different states.[62] Article III did not provide an amount in controversy requirement for such cases.[63] As far back as *Marbury v. Madison*,[64] the Supreme Court has endorsed the view that Congress has the ability to restrict, not expand, the powers of Article III and the jurisdiction of its courts.[65] Accordingly, Congress appropriately restricts the original jurisdictions of federal district courts by establishing the amount in controversy requirement.[66]

Indeed, ever since Congress enacted the Judiciary Act of 1789,[67] Congress has restricted the federal district courts' original jurisdiction over cases with diversity of citizenship through an amount in controversy requirement.[68] The first amount in controversy that Congress established for diversity jurisdiction cases set the bar at $500.[69] Congress has changed the amount several times since then, increasing it to $2,000 in 1887, $3,000 in 1911, and $10,000 in 1958.[70] In 1988, Congress increased the amount in controversy requirement for federal diversity jurisdiction from $10,000 to $50,000.[71] Finally in

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61. 28 U.S.C. § 1332(a)(1).

62. U.S. CONST. art. III, § 2.

63. *Id.*

64. 5 U.S. 137 (1803).

65. *See, e.g.*, *id.* at 174 (providing that Article III is the ceiling of the federal judiciary's power).

66. *See* Christopher Jon Sprigman, *Congress's Article III Power and the Process of Constitutional Change*, 95 N.Y.U. L. REV. 1778, 1802 (2020) (explaining that it is widely accepted that, because Article III does not establish lower federal courts, "if Congress decides to establish lower federal courts, it retains discretion to restrict their jurisdiction").

67. Pub. L. No. 1-20, 1 Stat. 73.

68. *Id.* § 11.

69. *Id.*; *see, e.g.*, Snyder v. Harris, 394 U.S. 332, 334 (1969) (employing $500 for the amount in controversy).

70. *Snyder*, 394 U.S. at 334.

71. Judicial Improvements and Access to Justice Act, Pub. L. No. 100-702, § 201(a), 102 Stat. 4642, 4646 (1988).

1996, Congress once again increased the amount in controversy requirement for federal diversity jurisdiction from $50,000 to $75,000, where it remains today.[72]

Matching the language of the MMWA's amount in controversy requirement for federal jurisdiction, federal diversity jurisdiction's amount in controversy requirement is "exclusive of interest and costs."[73] The federal diversity jurisdiction statute does not define what constitutes an interest or a cost.[74] The Supreme Court addressed whether the amount in controversy requirement for federal diversity jurisdiction should include attorneys' fees in the 1933 case *Missouri State Life Insurance Co. v. Jones*.[75] There, the Court held that the amount in controversy requirement for federal diversity jurisdiction includes attorneys' fees, so long as the recovery of attorneys' fees is required or permitted by the underlying statute or contract between the parties.[76] The Fourth Circuit followed this reasoning in the 2013 case *Francis v. Allstate Insurance Co.*,[77] holding that attorneys' fees can count towards the amount in controversy requirement for federal diversity jurisdiction so long as "the fees are provided for by contract" or "a statute mandates or allows payment of attorney's fees."[78]

The purpose of federal diversity jurisdiction is to provide litigants from different state jurisdictions an unbiased forum.[79] Chief Justice Marshall opined in early federal diversity jurisdiction jurisprudence that federal diversity jurisdiction is a safeguard of forum neutrality that

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72. Federal Courts Improvement Act of 1996, Pub. L. 104-317, § 205(a), 110 Stat. 3847, 3850 (codified at 28 U.S.C. § 1332(a)).

73. § 1332(a).

74. *Id.*

75. 290 U.S. 199 (1933).

76. *Id.* at 202 (treating attorneys' fees imposed by the underlying state statute as part of the sum needed to establish the amount in controversy requirement for federal diversity jurisdiction).

77. 709 F.3d 362 (4th Cir. 2013).

78. *Id.* at 368 (citing 15 JAMES W. MOORE ET AL., MOORE'S FEDERAL PRACTICE, Civil § 102.106(6)(a) (3d ed. 2023)); *see* 15 JAMES W. MOORE ET AL., MOORE'S FEDERAL PRACTICE, Civil § 102.106(6)(a) (3d ed. 2023) (explaining the general exception for when attorneys' fees should be included in the amount in controversy calculation). The circuit split regarding the amount of attorneys' fees to include in the calculation of the amount in controversy requirement when authorized by contract or statute is beyond the scope of this Comment.

79. *Diversity of Citizenship*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/diversity_of_citizenship [https://perma.cc/7PWM-GVMH] (last updated Sept. 2022).

the framers of the Constitution intended to be available to litigants as an alternative to litigating in a foreign state's court system.[80]

The goal of the federal diversity jurisdiction amount in controversy requirement, and its many increases throughout the history of the federal courts, has been to prevent trivial actions from overburdening the federal district courts.[81] Limiting cases with an increasingly large minimum jurisdictional amount reveals Congress's goal of not expending federal court resources on cases worth relatively little.[82]

C. The Class Action Fairness Act of 2005

The CAFA provides federal diversity jurisdiction to class actions with at least one plaintiff from a different jurisdiction than at least one defendant, so long as the claims exceed an amount in controversy of $5,000,000, excluding interests and costs.[83] The language of the CAFA's amount in controversy requirement is analogous to the language of the MMWA, making its interpretation instructive. This Part will address the CAFA's history, construction, and goals.

Congress passed the CAFA in 2005.[84] The CAFA, in pertinent part, amended the federal diversity jurisdiction statute to include specific provisions regarding class actions.[85] These provisions include 28 U.S.C. § 1332(d)(2), which provides that "[t]he district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, *exclusive of interest and costs*, and is a class action."[86]

For 28 U.S.C. § 1332(d)(2) to apply to a class action, the action must meet a diversity requirement.[87] This requirement is not complete

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80. *See* Bank of United States v. Deveaux, 9 U.S. 61, 87 (1809) (discussing how state tribunals should always be impartial regardless of the citizenship of litigants, but that it is still a goal of the constitution to safeguard this neutrality).

81. *See* Horton v. Liberty Mut. Ins. Co., 367 U.S. 348, 350–51 (1961) (stating that Congress's purpose for the increase in the amount in controversy requirement was to reduce congestion in the federal courts); Arai v. Tachibana, 778 F. Supp. 1535, 1538–39 (D. Haw. 1991) (discussing how the increase of the federal diversity jurisdiction amount in controversy requirement from $10,000 to $50,000 purported to reduce the case load of the federal district courts by 40% of the then-current caseload).

82. MOORE ET AL., *supra* note 78, § 102.100.

83. 28 U.S.C. § 1332(d)(2)(A).

84. Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (codified at 28 U.S.C. §§ 1332, 1453, 1711–15).

85. *Id.* § 4(a)(2).

86. § 1332(d)(2) (emphasis added).

87. § 1332(d)(2)(A)–(C).

diversity, rather there are three ways to meet the requirement.[88] Scenario one: Any one plaintiff has diverse citizenship from any one defendant.[89] Scenario two: Any one plaintiff is a foreign state or a citizen of a foreign state, and any defendant is a citizen of a state within the United States.[90] Scenario three: Any one plaintiff is a citizen of a state within the United States and any defendant is a foreign state or a citizen of a foreign state.[91]

Before the CAFA amended the federal diversity jurisdiction statute, the strict complete diversity requirement that applies to all other civil actions prevented many class actions from reaching federal court.[92] Under the former strict diversity requirement, a federal court could not assume jurisdiction over a case on grounds of diversity of citizenship unless no one plaintiff was of the same citizenship of any one defendant.[93] Thus, if one plaintiff in a class action was from the same state as even one defendant in a class action, there could be no diversity jurisdiction over the matter.[94]

The CAFA changed this standard for class actions making it so that only "minimum" diversity is required for class actions wanting to assert diversity jurisdiction, so long as the $5,000,000 minimum amount in controversy requirement is exceeded by aggregating all claims in the action.[95] Accordingly, federal courts can now assume diversity jurisdiction over class actions if any one plaintiff is from a different state as any one defendant, and the claim is worth more than $5,000,000.[96]

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88. *Id.*

89. § 1332(d)(2)(A).

90. § 1332(d)(2)(B).

91. § 1332(d)(2)(C).

92. *See* S. Rep. No. 109-14, at 5 (2005) (discussing how one of the goals of the CAFA is to correct the so-called "flaw" in the then-current federal diversity jurisdiction statute requiring complete diversity of citizenship); Strawbridge v. Curtiss, 7 U.S. 267, 267–68 (1806) (establishing the complete diversity standard), *rev'd on other grounds*; Louisville, Cincinnati, & Charleston R.R. Co. v. Letson, 43 U.S. 497, 554 (1844).

93. *See Strawbridge*, 7 U.S. at 267–68 (establishing the complete diversity standard).

94. *See id.* ("[T]he court does not mean to give an opinion in the case where several parties represent several distinct interests, and some of those parties are, and others are not, competent to sue . . . in the courts of the United States.").

95. F. Elliotte Quinn IV, *A Real Class Act: The Class Action Fairness Act of 2005's Amount in Controversy Requirement, Removal, and the Preponderance of the Evidence Standard*, 78 DEF. COUNS. J. 85, 88 (2011).

96. *Id.*

Like the MMWA, the CAFA allows for federal jurisdiction over class action matters in which the amount in controversy "exceeds the sum or value of $5,000,000, *exclusive of interest and costs*, and is a class action."[97] Like the federal diversity jurisdiction amount in controversy requirement and the MMWA amount in controversy requirement, courts are to calculate the amount in controversy under the CAFA exclusive of interests and costs.[98] Similarly, the CAFA does not define what constitutes interest and costs.[99]

While the issue of what interests and costs means under the CAFA has not reached the Supreme Court, some circuit courts have interpreted the CAFA's amount in controversy requirement.[100] The Ninth Circuit, for example, interpreted the CAFA's amount in controversy requirement in a similar manner as it interprets the federal diversity jurisdiction amount in controversy requirement.[101] In doing so, the Ninth Circuit held that the CAFA's amount in controversy requirement requires the assessment of attorneys' fees into the amount in controversy calculation when the recovery of attorneys' fees is permitted by the statute or contract underlying a plaintiff's claims.[102] Likewise, the Eighth Circuit decided that attorneys' fees can be included under the CAFA's amount in controversy requirement, even when the parties have stipulated to limit the amount of recoverable attorneys' fees, because the underlying statute allowed for the recovery of attorneys' fees.[103]

While drafting the CAFA, Congress saw "numerous problems with [the] current class action system."[104] The CAFA was intended to "correct[] a flaw in the [then] current diversity jurisdiction statute (28 U.S.C. § 1332) that prevent[ed] most interstate class actions from

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97. 28 U.S.C. § 1332(d)(2) (emphasis added).

98. *Id.*

99. *Id.*

100. *See* Arias v. Residence Inn by Marriott, 936 F.3d 920, 922–24 (9th Cir. 2019) (considering the attorneys' fees estimated by the class in determining the amount in controversy requirement for claims under the CAFA); Faltermeier v. FCA US LLC, 899 F.3d 617, 622 (8th Cir. 2018) (upholding the district court's inclusion of the class's attorneys' fee in the amount in controversy calculation for claims under the CAFA).

101. *See Arias*, 936 F.3d at 922–24.

102. *Id.* at 922.

103. *Faltermeier*, 899 F.3d at 622 (discussing how federal jurisdiction was proper when the underlying Missouri statute authorized the recovery of attorneys' fees and it was "more likely than not" that those attorneys' fees would be over $1,400,000, overcoming the threshold amount for jurisdiction under the CAFA).

104. S. Rep. No. 109-14, at 4 (2005).

being adjudicated in federal courts."[105] Congress saw the CAFA as necessary to protect consumers from an array of abuses and deficiencies in the former class action system where most class actions were adjudicated in the state courts.[106]

Congress intended for the CAFA to allow for the adjudication of more interstate class actions in federal court, the so-called "proper forum" for these types of actions, on a diversity jurisdiction basis.[107] Congress saw the federal courts as the proper forum for interstate class actions because of the number of plaintiffs involved, the amount of money involved, and the implication of interstate commerce issues present in such mass actions.[108]

The purpose of the federal diversity jurisdiction amount in controversy requirement is to limit which actions can make it into federal court.[109] This rationale is supported by the fact that an earlier iteration of the CAFA included a lower amount in controversy requirement, which was raised to $5,000,000 before its passage.[110] Additionally, Congress's rationale for the CAFA, which is that high stakes class actions belong in federal court, implies that the $5,000,000 requirement serves to weed out actions that are not high value enough to belong in the federal courts.[111] However, Congress stated its intention that the amount in controversy requirement be read expansively, instructing courts to err on the side of allowing federal jurisdiction over the class action if there is uncertainty.[112] This principle appears to support the inclusion of attorneys' fees into the

105. *Id.* at 5.

106. *See id.* at 4 (lamenting state courts' inconsistent applications of their governing rules, their inadequate supervision over litigation procedures and proposed settlements, and the resulting marginalization of class members by their own attorneys).

107. *Id.* at 5.

108. *Id.*

109. *See* H.R. Rep. No. 93-1107, at 42 ("The purpose of these jurisdictional provisions is to avoid trivial or insignificant actions being brought as class actions in the federal courts.").

110. *See* Jacob R. Karabell, Note, *The Implementation of "Balanced Diversity" Through the Class Action Fairness Act*, 84 N.Y.U. L. REV. 300, 306 (2009) (discussing the motivations behind the CAFA).

111. *See* S. Rep. No. 109-14, at 5 (discussing the necessity of the CAFA because of the number of plaintiffs and amount of money involved in the types of class actions covered by the act).

112. *Id.* at 42.

calculation of the CAFA's amount in controversy requirement, as circuit courts have held.[113]

D. The Circuit Split

To understand why it is proper for the interpretation of the MMWA's amount in controversy requirement to include attorneys' fees into the calculation when the recovery of those fees is authorized by the underlying statute, it is important to understand the competing positions of the present circuit split. The Sections of this Part will consider the essential aspects of the circuit split, including the Ninth Circuit's *Shoner* decision and its precedents, as well as the Fourth Circuit's *Saval* decision and the cases that follow it.

The *Shoner* case was a class action lawsuit against Carrier Corporation, an air conditioner manufacturer.[114] The class brought a federal claim under the MMWA and various state law claims for an alleged breach of warranty related to Carrier Corporation's air conditioner products.[115] The plaintiffs alleged that Carrier Corporation sold them defective air conditioners that breached both the express and implied warranties of the sale.[116] The key issue in relation to the plaintiffs' MMWA claim was whether the federal district court had jurisdiction over the claim.[117]

The Ninth Circuit determined that the district court did not have subject matter jurisdiction over the MMWA claims because the amount in controversy requirement was not met.[118] While the underlying state statute in *Shoner* did not allow for the recovery of attorneys' fees, the Ninth Circuit determined that the amount in controversy calculation can include attorneys' fees when it is authorized by the underlying state statute.[119]

Even though the Ninth Circuit determined that attorneys' fees can be included in the amount in controversy calculation if authorized by the underlying state statute, the underlying state statute in the case did not allow for the recovery of attorneys' fees, and thus the fees could

113. *See supra* note 100 and accompanying text.
114. Shoner v. Carrier Corp., 30 F.4th 1144, 1147 (9th Cir. 2022).
115. *Id.*
116. *Id.* at 1146–47.
117. *Id.* at 1147.
118. *Id.* at 1150.
119. *Id.* at 1149.

not count toward Shoner's amount in controversy for the MMWA claims.[120] The court relied on the following two arguments.[121]

First, the Ninth Circuit reasoned that the statutes establishing the amount in controversy requirements for federal diversity jurisdiction and the CAFA both have the same language excluding costs and interests as the MMWA, and both include attorneys' fees when authorized by the underlying statute.[122] The Ninth Circuit stated that there was no reason for it to depart from that understanding when interpreting the MMWA.[123] In doing so, the Ninth Circuit cited its precedent interpreting both the federal diversity jurisdiction and CAFA amount in controversy requirements to include attorneys' fees when authorized by the underlying state statute.[124]

Second, the Ninth Circuit reasoned that allowing attorneys' fees to count toward the amount in controversy requirement under the MMWA would not render meaningless its requirement that each individual claim be worth at least $25.[125] This is because when the underlying statute does not authorize the recovery of attorneys' fees, the claim would still need to reach the $25 threshold.[126]

Before *Shoner*, the Seventh Circuit determined that attorneys' fees can count towards the amount in controversy requirement of the MMWA in two cases, but it did not explain its departure from the Fourth Circuit's holding to the contrary.[127] In *Gardynski-Leschuck v. Ford*

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120. *Id.* at 1150 ("Michigan's Consumer Protection Act makes clear that attorneys' fees are not available 'in a class action.'" (quoting Mich. Comp. Laws § 445.911(2))).

121. *Shoner*, 30 F.4th at 1148–49.

122. *Id.* at 1148.

123. *Id.* (citing Galt G/S v. JSS Scandinavia, 142 F.3d 1150, 1156 (9th Cir. 1998); Fritsch v. Swift Transp. Co. of Ariz., 899 F.3d 785, 794 (9th Cir. 2018)).

124. *Id.* (citing Galt G/S v. JSS Scandinavia, 142 F.3d 1150, 1156 (9th Cir. 1998); Fritsch v. Swift Transp. Co. of Ariz., 899 F.3d 785, 794 (9th Cir. 2018)).

125. *Id.* at 1149.

126. *Id.*

127. Saval v. BL Ltd., 710 F.2d 1027, 1033 (4th Cir. 1983) (per curiam) (explaining that absent state statutes or contractual provisions that transform attorney fees into litigants' entitled substantive rights, "cost[s] and expenses" must be read as one and to include attorney fees; thus, attorney fees cannot be considered in calculating jurisdictional amount); Gardynski-Leschuck v. Ford Motor Co., 142 F.3d 955, 958–59 (7th Cir. 1998) (including attorneys' fees in the MMWA's amount in controversy requirement calculus, only if they are part of damages; however, the amount is limited to the amount accrued at the time of removal and becomes further subject to whether a state statute calls for an award of fees as part of costs); Burzlaff v. Thoroughbred Motorsports, Inc., 758 F.3d 841, 845 (7th Cir. 2014) (including attorneys' fees in the

Motor Co.,[128] the plaintiff brought a MMWA claim against Ford for unsatisfactory repairs on a car.[129] The court stated that it was not clear whether it could have included attorneys' fees in the calculation of the plaintiff's amount in controversy under Illinois law.[130] However, the court did not further explain why it thought it proper to include attorneys' fees if permitted by underlying state law.[131]

The Seventh Circuit most recently included attorneys' fees in the MMWA amount in controversy requirement in *Burzlaff v. Thoroughbred Motorsports, Inc.*[132] In *Burzlaff*, the plaintiff sued a car dealership for breach of warranties due to numerous ongoing complications with the new car that he purchased from the dealership.[133] The defendant contested the jury verdict for the plaintiff on the MMWA claim.[134] The Seventh Circuit upheld the jury verdict finding for the plaintiff and held that the MMWA's amount in controversy requirement could include attorneys' fees incurred at the time of removal.[135] However, once again, the Seventh Circuit did not explain its departure from the Fourth Circuit's reasoning in *Saval* when it included attorneys' fees in the amount in controversy calculation.[136]

The plaintiffs in *Saval* sued over defects that developed in their Jaguar automobiles.[137] Each of the plaintiffs' cars had six distinct mechanical issues, and each car required repeated servicing, which did

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MMWA's amount in controversy requirement calculus, and applying *Gardynski-Leschuck* to further confirm that state statutes may influence the calculations for determining the amount in controversy, such as the Wisconsin statute).

128. 142 F.3d 955 (7th Cir. 1998).

129. *Id.* at 956.

130. *See id.* at 958 (holding that attorneys' fees could count towards the amount in controversy if the prevailing party is entitled to the recovery of such fees but declining to address whether the law in this case permitted such recovery and resolving the issue on other grounds).

131. *Id.* (explaining that while fee awards under the MMWA are included in judgment rather than costs, it is unclear under precedent Illinois case law as to whether the attorney fees would be calculated as damages or as costs).

132. 758 F.3d 841 (7th Cir. 2014).

133. *Id.* at 843–44.

134. *Id.* at 843.

135. *Id.* at 844–45 (citing *Gardynski-Leschuck*, 142 F.3d at 958) (discussing the amount of attorneys' fees incurred at the time of removal and intending to include attorneys' fees in the amount in controversy requirement calculation under the MMWA).

136. *Id.*

137. Saval v. BL Ltd., 710 F.2d 1027, 1029 (4th Cir. 1983) (per curiam).

not resolve the issues.[138] The plaintiffs brought claims under the MMWA, and various state statute claims under tort law.[139] The main issue on appeal was whether the federal court had jurisdiction over the plaintiffs' claims under the MMWA, and whether the plaintiffs met the amount in controversy requirement for such jurisdiction.[140]

The court determined that the district court lacked subject matter jurisdiction because the amount in controversy requirement was not met.[141] The court declined to consider the plaintiffs' attorneys' fees that had accrued at the time of removal into the amount in controversy requirement under the MMWA.[142] The Fourth Circuit reasoned that the "cost[s] and expenses" referred to in 15 U.S.C. § 2310(d)(2) should be read together, and thus, attorneys' fees are both costs and expenses, making the exclusion of "interests and costs" in the § 2310(d)(3)(B) amount in controversy requirement apply to attorneys' fees.[143] The Fourth Circuit further reasoned that including attorneys' fees in the amount in controversy would make the MMWA's $25 individual claim requirement meaningless, presumably because attorneys' fees alone would always exceed $25 on individual claims.[144] In support of this reasoning, the Fourth Circuit dismissed the fact that the $25 minimum individual claim provision did not contain any of the exclusionary language contained in the amount in controversy provision, stating that the omission must have been unintentional.[145]

The Fourth Circuit rejected the analogy between the amount in controversy requirements of diversity jurisdiction and the MMWA because "although the [amount in controversy] language of [the diversity jurisdiction statute] is nearly identical to that contained in [the MMWA], the latter statute must be construed in the light of § 2310(d)(2)."[146] Thus, the Fourth Circuit found that § 2310(d)(2)'s language stating that should a plaintiff prevail, they are entitled to "cost and expenses (including attorneys' fees based on actual time expended)" was instructive regarding the amount in controversy

138. *Id.*
139. *Id.*
140. *Id.*
141. *Id.* at 1032–33.
142. *Id.* at 1033.
143. *Id.* at 1032.
144. *Id.*
145. *Id.* at 1032 n.7; *supra* note 49 and accompanying text.
146. *Saval*, 710 F.2d at 1033.

requirement in § 2310(d)(3).[147] Finally, the Fourth Circuit concluded that not including attorneys' fees in the MMWA's amount in controversy requirement is most consistent with the Act's goal of restricting access to federal courts.[148]

Other circuit courts have followed the Fourth Circuit's reasoning in *Saval* without providing independent analysis of the amount in controversy interpretation issue. In *Suber v. Chrysler Corp.*,[149] the Third Circuit held that attorneys' fees should not be included in the amount in controversy calculation for claims brought under the MMWA.[150] The Third Circuit did not provide its own reasoning, but it instead relied on the uniformity of the other circuits that had made such a ruling.[151] Similarly, in *Boelens v. Redman Homes, Inc.*,[152] the Fifth Circuit held that attorneys' fees should not be included in the amount in controversy calculation for MMWA claims.[153] The Fifth Circuit cited *Saval*, stating that attorneys' fees are costs within the meaning of § 2310(d)(3), and thus should be excluded from the MMWA amount in controversy calculation.[154] The Fifth Circuit provided no independent reasoning for why attorneys' fees are "costs."[155] Finally, in *Ansari v. Bella Automotive Group Inc.*,[156] the Eleventh Circuit held that attorneys' fees should not be included in the amount in controversy calculation for MMWA claims.[157] Like the Fifth Circuit, the Eleventh Circuit stated that attorneys' fees are costs within the meaning of § 2310(d)(3), and thus, should be excluded from the amount in controversy calculation for claims under the MMWA, and it provided no independent reasoning

147. *Id.* at 1032 (citing 15 U.S.C. § 2310(d)(2)).
148. *Id.*
149. 104 F.3d 578 (3d Cir. 1997).
150. *Id.* at 588 n.12.
151. *See id.* ("Unlike the federal diversity statute, the courts that have considered whether attorney fees are costs within the meaning of the statute have uniformly concluded that they are and thus must be excluded from the amount in controversy determination.").
152. 748 F.2d 1058 (5th Cir. 1984).
153. *Id.* at 1069.
154. *Id.*
155. *See id.*
156. 145 F.3d 1270 (11th Cir. 1998) (per curiam).
157. *Id.* at 1271–72.

for why attorneys' fees are "costs" within the meaning of the MMWA's amount in controversy requirement.[158]

E. Tools of Statutory Interpretation

Two principles of statutory interpretation that are most relevant for determining how to interpret the MMWA's amount in controversy provision are ordinary meaning and the prior interpretation of the same or similar language in other statutes.

Ordinary meaning is a principle of interpretation that states that the language of a statute should be interpreted in accordance with the words' "ordinary, contemporary, common meaning."[159] Ordinary meaning is the starting point of statutory interpretation for undefined terms within a statute.[160] The Supreme Court looks first to the ordinary meaning when faced with issues of statutory interpretation, and references ordinary meaning more than any other tool of statutory interpretation.[161] If the ordinary meaning produces a clear result, the interpretation should end there.[162] Consistent with the ordinary meaning principle, courts should not supply omissions into statutes, because "[t]o supply omissions transcends the judicial function" to interpret statutes.[163]

Statutes should be read in light of their purpose, precedents, and prior authorities.[164] This includes consideration of the goals of the statute.[165] The Supreme Court has honored this principle by refusing to apply an interpretation that undermined a basic objective of a federal statute.[166] Additionally, prior interpretations of similar

158. *Id.* (citing Suber v. Chrysler Corp., 104 F.3d 578, 589 n.12 (3d Cir. 1997); Saval v. B.L. Ltd., 710 F.2d 1027, 1032–33 (4th Cir. 1983); *Boelens*, 748 F.2d at 1069; Gardynski-Leschuck v. Ford Motor Co., 142 F.3d 955 (7th Cir. 1998)).

159. Food Mktg. Inst. v. Argus Leader Media, 139 S. Ct. 2356, 2362 (2019).

160. *Id.* at 2364.

161. *See* Kevin P. Tobia, *Testing Ordinary Meaning*, 134 HARV. L. REV. 726, 730 (2020) (discussing how an empirical study of the Supreme Court found that in recent years the Justices "referenced text/plain meaning and Supreme Court precedent more frequently than any of the other interpretive tools" (quoting Anita S. Krishnakumar, *Statutory Interpretation in the Roberts Court's First Era: An Empirical and Doctrinal Analysis*, 62 HASTINGS L.J. 221, 251 (2010))).

162. *Food Mktg. Inst.*, 139 S. Ct. at 2364.

163. Wallace v. Cutten, 298 U.S. 229, 237 (1936) (quoting Iselin v. United States, 270 U.S. 245, 250–51).

164. Dolan v. U.S. Postal Serv., 546 U.S. 481, 486 (2006).

165. *Id.*

166. *See* Kasten v. Saint-Gobain Performance Plastics Corp., 563 U.S. 1, 10 (2011).

language in like statutes can inform the interpretation of statutory provisions.[167] For example, in *Kasten v. Saint-Gobain Performance Plastics Corp.*,[168] the Supreme Court considered how other statutes interpreted the word "file" to determine whether the federal statute at issue's reference to the undefined term "file" should include oral filings.[169] Accordingly, the interpretation of the federal diversity jurisdiction statute and the CAFA can be instructive when interpreting the MMWA.[170]

II. ANALYSIS

The MMWA's federal jurisdiction amount in controversy requirement should include attorneys' fees incurred by the time of removal so long as the underlying statute or contract permits the recovery of such fees. The statutory interpretation of the MMWA, its goals, and its similarity to the federal diversity jurisdiction and CAFA amount in controversy requirements support such an interpretation.[171] This Part will first examine the statutory interpretation of the MMWA's amount in controversy requirement. Then, this Part will compare the MMWA's amount in controversy requirement to the amount in controversy requirements of the federal diversity jurisdiction statute and the CAFA. Finally, this Part concludes with a discussion on why the policy underlying the MMWA, absent clarification or amendment from Congress, supports the inclusion of attorneys' fees in the amount in controversy calculation.

A. Statutory Interpretation

The Fourth Circuit's interpretation of the MMWA is riddled with flawed reasoning. The Fourth Circuit reasoned that 15 U.S.C. § 2310(d)(3) states that the amount in controversy requirement excludes "interests and costs," which they argue includes attorneys'

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167. *See id.* at 8–9 (considering the interpretation of the phrase at issue in like statutes to interpret the statute at issue in the case).

168. 563 U.S. 1 (2011).

169. *Id.* at 8–9.

170. *See id.* at 10–11 (discussing that other statutes containing similar, yet broader, language may imply that Congress intended to limit the phrase to writings only).

171. *See infra* Section II.A (discussing the statutory interpretation of the MMWA); *infra* Section II.B (discussing the MMWA's amount in controversy requirement's similarity to the federal diversity jurisdiction amount in controversy requirement); *infra* Section II.C (discussing the MMWA's amount in controversy requirement's similarity to the CAFA's amount in controversy requirement).

fees because the § 2310(d)(2) provision allowing the plaintiff to recover attorneys' fees in a MMWA action states that a plaintiff can recover "cost and expenses (including attorneys' fees based on actual time expended)."[172] However, § 2310(d)(2), the recovery of attorneys' fees provision, uses the clause about attorneys' fees to modify the word "expenses" only.[173] The provision states:

> If a consumer finally prevails in any action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to *the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended)* determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.[174]

The Fourth Circuit then concludes, with little justification, that costs and expenses should be read together and that attorneys' fees are *both* a cost and an expense.[175] The MMWA's amount in controversy provision, § 2310(d)(3)(B), does not include the word expenses at all: "No claim shall be cognizable in a suit brought under paragraph (1)(B) of this subsection . . . if the amount in controversy is less than *the sum or value of $50,000 (exclusive of interests and costs)* computed on the basis of all claims to be determined in this suit[.]"[176]

The Fourth Circuit's reasoning is improper because of the plain meaning of the provisions. The jurisdictional requirements of 15 U.S.C. § 2310(d)(3) do not use the word "expenses" at all and make no reference to attorneys' fees, while § 2310(d)(2) does use the word "expenses" to refer to attorneys' fees.[177] This implies that attorneys' fees are considered expenses under the MMWA, and the word "expenses" is tellingly absent from the jurisdictional requirements of § 2310(d)(3).[178]

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172. *See* Saval v. B.L. Ltd., 710 F.2d 1027, 1032 (4th Cir. 1983) (per curiam).
173. 15 U.S.C. § 2310(d)(2).
174. *Id.* (emphasis added).
175. *Saval*, 710 F.2d at 1032.
176. § 2310(d)(3)(B) (emphasis added).
177. *See id.* (stating that the amount in controversy should be exclusive of costs and interests, not exclusive of expenses); § 2310(d)(2) (stating that a plaintiff who brought a successful action under section one of the Act can recover as part of the judgment "cost[s] and expenses (including attorneys' fees based on the actual time expended)").
178. § 2310(d)(3).

In statutory interpretation, the Supreme Court first looks to the ordinary meaning of the statute.[179] With the MMWA, a reader would understand that the parenthetical discussing attorneys' fees only modifies the word "expenses."[180] The ordinary meaning of the word "costs" is court costs, and does not include attorneys' fees, bolstering the argument that it is unreasonable to assume that the parenthetical referencing attorneys' fees in § 2310(d)(2) was meant to apply to the word "costs" along with the word "expenses."[181] Accordingly, the *Saval* court's baseless conclusion that "costs" and "expenses" must be read together in § 2310(d)(2) is weakened by the fact that an ordinary reading, the most common statutory interpretation tool used by today's Supreme Court, would likely produce an opposite result.[182]

The Fourth Circuit justifies their interpretation by stating that if attorneys' fees are included in the amount in controversy, then the interpretation of § 2310(d)(3)(A)'s $25 individual claim limit would be made obsolete.[183] This is simply incorrect. If the MMWA's amount in controversy requirement was interpreted like the federal diversity jurisdiction's amount in controversy requirement, attorneys' fees would only be included in the amount in controversy when the recovery of attorneys' fees is permitted or mandated by the underlying state statute or by the contract between the parties.[184] Thus, in situations where the underlying statute or agreement does not permit the recovery of attorneys' fees, the plaintiff's damages would still have to meet the $25 individual claim limit without including attorneys' fees

179. *See* Tobia, *supra* note 161, at 730.

180. *See id.*

181. *See Costs*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/costs [https://perma.cc/7V6Z-KKY8] ("As per 'the American rule', attorneys' fees are not considered court costs and each party pays their own attorneys' fees. Attorney's fees are often the most expensive component of litigation, but the prevailing party is generally not able to recoup its attorneys' fees unless recovery is authorized by a specific statute or the parties' contract."); *Cost*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("The expenses of litigation, prosecution, or other legal transaction, esp. those allowed in favor of one party against the other. Some but not all states allow parties to claim attorney's fees as a litigation cost.").

182. *See* Saval v. BL Ltd., 710 F.2d 1027, 1032 (4th Cir. 1983) (per curiam); Tobia, *supra* note 161, at 730; *Costs*, *supra* note 181.

183. *Saval*, 710 F.2d at 1032.

184. *See* Mo. State Life Ins. Co. v. Jones, 290 U.S. 199, 200–01 (1933) (determining that attorneys' fees may be included to establish the diversity jurisdiction amount in controversy requirement).

into the calculation.[185] Accordingly, the $25 individual claim limit does not support the Fourth Circuit's conclusion.[186]

The Fourth Circuit also concludes that because the § 2310(d)(3)(A) $25 individual claim limit does not exclude costs and interests from the amount in controversy, the omission must have been unintentional.[187] However, it is improper for courts to make this assumption; this is especially true when the omission is a determining factor of interpretation.[188]

The Supreme Court has determined multiple times that the Court should not supply omissions into a statute because to do so "transcends the judicial function."[189] The Fourth Circuit does just that by assuming that the failure to exclude costs and interests from the amount in controversy requirement of § 2310(d)(3)(A) must have been unintentional.[190] Thus, the statute should be interpreted as it reads, which implies that Congress intended for attorneys' fees to be included in the amount in controversy calculus.[191]

B. Similarity to the Federal Diversity Jurisdiction Amount in Controversy Requirement

The federal diversity jurisdiction statute reads like the MMWA's federal jurisdiction amount in controversy requirement.[192] Specifically,

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185. *See id.*; *see also* Shoner v. Carrier Corp. 30 F.4th 1144, 1149 (9th Cir. 2022) (analyzing and rejecting the Fourth Circuit's argument that including attorneys' fees in § 2310(d)(3)(B) renders the $25 amount in controversy threshold superfluous); 15 U.S.C. § 2310(d)(3)(A) (requiring that each individual claim from the plaintiff meet the $25 claim threshold, with no mention of exclusions).

186. *See* § 2310(d)(3)(A); *Shoner*, 30 F.4th at 1149.

187. *Saval*, 710 F.2d at 1032 n.7.

188. *See Shoner*, 30 F.4th at 1149 (citing Lamie v. U.S. Tr., 540 U.S. 526, 542 (2004)); *Lamie*, 540 U.S. at 542 (Kennedy, J., concurring) (holding that it is not the object of the courts to "rescue Congress from its drafting errors" and impose its "preferred result" (quoting United States v. Granderson, 511 U.S. 39, 68 (1994))).

189. Wallace v. Cutten, 298 U.S. 229, 237 (1936) (quoting Iselin v. United States, 270 U.S. 245, 250–51 (1926)).

190. *Saval*, 710 F.2d at 1032 n.7; *see Wallace*, 298 U.S. at 237 (discussing the impropriety of supplying omissions in a statute).

191. *See Shoner*, 30 F.4th at 1149 (discussing how the omission of "excluding interests and costs" in the $25 individual claim limit "tips the scale in favor of" the inclusion of attorneys' fees in the amount in controversy calculus); *see also* cases cited *supra* note 188 (discussing the limits of judicial interpretation regarding Congressional intent).

192. *Compare* 28 U.S.C. § 1332(a) (requiring an amount in controversy in excess of $75,000 "exclusive of interests and costs"), *with* 15 U.S.C. § 2310 (d)(3)(B) (requiring an amount in controversy of at least $50,000 "exclusive of interests and costs").

the federal diversity jurisdiction statute's amount in controversy requirement has the same exclusion provision as the MMWA, stating that the amount in controversy must exceed $75,000 "exclusive of interests and costs."[193] In 1933, the Supreme Court held in *Missouri State Life Insurance Co. v. Jones* that attorneys' fees are included in the amount in controversy required for federal diversity jurisdiction when recovery of such fees is provided by the underlying statute, even though the diversity statute says the amount is "exclusive of interests and costs."[194]

The wording of the MMWA's amount in controversy provision likewise requires that the amount in controversy be no less than $50,000 "exclusive of interests and costs."[195] There is no reason for the interpretation of the MMWA to depart from this well-settled interpretation of a very similarly worded provision.[196] On the contrary, the interpretation and comparison of similar language in similar statutes is a common method of statutory construction.[197] On the other hand, the Fourth Circuit chose not to interpret them similarly because of a concern that it would render § 2310(d)(2) superfluous, which, as previously discussed, is flawed reasoning itself.[198] Accordingly, the provision should be read consistently with the prior interpretation of this exact wording in the federal diversity jurisdiction statute by the Supreme Court.[199]

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193. *See supra* note 192.

194. 290 U.S. 199, 202 (1933) (stating that attorneys' fees authorized by the underlying statute "[become] part of the matter put in controversy" because the fees are "something to which the law [gives the plaintiff] a right" to recover).

195. § 2310 (d)(3)(B).

196. *See* Shoner v. Carrier Corp., 30 F.4th 1144, 1148 (9th Cir. 2022) (finding that there is "no reason to interpret the phrase 'exclusive of interests and costs,' in the MMWA differently from how we interpret the same language in the diversity and CAFA jurisdiction provisions").

197. *See* Kasten v. Saint-Gobain Performance Plastics Corp., 563 U.S. 1, 7–9 (2011) (considering the interpretation of the phrase at issue in like statutes to interpret the statute at issue in the case).

198. *See* Saval v. BL Ltd., 710 F.2d 1027, 1033 (4th Cir. 1983) (acknowledging the "nearly identical" language of the MMWA's amount in controversy requirement and the federal diversity jurisdiction amount in controversy requirement, but still declining to apply the federal diversity jurisdiction interpretation); *supra* Section II.A.

199. *See Jones*, 290 U.S. at 202 (rejecting the argument that attorneys' fees are costs to be excluded under the federal diversity jurisdiction amount in controversy requirement, even though the lower court concluded that the state statute on which the claims were based provided that attorneys' fee should be treated as costs).

Further, the goals of the federal diversity jurisdiction requirement and the MMWA's amount in controversy requirement are the same, providing even more reason for the requirements to be interpreted in the same way.[200] Courts should interpret a statute in light of its goals and avoid interpretations that undermine the objectives of the statute.[201] The federal diversity jurisdiction amount in controversy has the exact same goal of preventing trivial actions in federal courts, and the Supreme Court still interprets it to include attorneys' fees.[202] Thus, it follows that the Supreme Court has determined that actions are not trivial if they meet the amount in controversy requirement, even with the use of attorneys' fees in the sum.[203]

Allowing attorneys' fees to count towards the amount in controversy requirement of the MMWA's jurisdictional requirement would not allow for trivial actions to make their way into federal court. If the Supreme Court thought that trivial actions would result from allowing attorneys' fees to count towards the federal diversity jurisdiction amount in controversy requirement, they would not have made such a decision against the goals of Congress, for the Supreme Court would decline to adopt an interpretation contrary to a basic objective of a statute.[204] Attorneys' fees sought to be included in the amount in

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200. *See* Horton v. Liberty Mut. Ins., 367 U.S. 348, 350–51 (1961) (discussing how Congress aimed to limit congestion in federal courts by raising the amount in controversy requirement); Sarah T. Lepak, Comment, *Federal Jurisdiction Under the Magnuson-Moss Warranty Act*, 52 U. KAN. L. REV. 1041, 1060–61 (2004) (comparing the congressional intent of each statute's amount in controversy requirement in the context of a circuit split regarding the inclusion of punitive damages in the jurisdictional requirement of the MMWA).

201. *See* Dolan v. U.S. Postal Serv., 546 U.S. 481, 486 (2006) (refusing to apply a competing interpretation that undermined a basic objective of the statute at issue).

202. *Jones*, 290 U.S. at 200–01 (holding that federal courts may properly exercise diversity jurisdiction when attorneys' fees are used to meet the amount in controversy if recovery of those fees is provided for by state statute); *see supra* note 199 (demonstrating the shared Congressional intent of the amount in controversy provisions).

203. *Cf. Jones*, 290 U.S. at 202 (explaining that when the plaintiff had the right to recover attorneys' fees, "the amount [of attorneys' fees] so demanded" are treated the same as other types of damages and "became part of the matter put in controversy by the complaint, and not mere 'costs'").

204. *See* United States v. Dickerson, 310 U.S. 554, 562 (1940) (discussing how legislative intent is often relevant in questions of interpretations); *Dolan*, 546 U.S. at 486 (refusing to apply a competing interpretation that undermined a basic objective of the statute at issue); *cf. Jones*, 290 U.S. at 200, 202 (determining that the federal

controversy must be reasonable.[205] This limiting factor protects the goal of limiting trivial actions within the federal court system.[206]

C. Similarity to the Class Action Fairness Act's Amount in Controversy Requirement

The CAFA's amount in controversy requirement, as codified in 28 U.S.C. § 1332(d)(2), also reads like the MMWA's amount in controversy requirement.[207] The CAFA's amount in controversy requirement must exceed $5,000,000 "exclusive of interests and costs."[208] The two circuit courts that have interpreted the CAFA's amount in controversy provision agree that attorneys' fees should be included in the amount in controversy calculation, so long as the underlying statute or contract allows for the recovery of attorneys' fees.[209]

Like the federal diversity jurisdiction language, the language of CAFA's amount in controversy requirement provision is an exact analog to the MMWA's amount in controversy language.[210] The same

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diversity jurisdiction amount in controversy requirement includes attorneys' fees when authorized by the underlying state statute or agreement between the parties, and treating attorneys' fees imposed by the underlying state statute in the case as part of the sum needed to establish the amount in controversy requirement).

205. *See* MODEL RULES OF PRO. CONDUCT r. 1.5(a) (AM. BAR ASS'N 2023) (showing that attorneys' fees must always be reasonable, or risk being invalidated by the court); MOORE, *supra* note 78 ("[O]nly a reasonable estimate of [attorneys'] fees may be included in determining whether the jurisdictional minimum has been satisfied."); Dep't of Recreation & Sports v. World Boxing Ass'n, 942 F.2d 84, 90 (1st Cir. 1991) ("[W]hile attorney's fees may, if authorized by law, constitute part of the amount in controversy, they may only do so to the extent *reasonable*.").

206. *See supra* notes 202–05 and accompanying text (arguing that counting attorneys' fees toward the amount in controversy requirement would not cause litigants to take up trivial actions).

207. *Compare* 28 U.S.C. § 1332(d)(2) (requiring an amount in controversy exceeding $5,000,000 "exclusive of interests and costs"), *with* 15 U.S.C. § 2310(d)(3)(B) (requiring an amount in controversy of no less than $50,000 "exclusive of interests and costs").

208. § 1332(d)(2).

209. *See* Arias v. Residence Inn by Marriott, 936 F.3d 920, 923–24 (9th Cir. 2019) (considering the attorneys' fees estimated by the class in determining the amount in controversy requirement for claims under the CAFA, without holding whether they may be included); Faltermeier v. FCA US LLC, 899 F.3d 617, 622 (8th Cir. 2018) (upholding the district court's inclusion of the class's attorneys' fee in the amount in controversy calculation regarding their claims under the CAFA).

210. *See supra* note 207 (comparing uses of the statutory language "exclusive of interests and costs").

language's use and interpretation in a similar statute is informative.[211] Accordingly, this is yet another reason the MMWA's amount in controversy requirement should be interpreted to include attorneys' fees when authorized by the underlying statute or agreement.

Statutes should be interpreted in light of their purpose, precedents, and relevant authorities.[212] CAFA is a relevant authority that should. inform the interpretation of MMWA's amount in controversy provision.[213] Accordingly, the MMWA's amount in controversy provision should be read in light of the prior circuit court interpretation of this exact wording in the CAFA.[214]

The goals of the CAFA's and the MMWA's amount in controversy requirements are also the same.[215] Both amount in controversy requirements purport to only allow for actions with sufficient stakes to make it into the federal courts.[216] The CAFA's amount in controversy requirement purports to keep actions of insufficient worth out of the federal courts; however, Congress intended for the provision to be read permissively, and circuit courts have included attorneys' fees when interpreting the provision.[217] It follows that actions where the amount in controversy exceeds $5,000,000, even including attorneys' fees, are not trivial and are worthy of the federal courts' jurisdiction.[218]

This provides further justification that the MMWA's amount in controversy should include reasonable attorneys' fees. The purpose of the MMWA's amount in controversy provision, like the CAFA, is to prevent trivial actions in the federal courts.[219] This purpose would not

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211. *See supra* note 194 and accompanying text (examining how the phrase was interpreted in related statutes and applying that interpretation to the statute at issue).

212. Dolan v. U.S. Postal Serv., 546 U.S. 481, 486 (2006).

213. *Supra* note 209 and accompanying text.

214. *See id.*

215. *See supra* note 60 and accompanying text (discussing how the main purpose of the MMWA's amount in controversy requirement is to prevent flooding the courts with trivial matters). *Compare* H.R. Rep. No. 93-1107, at 42 (1974) (intending for the amount in controversy requirement to limit trivial cases entering federal court under the MMWA), *with* S. Rep. No. 109-14, at 5 (2005) (justifying the federal jurisdiction of interstate class actions under the CAFA by noting the high financial stakes).

216. *See supra* note 215 (emphasizing that the MMWA's wording echoes the CAFA's).

217. *See supra* notes 107–13 and accompanying text (discussing the goals and interpretation of the CAFA).

218. *See supra* notes 109–13 and accompanying text (discussing the goals of the CAFA amount in controversy provision).

219. *See supra* note 215 and accompanying text.

be subverted by the inclusion of attorneys' fees in the calculus because an action exceeding the $50,000 amount in controversy minimum with the inclusion of attorneys' fees would not be trivial. The circuit courts have implied as much when determining, in consideration of the identical language and goals of the CAFA, that attorneys' fees can count towards the $5,000,000 amount in controversy requirement.[220] Again, attorneys' fees must be reasonable, further protecting the goal of limiting trivial actions in federal courts because only realistic amounts will be considered for inclusion.[221]

D. Policy Considerations

Without an amendment of the MMWA from Congress, the Ninth Circuit's interpretation accords with congressional intent.[222] Additionally, allowing attorneys' fees into the amount in controversy calculation is better for consumers because more accommodating amount in controversy calculations will increase access to the federal courts, which can provide a more neutral forum for consumers.[223] Congress did not intend for the MMWA to bar consumers trying to reach federal court, because it included federal causes of action.[224] Like the federal diversity jurisdiction amount in controversy requirement, the MMWA's amount in controversy requirement was included to help control the federal courts' caseload and ensure that resources are not expended on cases of little financial worth.[225] However, because Congress has not amended the MMWA's amount in controversy requirement since its inception, it can be assumed that the $50,000 requirement remains a sufficient barrier to entry to the federal

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220. *See supra* note 100 and accompanying text (showing agreement amongst circuit courts that attorneys' fees can be included when calculating the amount in controversy).

221. *See supra* note 205 and accompanying text (discussing the reasonableness requirement for calculation of attorneys' fees).

222. *See supra* notes 60, 200 (showing the intent to limit trivial actions entering federal court under the Magnusson-Moss Warranty Act).

223. *See Diversity of Citizenship*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/Diversity_of_citizenship [perma.cc/7PWM-GVMH] (providing that the goal of diversity jurisdiction's access to the federal courts is to provide litigants with an unbiased forum).

224. *See* 15 U.S.C. § 2310(d)(1) (providing that any consumer damaged by a commercial actor in violation of the Act's obligations can bring suit in either federal or state court).

225. *See supra* notes 60, 200 and accompanying text (showing Congressional intent to limit trivial actions in federal court).

courts in the eyes of Congress.[226] Whether the action demands $50,000 in damages, or $40,000 in damages and $10,000 in reasonable attorneys' fees that the plaintiff has a statutory or contractual right to recover, the actions are of the same worth, and neither have a trivial amount at stake.[227] If Congress intended for a different interpretation of the amount in controversy provision it should amend the MMWA to provide for such an interpretation. Nothing in the current amount in controversy provision excludes attorneys' fees, and it is improper for courts to supply omissions into statutes.[228]

Further, not allowing attorneys' fees into the amount in controversy calculation can have real consequences for consumers trying to obtain relief for their injuries.[229] For example, in *Saval*, the Fourth Circuit dismissed the plaintiffs' claims entirely due to the inability to meet the amount in controversy requirement of the MMWA.[230] Had the *Saval* court included the plaintiffs' reasonable attorneys' fees in the amount in controversy requirement, the plaintiffs' claims could have moved forward and obtained relief for their injuries in the forum that they

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226. In fact, the Federal Trade Commission has amended the MMWA at the direction of Congress as recently as 2016 pursuant to the E-Warranty Act of 2015, and poignantly left the amount in controversy requirements for federal jurisdiction untouched. *See FTC Issues Final Rule Amendments Related to the E-Warranty Act*, FTC (Sep. 6, 2016), https://www.ftc.gov/news-events/news/press-releases/2016/09/ftc-issues-final-rule-amendments-related-e-warranty-act [https://perma.cc/9ZHE-BFV3] (discussing the amendments to the MMWA).

227. *See* Shoner v. Carrier Corp., 30 F.4th 1144, 1148 (9th Cir. 2022) (explaining that an amount in controversy is "*all* relief to which the plaintiff is entitled if the action succeeds" including attorneys' fees when authorized by underlying state statute or agreement between the parties (quoting Fritsch v. Swift Transp. Co. of Ariz., 899 F.3d 785, 795 (9th Cir. 2018))).

228. *See* Wallace v. Cutten, 298 U.S. 229, 237 (1936) (holding that "[supplying] omissions transcends the judicial function" (quoting Iselin v. United States, 270 U.S. 245, 250–51 (citation omitted))); *supra* Section II.A (discussing how statutory interpretation reveals that the current construction of the MMWA's amount in controversy provision does not exclude attorneys' fees).

229. *See* Ansari v. Bella Auto. Grp., Inc., 145 F.3d 1270, 1271–72 (11th Cir. 1998) (per curiam) (affirming a dismissal with prejudice of the plaintiff's MMWA claims for failure to meet the amount in controversy requirement); Boelens v. Redman Homes, Inc., 748 F.2d 1058, 1071 (5th Cir. 1984) (vacating and remanding with instructions to dismiss the plaintiff's MMWA claims due to failure to meet amount in controversy requirement); Saval v. BL Ltd., 710 F.2d 1027, 1029–30 (4th Cir. 1983) (per curiam) (affirming a dismissal of the plaintiff's MMWA claims for failure to meet the amount in controversy requirement).

230. *Saval*, 710 F.2d at 1029–30 (affirming a dismissal of the plaintiff's MMWA claims for failure to meet the amount in controversy requirement).

thought was best for their claims.[231] In a law intended to protect consumers, that would appear to be the favorable result.[232]

CONCLUSION

This Comment argues the Ninth Circuit's decision[233] to allow attorneys' fees into the amount in controversy calculation for claims brought in federal court under the MMWA is the proper interpretation of the Act. A comparison of the MMWA's interests and costs provision with statutes of similar intent and form supports this conclusion. Additionally, allowing the attorneys' fees into the amount in controversy is better for consumers and more aligned with Congress's goals.

The federal diversity jurisdiction statute and the CAFA both have amount in controversy provisions with the same language as the MMWA, which exclude costs and interests.[234] Both of these widely used provisions have been consistently interpreted to include attorneys' fees in the amount in controversy calculation if the recovery of attorneys' fees is authorized by the underlying statute or agreement.[235] There is no compelling reason for the MMWA to depart from this interpretation. In fact, there are compelling reasons to apply this interpretation to the MMWA, including established statutory interpretation principles and the fact that allowing attorneys' fees into the amount in controversy calculation would provide consumers with greater access to a more neutral forum when desired.[236] Further,

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231. *See Shoner*, 30 F.4th at 1148 (holding that attorneys' fees are not costs within the meaning of the MMWA and thus should be included in the amount in controversy calculation).

232. *See* Steverson, *supra* note 9, at 160 (citing S. Rep. No. 93-151, at 2 (1973)); S. Rep. No. 93-151, at 2 ("[T]his bill aims to increase the ability of the consumer to make more informed product choices and to enable him to economically pursue his own remedies when a supplier of a consumer product breaches a voluntarily assumed warranty or service contract obligation.").

233. *Shoner*, 30 F.4th at 1148.

234. *See supra* notes 204, 207 (using identical language to define the amount in controversy requirements in each of the referenced statutes).

235. *See supra* notes 73–78, 97–103 and accompanying text (discussing the interpretation of the federal diversity jurisdiction and CAFA's amount in controversy provisions respectively).

236. *See supra* note 196 and accompanying text (interpreting the phrase consistently across similar statutes); *supra* Section II.D (discussing why including attorneys' fees in the amount in controversy calculation is the better policy).

Congress did not intend that the MMWA restrict access to the federal courts so severely.[237]

Accordingly, without amendment of the MMWA by Congress, if the Supreme Court grants a writ of certiorari on this issue, it should rule that the MMWA's amount in controversy requirement includes attorneys' fees if permitted by the underlying statute or contract.

237. *See supra* note 224 and accompanying text (discussing the significance of Congress's inclusion of federal remedies in the MMWA's provisions).