Comments:

A Controversial Provision: Should Federal Courts Allow Plaintiffs Under the Magnuson-Moss Warranty Act to Include Attorneys' Fees to Reach the Amount in Controversy Requirement?

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ABSTRACT

In 1975, the United States Congress passed the Magnuson-Moss Warranty Act ("MMWA") with the goal of alleviating the problem of sellers failing to honor their given warranties on consumer products. The MMWA provides a remedy for breach of warranty via a cause of action that consumers can bring in state or federal court. Federal court jurisdiction requires the claim to have an amount in controversy of at least $50,000. This amount must be free of "interests and costs." In another section, the MMWA provides that victorious plaintiffs are entitled to "cost and expenses," which include reasonable attorneys' fees.

Litigation surrounding the MMWA has raised the question of whether attorneys' fees are part of "interests and costs" and thus whether they count toward the amount in controversy. In 1983, the Fourth Circuit in *Saval v. BL Ltd.* introduced what would become the majority rule on

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this issue—attorneys' fees arising from the MMWA are excluded from the amount in controversy requirement. However, in 2022, the Ninth Circuit's decision in *Shoner v. Carrier Corp.* created a circuit split by holding that claims under the MMWA could reach the amount in controversy using attorneys' fees.

This Comment first examines the history of the MMWA, from the consumer product landscape that inspired it to its passage. The Comment then considers the statutory language and legislative history of the MMWA. Next, this Comment provides a summary and timeline of the circuit court cases that have ruled on the issue. Finally, this Comment analyzes the issue and suggests that plaintiffs under the MMWA should be allowed to include their attorneys' fees in the amount in controversy requirement for federal jurisdiction. In reaching this conclusion, this Comment considers the analogous rule in diversity jurisdiction, the purpose of the MMWA, the legal reasoning of the Fourth and Ninth Circuits, and various important policy reasons.

Table of Contents

I. INTRODUCTION 893
II. BACKGROUND 894
A. *The State of Consumer Product Warranties Before the MMWA* ...895
B. *The Magnuson-Moss Warranty Act* 897
1. The Purpose of the MMWA 898
a. Promoting Consumer Understanding 899
b. Ensuring Basic Consumer Protections 900
c. Penalizing Warrantor Non-Performance 900
d. Improving Product Design and Quality 901
2. The Function of the MMWA 901
a. Warranty Requirements under the MMWA 902
b. Remedies for Breach of Warranty under the MMWA 902
c. Jurisdiction of MMWA Breach of Warranty Claims 904
C. *The Circuit Split* 904
1. The Majority Rule 904
a. The Fourth Circuit 904
b. The Fifth Circuit 905
c. The Third and Eleventh Circuits 905
d. The Seventh Circuit 906
2. The Minority Rule 906
a. The Seventh Circuit 907
b. The Ninth Circuit 907
III. ANALYSIS 909
A. *Analogy to Attorneys' Fees in Diversity Jurisdictio*n 910
B. *Statutory Purpose and Legislative History* 912
1. The Plain Language of the Statute 913

2. The Purpose of the MMWA Shown in the Legislative History 914
C. *The Arguments of the Majority and Minority Courts* 915
1. Critique of the Legal Reasoning of the Fourth Circuit 916
2. Defense of the Legal Reasoning of the Ninth Circuit 918
D. *Workability of the Rule, and Other Stare Decisis Factor*s 919
1. Creates Uniformity Among the Circuits 920
2. Fulfills Congressional Intent to Prevent Flooding of Federal Courts 920
3. Other Stare Decisis Factors 921
IV. CONCLUSION 921

I. INTRODUCTION

In the early part of the twentieth century, a wave of injustice arose in the world of consumer products.[1] This injustice appeared especially in those markets into which the average consumer entered, such as the automobile market.[2] Consumers noticed a troublesome trend: products did not work as intended.[3] Manufacturers and sellers offered warranties,[4] promising that the fridge would not leak and the car would not break down. But their word would often prove untrue.[5] In response, state law began to mandate implied warranties.[6] Presidents and executive agencies investigated consumers' concerns.[7] Finally, the United States Congress got involved—hesitantly, at first, but then in force.[8]

In 1975, Congress passed the Magnuson-Moss Warranty Act ("MMWA"), named after the two senators who led the charge in introducing it.[9] The MMWA did what previous attempts could not: protect consumers by making sure their warranties have worth.[10] The MMWA protected consumers by defining requirements for written warranties and providing legal redress for harm caused by breach of warranty.[11]

However, the MMWA did not live up to its intended goal. Soon after the MMWA's passage, judicial interpretation limited the MMWA's

1. *See* S. REP. NO. 93-151, at 4 (1973).
2. *See id.*
3. *See* H.R. REP. NO. 93-1107, at 24 (1974).
4. *See Warranty*, MERRIAM-WEBSTER, https://perma.cc/D35V-FJPU (last visited Dec. 21, 2023).
5. *See* H.R. REP. NO. 93-1107, at 24 (1974).
6. *See id.* at 24.
7. *See id.* at 24–28.
8. *See* S. REP. NO. 93-151, at 5–6 (1973).
9. *See id.* at 6.
10. *See generally id.* at 6 (listing the four needs the MMWA sought to satisfy).
11. *See* 15 U.S.C. §§ 2304, 2310.

effectiveness.[12] Federal courts read language restricting federal jurisdiction over MMWA claims broadly, which resulted in the majority of federal circuit courts not allowing MMWA plaintiffs to use their attorneys' fees to reach the MMWA's amount in controversy requirement.[13] However, the Ninth Circuit recently diverged from this rule by allowing MMWA plaintiffs to use their attorneys' fees to reach the amount in controversy requirement if their attorneys' fees were authorized by state statute.[14] This ruling created a circuit split, adding uncertainty to an area of law that had long been settled.[15]

This Comment addresses the circuit split on the issue of whether attorneys' fees may be included in the MMWA's amount in controversy requirement.[16] This Comment argues in the affirmative and suggests that courts that have not yet ruled on the issue—and those that have already ruled the opposite—should allow plaintiffs to include their attorneys' fees in the amount in controversy under the MMWA.[17] Four reasons support this approach: (1) the analogous issue of the amount in controversy requirement for federal diversity jurisdiction permits the inclusion of attorneys' fees; (2) the plain language and legislative history of the MMWA show that attorneys' fees should be included in the amount in controversy; (3) the legal reasoning of the minority rule is superior to the majority's reasoning; and (4) multiple policy reasons support the minority rule.[18]

II. BACKGROUND

One of the major, if unheralded, consumer protection statutes under United States law is the MMWA.[19] Before Congress enacted the MMWA in 1975, regulation of consumer product warranties was within the states' purview.[20] The Uniform Commercial Code (U.C.C.), which nearly every state has adopted in full, was the uniform set of rules for regulation of consumer product warranties.[21] The U.C.C.'s default set of warranty rules led to adverse consequences for consumers bringing breach of warranty claims, so Congress decided to rectify the problem by creating a uniform

12. *See* Saval v. BL Ltd., 710 F.2d 1027, 1033 (4th Cir. 1983).
13. *See infra* Section II.C.1.
14. *See* Shoner v. Carrier Corp., 30 F.4th 1144, 1149 (9th Cir. 2022).
15. *See infra* Section II.C.2.
16. *See infra* Section II.C.
17. *See infra* Part IV.
18. *See infra* Part III.
19. *See* 15 U.S.C. §§ 2301–2312.
20. *See* Janet W. Steverson, *The Unfulfilled Promise of the Magnuson-Moss Warranty Act*, 18 LEWIS & CLARK L. REV. 155, 161 (2014).
21. *See id.*

federal set of rules to regulate consumer product warranties: the MMWA.[22]

A. The State of Consumer Product Warranties Before the MMWA

Before 1975, states regulated consumer product warranties, usually by adopting the U.C.C legislatively.[23] By 1975, nearly every state and the District of Columbia had adopted some form of the U.C.C. to govern warranties.[24] Under the U.C.C., an express warranty arises from "[a]ny affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain."[25] The U.C.C. liberalized the creation of express warranties by looking at the circumstances of the given warranty instead of requiring formalities.[26]

Additionally, the U.C.C. established implied warranties for consumer protection purposes.[27] The U.C.C. created two main implied warranties: (1) the implied warranty of merchantability and (2) the implied warranty of fitness.[28] The implied warranty of merchantability guaranteed that goods were "fit for [their] ordinary purposes,"[29] so long as the "seller [was] a merchant with respect to goods of [the] kind."[30] An implied warranty of merchantability arises in nearly all sales of consumer products, so breach of that warranty has become the main avenue for consumers to seek redress for faulty products.[31] Comparatively, the implied warranty of fitness was narrower, arising only when the buyer needed the goods for a "particular purpose" and the seller knew of that purpose.[32]

Despite the buyer-friendly implied warranties in the U.C.C., it was all too simple for sellers to make any implied warranties illusory, leaving consumers without any real protection.[33] Due to the simplicity with which

22. *See generally* H.R. REP. NO. 93-1107, at 24–29 (1974) (providing a history of sellers negating U.C.C. warranty liability leading to a need for federal legislation).

23. *See id.* at 24.

24. *See id.*

25. U.C.C. § 2-313(1)(a) (AM. L. INST. & UNIF. L. COMM'N 2010).

26. *See* U.C.C. § 2-313(2).

27. *See* Woodruff v. Clark County Farm Bureau Co-op. Ass'n, 286 N.E.2d 188, 194–95 (Ind. Ct. App. 1972).

28. *See* U.C.C. §§ 2-314, 2-315; *see also* H.R. REP. NO. 93-1107, at 24 (1974).

29. U.C.C. § 2-314(2)(c).

30. U.C.C. § 2-314(1). Under the U.C.C., a "merchant" is "a person who deals in goods of the kind or otherwise . . . holds himself out as having knowledge or skill peculiar to the . . . goods involved in the transaction . . . ." U.C.C. § 2-104(1).

31. *See, e.g.*, *Can I Sue for Breach of an Implied Warranty*, LEGALMATCH, https://perma.cc/ZD3N-5Z9S (last visited Jan. 25, 2024).

32. *See* U.C.C. § 2-315.

33. *See, e.g.*, H.R. REP. NO. 93-1107, at 24 (1974) (describing the common given warranty as being "of no greater worth than the paper it was printed on").

sellers could disclaim implied warranties, the practice became the standard for sellers of all kinds.[34]

Sellers could disclaim an implied warranty of merchantability by a "conspicuous" writing that "mention[s] merchantability."[35] The U.C.C. also gave more ways to disclaim its implied warranties.[36] All implied warranties were excluded if the seller used a phrase such as "as is" or "with all faults" to describe the product.[37] Further, if the buyer refused to inspect the product or failed to discover a defect, then any implied warranty did not extend to a defect that "an examination ought in the circumstances to have revealed to [the buyer]."[38] Finally, the U.C.C. provided that "course of performance," "course of dealing," and "usage of trade" could also exclude implied warranties in certain circumstances.[39]

Further, a seller need not offer an express warranty under the U.C.C. and, thus, there would be no need to disclaim one.[40] If a seller elected to offer an express warranty, then the seller could disclaim it in the same breath, according to the U.C.C.[41] The only limit on disclaiming an express warranty was that the disclaimer not be "unreasonable."[42]

Consumer agitation with these practices began to boil over in the mid-twentieth century.[43] The Federal Trade Commission (FTC) received an outpouring of consumer complaints regarding the motor-vehicle industry's failure to make good on their given warranties, whether express or implied.[44] An FTC investigation of these complaints yielded a report that contained three important findings: (1) seller performance failed to reach the level implied by the warranty; (2) this failure existed in both "the manufacture and preparation of cars under the warranty"; and (3) warranty performance, to an "excessive amount," did not meet "consumer acceptability."[45] In response, the FTC proposed the Automobile Quality

34. *See id.* at 24 (1974) ("Many of the so-called warranties and guarantees now given on consumer products disclaim or negate these implied warranties of merchantability and fitness.").

35. U.C.C. § 2-316(2).

36. *See* U.C.C. § 2-316(3).

37. U.C.C. § 2-316(3)(a).

38. U.C.C. § 2-316(3)(b).

39. U.C.C. § 2-316(3)(c); *see also* U.C.C. § 1-303 (defining "course of performance," "course of dealing," and "usage of trade").

40. *See* U.C.C. § 2-313(1) (describing what constitutes an "express warranty" under the U.C.C., but not requiring that one be given).

41. *See* U.C.C. § 2-316(1) ("Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other.").

42. *Id.*

43. *See* Steverson, *supra* note 20, at 163.

44. *See* H.R. REP. NO. 93-1107, at 25 (1974).

45. *Id.* at 26. The meaning of these findings is that sellers gave warranties that seemed to indicate extensive protection for consumers, but consumers trying to redeem those warranty promises were frequently left with inadequate remedy. *See id.*

Control Act in 1970 to combat these problems through federal legislation.[46]

Federal action to address the problem of warranty disclaimers began in the early 1960s under President John F. Kennedy.[47] Subsequent presidents echoed Kennedy's concern for these "consumer matters."[48] In 1968, President Lyndon B. Johnson created the Task Force on Appliance Warranties and Service, which included both the Chairman of the Federal Trade Commission and the Secretary of Commerce.[49] This task force had four goals: (1) "encourage improvements in the quality of service and repairs"; (2) "assure that warranties and guarantees say what they mean and mean what they say"; (3) "let the consumer know how long he may expect a product to last if properly used"; and (4) "determine whether Federal legislation was needed."[50]

In 1969, President Richard Nixon followed in his predecessors' footsteps by creating a task force to determine the need for federal warranty legislation in the household appliance industry, among others.[51] President Nixon delivered a message to Congress in 1971, proposing the Fair Warranty Disclosure Act, which, according to Nixon, "would further seek to prevent deceptive warranties; and it would prohibit improper use of a written warranty or guarantee to avoid implied warranty obligations arising under state law."[52] Nixon's plan failed to materialize, but its goal would find fruition in federal legislation less than five years later.[53]

B. The Magnuson-Moss Warranty Act

Codified in only a dozen sections of Title 15 of the United States Code,[54] the MMWA punches far above its weight in being one of the more

46. *See id.*
47. *See id.* at 24.
48. *Id.*
49. *Id.*
50. *Id.*
51. *See id.* at 25.
52. *Id.*
53. *See generally* S. REP. NO. 93-151, at 5–6 (providing a history of the introduction and passage of the MMWA). In light of the report of President Johnson's Task Force, *see* H.R. REP. NO. 93-1107, at 24 (1974), Senator Warren G. Magnuson and Representative John E. Moss introduced to the Senate the "Consumer Products Guarantee Act" in late 1969. *See* S. REP. NO. 93-151, at 5 (1973). This bill, after amendment by the Senate Commerce Committee, unanimously passed in the Senate, but did not reach a vote in the House of Representatives before the adjournment of the 91st Congress. *See id.* A refined bill, introduced in the 92nd Congress (along with President Nixon's "Fair Warranty Disclosure Act," *see* H.R. REP. NO. 93-1107, at 25 (1974)), again passed in the Senate but did not reach a vote in the House before adjournment of the 92nd Congress. *See* S. REP. NO. 93-151, at 6 (1973). Finally, after being reintroduced in the 93rd Congress on January 12, 1973, the bill finally passed both houses as the MMWA. *See id.*
54. *See* 15 U.S.C. §§ 2301–2312.

important—and more useful—consumer protection laws in the United States.[55] Congress passed the MMWA into law in 1975.[56] The MMWA had two primary goals: (1) "to provide minimun [sic] disclosure standards for written consumer product warranties," and (2) "to amend the Federal Trade Commission Act in order to improve its consumer protection activities."[57] The former of these two goals was preeminent.[58] This Comment details both the purpose—as seen in the legislative history—and the function of the MMWA to better explain how the first goal is the priority of the MMWA and to explain how the MMWA affects consumer product liability litigation.[59]

1. The Purpose of the MMWA

Congressional committees conducted hearings regarding the consumer warranty problems that the FTC had investigated.[60] The hearings, in turn, revealed the need for federal legislation to accomplish the following ends:

> (1) requiring that the terms and conditions of written warranties on consumer products be clearly and conspicuously stated in simple and readily understood language, (2) prohibiting the proliferation of classes of warranties on consumer products and requiring that such warranties be either a full or limited warranty with the requirements of a full warranty clearly stated, (3) safeguards against the disclaimer or modification of the implied warranties of merchantability and fitness on consumer products where a written warranty is given with respect thereto, and (4) providing consumers with access to reasonable and effective remedies where there is a breach of a warranty on a consumer product.[61]

The stated purpose of the MMWA was "to help the American consumer to find and enforce greater reliability in the tangible personal property he buys for 'personal, family, or household purposes.'"[62]

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55. *See generally 12 Reasons to Love the Magnuson-Moss Warranty Act*, 11 J. CONSUMER & COM. L. 127, 127–29 (2008) (describing 12 ways in which the MMWA is useful in consumer protection actions).

56. *See* Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. No. 93-637, 88 Stat. 2183 (1975).

57. *Id.*

58. *See generally* S. REP. NO. 93-151, at 2–3 (1973) (describing the purpose of empowering the FTC as effectuating the consumer protection designs of Title I of the MMWA).

59. *See infra* Section II.B.

60. H.R. REP. NO. 93-1107, at 29 (1974).

61. *Id.*

62. S. REP. NO. 93-151, at 2 (1973).

In the Senate Committee on Commerce's report concerning the MMWA, the Committee found that consumers were increasingly losing bargaining power in contractual negotiation of warranties.[63] Contracts for the sale of consumer goods were typically contracts of adhesion,[64] and sellers often forced consumers into unfavorable terms.[65] In response, the MMWA sought to return bargaining power to the consumer, whose leverage had dwindled through sellers waiving warranties.[66] The report recognized four major needs—promoting consumer understanding, ensuring consumer protections, penalizing non-performance, and improving product quality—and explained how the MMWA would address them.[67]

a. Promoting Consumer Understanding

The Senate report first recognized "[t]he need for consumer understanding" of warranties.[68] According to the report, consumers were almost never informed of what the warranties on their products meant.[69] Furthermore, consumers had no knowledge of what process they might undertake to receive their warranted remedy.[70] Many consumers did not know whom to notify, what to do after notification, how soon a replacement may be given to them, or even whether they must pay for their warranted remedy.[71]

Congress solved this problem by mandating clear and conspicuous terms and conditions on written consumer product warranties.[72] The MMWA effectuates this solution in section 102.[73] This section requires a warranty to "fully and conspicuously disclose . . . the terms and conditions of such warranty."[74] Two of the stated reasons for this requirement are to "improve the adequacy of information available to consumers" and to "prevent [consumer] deception," which correspond to the need to promote consumer understanding of given written warranties.[75]

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63. *See id.* at 6.
64. *See* Colleen McCullough, *Unconscionability as a Coherent Legal Concept*, 164 U. PA. L. REV. 779, 789 (2016) (discussing the "hallmark[s]" of a contract of adhesion: "unequal bargaining power, the presence of boilerplate language, the [consumer's] lack of knowledge about the contract's contents, and the [consumer's] economic straits").
65. *See* S. REP. NO. 93-151, at 6.
66. *See id.*
67. *See id.* at 6–9.
68. *Id.* at 6.
69. *See id.* at 6–7.
70. *See id.* at 7.
71. *See id.*
72. *See id.*
73. *See* 15 U.S.C. § 2302; *see also* S. REP. NO. 93-151, at 15–16 (1973).
74. 15 U.S.C. § 2302(a).
75. *Id.*; *see also* S. REP. NO. 93-151, at 6.

b. Ensuring Basic Consumer Protections

Second, the Senate report recognized "[t]he need for minimum warranty protection for consumers."[76] The report again noted that state law, through the U.C.C., established certain implied warranties,[77] but the report reiterated the simple methods a seller may use in a written warranty to disclaim an implied warranty.[78] These methods, though not terribly harmful for knowledgeable or discerning commercial buyers, affected the ordinary consumer heavily, as their warranted rights would be stripped without notice.[79]

Because of the problem of warranty disclaimer, Congress intended the MMWA to protect the ordinary consumer by mandating that written warranties not abridge, disclaim, or exclude the implied warranties state law created.[80] Congress accomplished this goal mainly through section 108 of the MMWA.[81] This section's main purpose was to eliminate the popular practice of stripping away implied warranties by way of a written disclaimer.[82] However, the MMWA maintained freedom of contract by allowing an implied warranty to be limited to the duration of the written warranty.[83]

c. Penalizing Warrantor Non-Performance

Third, the Senate report recognized "[t]he need for assurance of warranty performance."[84] Even when consumers could understand a warranty's language and sellers did not disclaim any implied warranties in the written warranty, sellers frequently neglected performance under the warranty.[85] Even after a breach of warranty, consumers were often unable to seek redress due to the expense and complexity of litigation.[86] The intent of the MMWA was to exact a "direct economic detriment" on sellers who did not perform their warranty obligations.[87] The Senate report enumerated one such way to effect that detriment: to provide for "reasonable attorneys fees and court costs to successful consumer litigants, thus making

76. S. REP. NO. 93-151, at 6.
77. *See supra* Section II.A.
78. *See* S. REP. NO. 93-151, at 7; *see also* U.C.C. § 2-316(1).
79. *See* S. REP. NO. 93-151, at 7.
80. *See id.*
81. *See* 15 U.S.C. § 2308; *see also* S. REP. NO. 93-151, at 21.
82. *See* 15 U.S.C. § 2308.
83. *See id.*; *see also id.* § 2308(b).
84. S. REP. NO. 93-151, at 6.
85. *See id.* at 7.
86. *See id.*
87. *Id.*

consumer resort to the courts feasible."[88] This solution was accomplished in section 110 of the MMWA.[89]

d. Improving Product Design and Quality

Finally, the Senate report recognized "[t]he need for better product reliability."[90] The report recognized that the prior three needs would not exist if consumer products worked as warranted.[91] Therefore, another goal was to encourage the production of better consumer products by creating an economic advantage to do so.[92] The report postulated that consumers could have no foresight of the quality or reliability of consumer products due to unclear warranty terms.[93] By prescribing standard warranty rules, a warranty's duration and the price of the goods would become an indicator of quality.[94] Presumably, higher quality products would be more valuable to consumers, and sellers offering higher quality products would experience an economic benefit.[95]

The MMWA attempts to bring about this economic advantage through its distinction of "full" and "limited" warranties in section 103.[96] Congress intended that a "full" warranty—one for which the warrantor would assume all costs of repair or replacement—would be more attractive to consumers, as it would indicate a more reliable product.[97] A "full" warranty, with its standards expressly provided under the MMWA,[98] would thus be more desirable for a warrantor to offer, as it would lead to more sales than a product carrying a "limited" warranty.[99]

2. The Function of the MMWA

The MMWA is divided into two parts: Title I—the Magnuson-Moss Warranty Act—which provides for written warranty requirements and consumer remedies for sellers' breach of written warranties; and Title II—the Federal Trade Commission Improvement Act—which empowers the FTC to further regulate "unfair consumer acts and practices."[100] The latter

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88. *Id.* at 7–8.
89. *See id.* at 22–24; *see also* 15 U.S.C. § 2310(d).
90. S. REP. NO. 93-151, at 6 (1973).
91. *See id.* at 8.
92. *See id.*
93. *See id.*
94. *See id.*
95. *See id.*
96. *Id.* at 8, 16–17; *see also* 15 U.S.C. § 2303.
97. *See* S. REP. NO. 93-151, at 8 (1973).
98. *See* 15 U.S.C. § 2304.
99. *See* S. REP. NO. 93-151, at 8 (1973) ("Only a warrantor giving this type of 'full' warranty is in a position to increase his profit, by making product reliability or service capability improvements.").
100. *Id.* at 2.

is not at issue in this Comment and is not discussed to great extent. The former—the MMWA—governs written warranty requirements and provides consumers with remedies for a seller's breach of warranty, as follows.[101]

a. Warranty Requirements under the MMWA

After the MMWA took effect, sellers had to adhere to certain requirements that the Act imposed on consumer product warranties.[102] First, it is important to make clear when the MMWA applies. The MMWA governs written warranties.[103] Nothing in the MMWA requires a seller to give a written warranty,[104] but if the seller does give one, that warranty must adhere to the MMWA's statutory standards.[105]

The MMWA sets forth two types of consumer product written warranty designations: "full" and "limited."[106] A written warranty is a full warranty if it meets the minimum standards of 15 U.S.C. § 2304.[107] If a written warranty meets these requirements, then it is to be conspicuously designated as a "full [statement of duration] warranty."[108] If it does not meet those minimum requirements, then it is designated a "limited warranty."[109]

b. Remedies for Breach of Warranty under the MMWA

Once a seller gives either a full or limited written warranty, the MMWA is then concerned with breach of the given warranty.[110] The default remedy for a breach of warranty on a product is for the warrantor—usually the seller—itself to remedy the product.[111] If the warrantor is unable to remedy the product, then the warrantor must refund or replace the product.[112] In the event that the warrantor fails to either refund or replace the product, the MMWA provides three further remedies for a warrantor's breach of warranty.[113]

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101. *See id.*
102. *See* 15 U.S.C. § 2302. Under the MMWA, a "consumer product" is "any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes." *Id.* § 2301(1).
103. *See id.* §§ 2301(6)(A)–(B) (defining "written warranty").
104. *See id.* § 2302(b)(2).
105. *See id.* § 2303(a).
106. *Id.* § 2303.
107. *See id.* § 2303(a)(1).
108. *Id.*
109. *Id.* § 2303(a)(2).
110. *See id.* § 2304.
111. *See id.* § 2304(a)(1).
112. *See* 15 U.S.C. § 2304(a)(4).
113. *See id.* § 2310.

The first of these remedies is informal dispute settlement.[114] The MMWA declares that it is congressional policy "to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled" informally.[115] The MMWA charges the FTC with providing the rules and procedures for these informal dispute settlements.[116] The FTC also has the power to investigate, at will, a warrantor's compliance with the rules and procedures.[117] If the FTC finds that the warrantor failed to meet its obligations, then the Commission or the Attorney General may pursue a second remedy.[118]

The second remedy against a warrantor that offers deceptive warranties or violates the requirements of the MMWA generally consists of injunctive relief.[119] The federal district courts have jurisdiction over these injunctive proceedings.[120] An injunction may prohibit a warrantor from offering "deceptive warranties,"[121] or it may prevent any person from "failing to comply with any requirement" or "violating any prohibition" of the MMWA.[122] Though this power is broad, a temporary injunction, which the FTC initiates and a court grants, expires after a judicially prescribed time if the FTC does not seasonably follow-up with an action under 15 U.S.C. § 45.[123]

The MMWA's third and final remedy is a private cause of action for a consumer harmed by a warrantor's breach of warranty.[124] The relief afforded to a consumer through this action is broad.[125] A consumer can bring this claim against a warrantor for a breach of any obligation under the MMWA or for breach of a written warranty, implied warranty, or service contract.[126] The consumer may recover damages and equitable relief.[127] Further, a prevailing consumer may recover costs, expenses, and attorneys' fees, when appropriate.[128]

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114. *See id.* § 2310(a).
115. *Id.* § 2310(a)(1).
116. *See id.* § 2310(a)(2).
117. *See id.* § 2310(a)(4).
118. *See id.*
119. *See id.* § 2310(c)(1).
120. *See id.*
121. *Id.* §§ 2310(c)(2)(A)(i)–(ii). A deceptive warranty is a warranty with "a representation which is either false or fraudulent" or which "fails to contain information which is necessary in light of all of the circumstances." *Id.*
122. 15 U.S.C. § 2310(c)(1)(B).
123. *Id.* § 45(a)(1). The statute makes it unlawful for businesses to engage in "unfair methods of competition" or "unfair or deceptive acts or practices." *Id*. The FTC is given the power to initiate a proceeding independently. *See id.* § 45(b).
124. *See id.* § 2310(d).
125. *See id.* §§ 2310(d)(1)–(2).
126. *See id.* § 2310(d)(1).
127. *See id.*
128. *See id.* § 2310(d)(2).

c. Jurisdiction of MMWA Breach of Warranty Claims

A consumer may bring a claim under the MMWA in state or federal court.[129] This Comment focuses on federal court jurisdiction over MMWA consumer claims.[130] Three requirements limit federal court jurisdiction over MMWA claims: (1) the amount in controversy on an individual claim must be $25 or higher; (2) the total amount in controversy of all claims combined must be $50,000 or higher, "exclusive of interests and costs"; and (3) in the case of a class action, there must be at least 100 class members.[131] The second of these three provisions is at issue in this Comment.[132]

C. The Circuit Split

There is currently a circuit split concerning the amount in controversy requirement for standing under the MMWA.[133] Specifically, the split centers on the issue of whether a plaintiff may use their attorneys' fees to reach the statutory requirement of $50,000.[134] Currently, six circuits have ruled on the issue.[135]

1. The Majority Rule

Historically, most circuits that have addressed the issue have held that attorneys' fees may not be used to reach the amount in controversy requirement of the MMWA (the "majority rule").[136] Four circuits currently hold this position: the Third, Fourth, Fifth, and Eleventh Circuits.[137]

a. The Fourth Circuit

The first circuit court to rule on the issue was the Fourth Circuit in *Saval v. BL Ltd.*[138] The court ruled that the appellants' attorneys' fees could not be used to reach the amount in controversy requirement.[139] The court reasoned that attorneys' fees are "costs and expenses."[140] Thus, because the statute excludes interests and costs from the amount in

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129. *See id.* §§ 2310(d)(1)(A)–(B).
130. *See infra* Part III.
131. *See* 15 U.S.C. §§ 2310(d)(3)(A)–(C). Class actions under the MMWA are governed by § 2310(e). *See id.* § 2310(e).
132. *See infra* Section II.B.1.
133. *See* Shoner v. Carrier Corp., 30 F.4th 1144, 1148 (9th Cir. 2022).
134. *See id.* at 1147–48.
135. *See id.*
136. *See* Ansari v. Bella Auto. Group, Inc., 145 F.3d 1270, 1271–72 (11th Cir. 1998).
137. *See Shoner*, 30 F.4th at 1147–48.
138. Saval v. BL Ltd., 710 F.2d 1027, 1032–33 (4th Cir. 1983).
139. *See id.* at 1030.
140. *Id.* at 1033.

controversy requirement, a plaintiff may not include them.[141] The court compared the issue to the diversity jurisdiction amount in controversy requirement but reasoned that attorneys' fees are only allowed to reach that requirement if state statutes and contract terms, which are not relevant under the MMWA, so authorize.[142]

b. The Fifth Circuit

A year later, the Fifth Circuit considered the same question in *Boelens v. Redman Homes, Inc.*[143] The court adopted *Saval*'s rule, holding that attorneys' fees could not be included in the amount in controversy requirement calculation because they are "costs" within the meaning of the statute.[144] Judge Wisdom, writing for the court, discussed the background of the MMWA, particularly that it was intended to provide relief for consumers who were harmed by products that are not, in themselves, worth litigating over.[145] The court also stated the principle that "statutes conferring jurisdiction on federal courts are to be strictly construed, and doubts resolved against federal jurisdiction."[146] Including personal injury damages in the amount in controversy requirement calculation would "allow virtually any state products liability action for personal injury damages . . . to be brought into federal court," which would impermissibly upset the balance between federal and state courts.[147]

c. The Third and Eleventh Circuits

Over a decade later, the Third Circuit commented on the issue in *Suber v. Chrysler Corp.*[148] The court examined a case brought under diversity jurisdiction.[149] Reviewing the district court's dismissal for lack of subject matter jurisdiction due to the plaintiff's inability to reach the diversity jurisdiction amount in controversy requirement, the court ruled that district courts must consider attorneys' fees in the calculation.[150] Because the district court awarded attorneys' fees under the state statute underlying the diversity suit, the attorneys' fees were "necessarily part of the amount in controversy" calculation.[151]

141. *See id.* at 1032–33.
142. *See id.* at 1033.
143. Boelens v. Redman Homes, Inc., 748 F.2d 1058, 1058 (5th Cir. 1984).
144. *Id.* at 1069.
145. *See id.* at 1067.
146. *Id.*
147. *Id.*
148. Suber v. Chrysler Corp., 104 F.3d 578, 578 (3d Cir. 1997).
149. *See id.* at 582.
150. *See id.* at 585.
151. *Id.*

However, when considering the plaintiff's MMWA claim in a footnote, the court stated that "whether a plaintiff satisfies the amount in controversy threshold is a different question under Magnuson-Moss."[152] The court approved of the majority rule denying attorneys' fees as part of the amount in controversy calculation and noted that the plaintiff "probably [could] not establish jurisdiction with his Magnuson-Moss claim," yet left the question to the judgment of the district court without specifically ruling on the issue.[153]

A year later, the Eleventh Circuit considered the issue in *Ansari v. Bella Auto Group*.[154] In a brief opinion, the court adopted the rule of other circuits and held that the plaintiff's attorneys' fees could not be included in the amount in controversy calculation.[155]

d. The Seventh Circuit

Finally, the Seventh Circuit considered the issue in *Gardynski-Leschuck v. Ford Motor Co.*[156] There, the court ruled that attorneys' fees could not be used to reach the amount in controversy requirement.[157] The court looked to the reasoning of the court in *Suber*, and Judge Easterbrook, writing for the majority, added new analysis.[158] The court began by providing that a court must consider the amount in controversy as it existed at the onset of litigation.[159] The court noted that "legal services that have not been and may never be incurred . . . are therefore not 'in controversy' between the parties."[160] Rather, the amount in controversy is the "sum the [defendants] would have to pay to resolve the case on the date it was filed."[161] Because that sum would not include any attorneys' fees, plaintiffs may not use attorneys' fees to reach the amount in controversy.[162]

2. The Minority Rule

Recently, a minority of circuits have split from the majority and have allowed plaintiffs pursuing claims under the MMWA to include their attorneys' fees to reach the amount in controversy requirement (the

152. *Suber*, 104 F.3d at 588 n.12.
153. *Id.*
154. Ansari v. Bella Auto Grp., 145 F.3d 1270, 1270 (11th Cir. 1998).
155. *See id.* at 1271–72.
156. Gardynski-Leschuck v. Ford Motor Co., 142 F.3d 955, 958–59 (7th Cir. 1998).
157. *See id.* at 959.
158. *See id.* at 958–59.
159. *See id.* at 959.
160. *Id.* at 958.
161. *Id.* at 959.
162. *See generally id.* at 958–59 (describing a scenario in which the Hatfields and McCoys refuse to settle over a defective $10 rake).

"minority rule").[163] Two circuits have adopted this view: the Seventh Circuit and the Ninth Circuit.[164]

a. The Seventh Circuit

Nearly twenty years after *Gardynski-Leschuck*, the Seventh Circuit reconsidered the amount in controversy issue in *Burzlaff v. Thoroughbred Motorsports, Inc*.[165] In *Burzlaff*, the court indicated, without overturning or distinguishing *Gardynski*, that the plaintiff's attorneys' fees could have been used to reach the amount in controversy requirement if the fees had been incurred at the time of removal to federal court.[166]

b. The Ninth Circuit

The most recent court to decide on the issue—and the first since the Fourth Circuit in *Saval* to undertake a completely fresh evaluation—was the Ninth Circuit in *Shoner v. Carrier Corp.*[167] The court first considered the landscape among the circuits that had addressed the attorneys' fees issue, making note of the four circuits that had prohibited using attorneys' fees to reach the amount in controversy requirement.[168] However, the court stated that the Fourth Circuit was the only one to address the issue independently, while the other three merely adopted the rule of *Saval*.[169] In addition, the court reasoned that the Seventh Circuit, in *Burzlaff*, departed from the other circuits' rulings without explaining the reasoning.[170] The court then addressed the reasoning in *Saval* and declined to follow the longstanding rule.[171]

The court, quoting *Saval*, noted that the statute "gives way to 'two equally troublesome interpretations.'"[172] However, the court diverged from the majority rule, holding that "attorneys' fees are not 'costs' under the MMWA," and thus may be included to reach the amount in controversy requirement if they are to be awarded pursuant to state

163. *See* Shoner v. Carrier Corp., 30 F.4th 1144, 1147–48 (9th Cir. 2022).
164. *See id.*
165. *See* Burzlaff v. Thoroughbred Motorsports, Inc., 758 F.3d 841, 841 (7th Cir. 2014).
166. *See id.* at 845.
167. *Shoner*, 30 F.4th at 1147.
168. *See id.*
169. *See id.*
170. *See id.*
171. *See id.* at 1148.
172. *Shoner*, 30 F.4th at 1148 (quoting Saval v. BL Ltd., 710 F.2d 1027, 1033 n.9 (4th Cir. 1983)).

statute.[173] The court defined "amount in controversy" as "*all* relief to which the plaintiff is entitled if the action succeeds."[174]

The court compared the language of the MMWA with the same language seen in the diversity jurisdiction statute and the Class Action Fairness Act jurisdictional statute.[175] The court declined to interpret the language of the MMWA differently than the similar language in those two statutes, recognizing that statutory attorneys' fees may be used to reach the amount in controversy requirement under the other two statutes.[176] Though the court agreed with the Fourth Circuit's argument that allowing attorneys' fees to reach the amount in controversy requirement seems to make the $25 individual claim requirement superfluous, the court did not see this superfluity as enough reason to adopt the *Saval* rule.[177] Rather, the court reasoned that allowing only the use of statutory attorneys' fees to reach the amount in controversy requirement would preserve the meaning of the $25 individual claim requirement in claims in which no underlying statutory attorneys' fees are authorized.[178] Notwithstanding the rule the court pronounced, the court held that the plaintiff could not reach the amount in controversy requirement even with attorneys' fees included.[179] First, two of the plaintiff's state law claims did not provide statutory attorneys' fees.[180] Second, because the plaintiff brought his claim as a class action under a third state statute that disallowed attorneys' fees, he also could not recover statutory attorneys' fees under that claim.[181]

In his dissent, Judge Kelly stated that the statute was likely not intended to allow attorneys' fees to be part of the amount in controversy requirement because it would render the $25 individual claim requirement superfluous.[182] Judge Kelly also noted that the terms "costs" and "expenses," as stated in the statute, likely do not "refer to distinct categories of expenditures as the terms are synonymous."[183] Judge Kelly

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

174. *Id.* (quoting Fritsch v. Swift Transp. Co. of Ariz., 899 F.3d 785, 795 (9th Cir. 2018)).

175. *See id.* at 1148.

176. *See id.*

177. *See id.* at 1149.

178. *See id.* The Fourth Circuit in *Saval* reasoned that allowing attorneys' fees to reach the $50,000 amount in controversy requirement would render the $25 individual claim requirement superfluous. *See* Saval v. BL Ltd., 710 F.2d 1027, 1032 (4th Cir. 1983). The Ninth Circuit approach, which allows attorneys' fees to be included only when expressly authorized by a state statute, would thus preserve the meaning of the $25 individual claim requirement if the underlying statute did not authorize attorneys' fees. *See Shoner*, 30 F.4th at 1149.

179. *See Shoner*, 30 F.4th at 1149–50.

180. *See id.* at 1149.

181. *See id.* at 1150.

182. *See id.* at 1150 (Kelly, J., dissenting).

183. *See id.* at 1150.

also disagreed with the majority's reading of the Seventh Circuit's view of the issue and would have deferred to the majority opinion among the circuits.[184]

III. ANALYSIS

With its opinion in *Shoner*, the Ninth Circuit created a circuit split on the issue of whether plaintiffs suing under the MMWA may use their attorneys' fees to reach the $50,000 amount in controversy requirement for federal court jurisdiction.[185] As a result, plaintiffs bringing breach of warranty claims under the MMWA in the Ninth Circuit have an advantage over MMWA plaintiffs in other jurisdictions, especially those that have not allowed plaintiffs to use their attorneys' fees to reach the amount in controversy requirement.[186] Moreover, MMWA plaintiffs in jurisdictions that have not ruled on the issue have no way of predicting which way their respective circuit courts will rule. This disparity and uncertainty are undesirable because courts should strive for uniformity in the law.[187]

This Comment proposes that the Ninth Circuit's inclusion of attorneys' fees in the MMWA's amount in controversy requirement should become the law of the land.[188] When the opportunity becomes available, those district and circuit courts deciding the issue as a matter of first impression should follow the holding in *Shoner*, and those circuit courts that follow the majority rule should reconsider the issue and overturn their precedent.[189] The reasons for adopting the minority rule are fourfold: (1) the analogy to diversity jurisdiction, in which attorneys' fees are allowed in the amount in controversy, is strong;[190] (2) the plain language of the statute, read in light of the legislative history, shows that attorneys' fees should be allowed in the amount in controversy;[191] (3) the legal reasoning of the minority rule is superior to that of the majority rule;[192] and (4) public policy supports the workability of including attorneys' fees in the amount in controversy requirement.[193]

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184. *See id.* at 1150–51.
185. *See id.* at 1148 (majority opinion).
186. *See supra* Section II.C.1.
187. *See* Maniar v. FDIC, 979 F.2d 782, 785 (9th Cir. 1992) ("[U]niformity among the circuits in matters having general application to the various states is preferable as long as individual justice is not sacrificed.").
188. *See infra* Part IV.
189. *See infra* Part IV.
190. *See infra* Section III.A.
191. *See infra* Section III.B.
192. *See infra* Section III.C.
193. *See infra* Section III.D.

A. Analogy to Attorneys' Fees in Diversity Jurisdiction

Perhaps the closest comparison that can be drawn to the issue of attorneys' fees factoring into the amount in controversy calculation of the MMWA is that of the amount in controversy requirement for diversity jurisdiction.[194] Under the controlling federal statute, federal courts may only hear cases under diversity jurisdiction when the total amount in controversy is greater than $75,000.[195] It is a "well-settled" point of law that the amount in controversy of an action is "the direct pecuniary value of the right that the plaintiff seeks to enforce or protect or the value of the object that is the subject matter of the suit."[196] Put simply, the amount in controversy is the amount the defendant "would have to pay to resolve the case on the date it was filed."[197] Under the diversity jurisdiction statute, this amount must be calculated "exclusive of interests and costs."[198]

However, the majority of federal district and circuit courts have interpreted this language to allow for attorneys' fees to be included in the calculation.[199] The Supreme Court ruled in *Missouri State Life Insurance Co. v. Jones* that a plaintiff who was entitled to attorneys' fees by state statute was thereby allowed to use those fees to reach the amount in controversy requirement of diversity jurisdiction.[200] The Court rejected the view that statute-authorized attorneys' fees should be excluded from the amount in controversy calculation as costs, even though the statute itself refers to them as costs.[201] Rather, the Court ruled that the statutorily authorized attorneys' fees were "something to which the law gave [the plaintiff] a right," and were therefore part of the amount in controversy and not "mere costs."[202] For the last century, federal courts have uniformly allowed plaintiffs to reach the diversity jurisdiction amount in controversy requirement with statute-authorized attorneys' fees.[203] The amount of

194. *See* 28 U.S.C. §§ 1331, 1332 (providing federal jurisdiction over matters of diversity or matters involving a federal question). Under federal law, federal courts may hear cases between "citizens of different States" when the amount in controversy is greater than $75,000. *Id.* § 1332.

195. *See* 28 U.S.C. § 1332.

196. 14AA Charles Alan Wright et al., FEDERAL PRACTICE & PROCEDURE § 3702.5 (4th ed. 2022).

197. Gardynski-Leschuck v. Ford Motor Co., 142 F.3d 955, 959 (7th Cir. 1998).

198. 28 U.S.C. § 1332.

199. *See generally* Clay Weinstein, *These Aren't the Fees You're Looking For: Why Attorney's Fees Should Not Open the Door to Federal Court*, 27 U. FLA. J.L. & PUB. POL'Y 281, 285–87 (2016) (explaining the ways uniformly held by federal courts in which attorneys' fees may be used to reach the amount in controversy requirement of diversity jurisdiction).

200. *See* Mo. State Life Ins. Co. v. Jones, 290 U.S. 199, 202 (1933).

201. *See id.* at 202; *see also* 28 U.S.C. § 1332.

202. *Jones*, 290 U.S. at 202 (internal quotations omitted).

203. *See* Weinstein, *supra* note 199, at 287. Subsequent jurisprudence has also recognized another uniform rule, whereby attorneys' fees authorized by contractual terms

attorneys' fees to be calculated, however, is in dispute among the circuits.[204] The majority of circuits have adopted the "future fees" method, which considers the amount of attorneys' fees that a plaintiff could potentially incur.[205]

This "future fees" method for determining attorneys' fees in the calculation for the diversity jurisdiction amount in controversy requirement provides a perfect parallel to the rule that circuit courts should adopt for MMWA claims.[206] This rule finds its origin in Supreme Court jurisprudence,[207] and it finds its logical extension in the context of MMWA claims because MMWA attorneys' fees are themselves allowed by federal statute.[208]

Under the MMWA, successful consumer plaintiffs are entitled to reasonable attorneys' fees.[209] The court grants this award by default unless, "in its discretion," it finds that awarding attorneys' fees would be "inappropriate."[210] The language of the MMWA is nearly identical to the language of the Arkansas statute considered in *Missouri State Life Insurance Co. v. Jones*, which allowed for a plaintiff to collect "all reasonable attorneys' fees."[211] It was this award of attorneys' fees that the Supreme Court recognized as being part of the amount in controversy.[212]

In another parallel to the MMWA, which includes attorneys' fees as part of the costs and expenses allowed, the Arkansas statute at issue in *Jones* also considered the authorized attorneys' fees as costs.[213] Despite the Arkansas statute's language, the Supreme Court declared in no

are allowed to be used to reach the amount in controversy requirement. *See id.*; *see also* 14C Wright, *supra* note 196, § 3725.

204. *See* Weinstein, *supra* note 199, at 287–94 (providing a more complete discussion on this split among the circuits).

205. *Id.* at 283. This "future" or "potential" fees method has been adopted by the Third, Fourth, Fifth, and Tenth Circuits. *See id.* at 293. The alternative view, which the Seventh Circuit adopted in *Gardynski-Leschuck*, is the "past" fees method, which considers only the attorneys' fees actually incurred at the point of a hypothetical removal to federal court. *See id.* at 283, 288.

206. This Comment does not offer an argument for the "future fees" method over the "past fees" method. The "future" method is the one endorsed by the majority of courts. *See* Weinstein, *supra* note 199, at 287–294. Further, the method of calculating attorneys' fees into the amount in controversy is secondary to the main issue this Comment addresses: that attorneys' fees *should* be calculated into the amount in controversy for MMWA claims. *See infra* Part IV. Just as the calculation method does not affect whether attorneys' fees can themselves be factored into the amount in controversy for diversity jurisdiction, the method will not affect the same for MMWA claims. *See* Weinstein, *supra* note 199, at 283–84.

207. *See* Mo. State Life Ins. Co. v. Jones, 290 U.S. 199, 202 (1933).

208. *See* 15 U.S.C. § 2310(d)(2); *see also* S. REP. NO. 93-151, at 23–24 (1973).

209. 15 U.S.C. § 2310(d)(2).

210. *Id.*

211. *Jones*, 290 U.S. at 200.

212. *See id.* at 202.

213. *See id.* at 201; *see also* 15 U.S.C. § 2310(d)(2).

uncertain terms that the attorneys' fees were not "mere 'costs;'" rather, they were "something to which the law gave [the plaintiff] a right."[214] Although "[a]ttorneys fees are 'costs' within the meaning of § 2310(d)(3),"[215] courts should not "exclude[] [them] from the reckoning by the jurisdictional" statute.[216] The fact that § 2310(d)(2) calls the attorneys' fees "costs" does not "alter the true nature of the obligation," which is that the authorized attorneys' fees are a legal right of the aggrieved party.[217] Attorneys' fees are expressly authorized as part of the recovery for a victorious consumer plaintiff and should, therefore, be part of that plaintiff's legal rights to be asserted in court.[218] To prevent a plaintiff from asserting the monetary award to which they are entitled—thereby preventing them from pursuing claims specifically envisioned by the MMWA—is to strip them of that legal right.[219] For that reason, such a rule should be abrogated.

A possible distinction between diversity jurisdiction and the MMWA is that the diversity jurisdiction rule is an exception for state statutes that authorize attorneys' fees, while the MMWA is a federal statute authorizing attorneys' fees.[220] However, the diversity jurisdiction rule for attorneys' fees only concerns state statutes because diversity jurisdiction, unlike federal question jurisdiction, concerns causes of actions that are not derived from federal statutes.[221] It is unlikely that the Supreme Court, in *Missouri State Life Insurance Co. v. Jones,* envisioned a distinction between state and federal statutes that authorize attorneys' fees because there would be no need to make such a distinction: diversity jurisdiction concerns disputes governed by state law, as was the case in *Jones*.[222]

B. Statutory Purpose and Legislative History

Because the issue of including attorneys' fees in the MMWA amount in controversy is primarily one of statutory interpretation,[223] the analysis

214. *Jones*, 290 U.S. at 202.
215. Boelens v. Redman Homes, Inc., 748 F.2d 1058, 1069 (5th Cir. 1984).
216. *Jones*, 290 U.S. at 202.
217. *Id.*
218. *See* 15 U.S.C. § 2310(d)(2).
219. *See Jones*, 290 U.S. at 202.
220. *See* 15 U.S.C. § 2310(d)(2).
221. *See generally* Mattel, Inc. v. Barbie-Club.com, 310 F.3d 293, 298 (2d Cir. 2002) (showing that diversity jurisdiction was not required when a federal statute provided jurisdiction).
222. *See Jones*, 290 U.S. at 202.
223. *See* Shoner v. Carrier Corp., 30 F.4th 1144, 1147 (9th Cir. 2022) ("At issue is whether the phrase 'exclusive of interests and costs' in subsection (B) excludes attorneys' fees as costs.").

should begin with the plain language of the statute.[224] The text of the MMWA is not ambiguous in distinguishing the "expenses" of attorneys' fees from the "interests" that are excluded from the amount in controversy.[225] Nevertheless, even if the language were ambiguous, the purpose of the MMWA and the legislative history show that any ambiguity should be read cautiously in favor of allowing attorneys' fees to factor into the amount in controversy.[226]

1. The Plain Language of the Statute

Considering the plain language of the statute, it is ambiguous at best whether attorneys' fees are excluded from the amount in controversy requirement.[227] In the language at issue, federal courts do not have jurisdiction over MMWA claims if the total amount in controversy of all claims is less than $50,000, "exclusive of interests and costs."[228] Courts that have adopted the majority rule read "interests and costs" as including attorneys' fees.[229] However, the MMWA does not define the terms "interest" or "costs," nor does it give an answer as to whether attorneys' fees are included within the scope of those terms.[230]

The closest the MMWA comes to giving that answer is authorizing statutory attorneys' fees; the statutory language says that a plaintiff may recover "the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended)."[231] By this language, attorneys' fees are included within the scope of either "expenses" or "cost and expenses," depending on what term the parenthetical modifies.[232] Regardless of which term the parenthetical modifies, the statutory language indicates that attorneys' fees are not meant to be excluded from the amount in controversy calculation.[233]

Attorneys' fees are identified as belonging, by the broadest interpretation of the statutory language, to "cost and expenses."[234]

224. *See* Duncan v. Walker, 533 U.S. 167, 172 (2001) ("Our task is to construe what Congress has enacted. We begin, as always, with the language of the statute.").

225. *See infra* Section III.B.1; *see also* 15 U.S.C. § 2310(d).

226. *See infra* Section III.B.2.

227. *See* Saval v. BL Ltd., 710 F.2d 1027, 1033 n.9 (4th Cir. 1983).

228. 15 U.S.C. § 2310(d)(3)(B).

229. *See* Shoner v. Carrier Corp., 30 F.4th 1144, 1149 (9th Cir. 2022) ("As the Fourth Circuit acknowledged, under an equally plain reading, attorneys' fees may be 'expenses' and not 'costs.'").

230. *See generally* 15 U.S.C. § 2301 (providing definitions for various terms used throughout the MMWA).

231. *Id.* § 2310(d)(2).

232. *But see* Saval v. BL Ltd., 710 F.2d 1027, 1032 (4th Cir. 1983) (finding that the parenthetical modified both "cost" and "expenses").

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

234. *See* 15 U.S.C. § 2310(d)(2).

However, the items excluded from the amount in controversy calculation are "interests and costs."[235] Even discounting the difference between "cost" and "costs" as immaterial, the different vocabulary and order of terms—"cost and expenses" vs. "interests and costs"—indicates that the two phrases are distinct. If Congress intended to exclude attorneys' fees from the amount in controversy calculation, then it would have used the term "cost and expenses," rather than creating new terminology in "interests and costs."

Importantly, these two distinct terms are not separated by many sections of text; rather, they occur immediately next to each other in the statutory layout.[236] Thus, absent any evidence that Congress intended these terms to mean the same thing, or that Congress neglected to use uniform language throughout the MMWA,[237] which seems unlikely for the reasons stated above, the plain statutory language indicates that attorneys' fees were not meant to be excluded from the amount in controversy requirement.[238] At the very least, the statute is ambiguous in its language, and any interpretation should be done with due consideration of the MMWA's purpose.[239]

2. The Purpose of the MMWA Shown in the Legislative History

The first purpose of the MMWA is "to make warranties on consumer products more readily understood and enforceable."[240] All interpretation of the MMWA, and any resolution of its ambiguity, should be resolved in favor of this purpose.[241] Congress chose to allow federal courts to hear warranty enforcement actions under the MMWA,[242] so ambiguities in jurisdictional language should not be read to prevent consumers from bringing federal actions.[243] Rather, courts should read the limitations on jurisdiction conservatively.[244] In this case, when the language is

235. *See id.* § 2310(d)(3)(B).

236. *Compare id.* § 2310(d)(2) (authorizing statutory attorneys' fees and using the language "cost and expenses"), *with* § 2310(d)(3)(B) (stating the amount in controversy exclusion, which uses the language "interests and costs").

237. *But see* Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253–54 (1992) ("[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.").

238. *See* Shoner v. Carrier Corp., 30 F.4th 1144, 1148–49 (9th Cir. 2022).

239. *See* O'Donovan-Conlin v. U.S. Dep't of State, 255 F. Supp. 2d 1075, 1085 (N.D. Cal. 2003) ("[S]tatutes should be read in conjunction with legislative intent, and be liberally construed in order to give effect to such intent.").

240. H.R. REP. NO. 93-1107, at 20 (1974).

241. *See O'Donovan-Conlin*, 255 F. Supp. 2d at 1085.

242. *See* 15 U.S.C. § 2310(d)(1)(B).

243. *See* United States v. Lira-Ramirez, 951 F.3d 1258, 1262 (10th Cir. 2020).

244. *See O'Donovan-Conlin*, 255 F. Supp. 2d at 1085.

ambiguous as to whether attorneys' fees could factor into the amount in controversy, courts should resolve the ambiguity cautiously in favor of allowing the action.

However, Congress also intended to limit access to the federal courts in MMWA actions so as to not flood the dockets of district courts.[245] This intent can be seen in the statutory language itself, in which Congress allowed for MMWA claims to be brought in both state and federal court but placed restrictions on federal jurisdiction.[246] Though Congress intended to limit federal jurisdiction of MMWA claims, it cannot be said that its main goal was to do so, nor that the limitation on federal jurisdiction is enough to prevent attorneys' fees from entering the amount in controversy.[247] The legislative history indicates that limitations on federal jurisdiction were put in place to prevent federal courts from being overwhelmed when "small claims courts are available and function adequately in resolving consumer disputes."[248] In small claims courts, *pro se* representation is generally sufficient, and attorneys' fees would not be required.[249]

Based on the language of the Senate report, it seems more likely that Congress intended the limitation on federal jurisdiction to serve as a buffer for claims that could more easily and speedily be resolved by a *pro se* plaintiff in small claims court.[250] Such a context is drastically different from one in which a consumer plaintiff, who requires an attorney to represent them, becomes barred from federal court because the plaintiff does not have a breached warranty for a $50,000 consumer product.

C. The Arguments of the Majority and Minority Courts

Regardless of the statutory language and the legislative history, the primary issue this Comment addresses is a jurisprudential one.[251] The majority rule established in *Saval v. BL Ltd.* nearly 40 years ago, which many circuit courts have since adopted, should be overturned, and courts should adopt the minority rule established in *Shoner v. Carrier Corp.*[252]

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245. *See* S. REP. NO. 93-151, at 24 (1973).

246. *See* 15 U.S.C. §§ 2310(d)(1)(A)–(B), (3)(A)–(C).

247. *See generally* S. REP. NO. 93-151, at 23–24 (recognizing the effect that MMWA claims will "for the most part . . . be enforced in State rather than Federal courts," but explaining that a goal is to "make economically feasible the pursuit of remedies by consumers in State and Federal courts").

248. S. REP. NO. 93-151, at 24 (1973).

249. *See id.*

250. *See id.*

251. *See generally* Shoner v. Carrier Corp., 30 F.4th 1144, 1149 (9th Cir. 2022) (explaining that Congress has not been involved with the development because "[t]he MMWA has not been amended since its enactment").

252. *See infra* Part IV.

The doctrine of *stare decisis* cautions courts against overturning their precedent.[253] However, *stare decisis* must give way in some situations.[254] When considering overturning precedent, courts weigh a number of factors: "the quality of the precedent's reasoning, its consistency with other decisions, legal and factual developments since [it] was decided, and its workability."[255] This Section primarily considers the first factor—the quality of the precedent's reasoning.[256] Particularly, this Section focuses on the quality of the Fourth Circuit's reasoning in *Saval* versus the Ninth Circuit's reasoning in *Shoner*.[257] In addition, other, secondary factors are discussed below.[258]

1. Critique of the Legal Reasoning of the Fourth Circuit

The Fourth Circuit began its refutation of including attorneys' fees in the amount in controversy calculation by first looking at the statutory language.[259] The court rested its conclusion on its finding that "costs" and "expenses" refer to the same concept and that "'attorneys' fees' are an example of both."[260] However, the court refuted itself by its own words, stating that the statutory language "tends to suggest that 'expenses' are not the same as 'costs'"[261] because § 2310(d)(3) excludes "interests and costs" from the amount in controversy calculation, while "expenses" are seemingly left alone.[262] The court saw in this discrepancy evidence that costs and expenses could refer to two separate concepts.[263] Attorneys' fees would thus not be excluded because they are labelled "expenses" but not "costs."[264] The court relegated this admission to a footnote, but the principles of statutory construction show that it is the stronger argument.[265]

253. *See generally* Ramos v. Louisiana, 140 S. Ct. 1390, 1410–11 (2020) (Kavanaugh, J., concurring in part) (providing a brief history and purpose of the *stare decisis* doctrine).

254. *See id.* at 1411–12.

255. Jones v. Mississippi, 141 S. Ct. 1307, 1336 (2021) (Sotomayor, J., dissenting) (citing *Ramos*, 140 S. Ct. at 1414). Justice Kavanaugh lists another factor, "the age of the precedent." *Ramos*, 140 S. Ct. at 1414.

256. *See infra* Section III.C.1.

257. *Compare* Saval v. BL Ltd., 710 F.2d 1027, 1032–33 (4th Cir. 1983) (rejecting including attorneys' fees in the amount in controversy), *with* Shoner v. Carrier Corp., 30 F.4th 1144, 1147-49 (9th Cir. 2022) (allowing attorneys' fees in the amount in controversy).

258. *See infra* Section III.D.

259. *See Saval*, 710 F.2d at 1032.

260. *Id.*

261. *Id.* at 1033 n.9.

262. *See* 15 U.S.C. § 2310(d)(3).

263. *See Saval*, 710 F.2d at 1033 n.9.

264. *See id.*

265. *See id.*

One of the canons of statutory construction is the canon against superfluity—courts should interpret statutes to not render any part of the statute superfluous or void.[266] Applying this canon to the MMWA, "costs" and "expenses" refer to separate items. First, if "costs" and "expenses" were meant to be synonyms, the two most obvious ways to indicate that would be to (1) phrase the statute with the language "costs or expenses," rather than "costs and expenses"; or (2) remit either of the two words so that the statute reads "costs" or "expenses," but not both. An example of this use of conjunctions can be seen in the very same statutory section, which states that "a written warranty [is] created by the use of such terms as 'guaranty' or 'warranty.'"[267] The use of "or" indicates that the terms "guaranty" and "warranty" are two terms that refer to the same thing: something that creates a written warranty.[268]

The possibility that "costs and expenses" is intended as a package term in § 2310(d)(2) seems to be precluded by § 2310(d)(3)(B), which excludes "costs" from the amount in controversy, but not "costs and expenses" as would be expected if "costs and expenses" was intended to be a single term.[269] The most natural interpretation would be to read "costs" and "expenses" as representing two distinct items, as the court recognizes yet resists.[270] The court rationalizes its adoption of this reading by declaring it to be "more in line with the statutory purpose,"[271] but the purpose of the MMWA is to allow consumers redress against sellers for faulty consumer products.[272] A proper consideration of the statutory purpose of the MMWA would allow consumers to effectuate the powers that Congress has granted to them.[273]

The Fourth Circuit also regarded the inclusion of attorneys' fees in the amount in controversy calculation as rendering superfluous the requirement that each individual claim be at least \$25.[274] It is true that including attorneys' fees will almost certainly make the amount in controversy exceed \$25.[275] However, as the court recognized, the language of this section does not mandate that the minimum \$25 amount in controversy for individual claims be reached free of "interests and costs,"

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266. *See generally* Marx v. Gen. Revenue Corp., 568 U.S. 371, 392–97 (2013) (Sotomayor, J., dissenting) (describing the importance of the canon against superfluity).

267. 15 U.S.C. § 2310(c)(2)(B).

268. *See generally* Hassan v. GCA Prod. Servs., Inc., 487 P.3d 203, 211 (Wash. Ct. App. 2021) (examining how the conjunction "or" may be used in a statute).

269. *See* 15 U.S.C. §§ 2310(d)(2), (3)(B).

270. *See* Saval v. BL Ltd., 710 F.2d 1027, 1033 n.9 (4th Cir. 1983).

271. *Id.*

272. *See* S. REP. NO. 93-151, at 2 (1973).

273. *See* O'Donovan-Conlin v. U.S. Dep't of State, 255 F. Supp. 2d 1075, 1085 (N.D. Cal. 2003).

274. *See Saval*, 710 F.2d at 1032.

275. *See id.*

nor of "costs and expenses."[276] The court declared the absence of this language to be unintentional and read the language into the statute,[277] but this contravenes the "cardinal canon" of statutory construction—that "courts must presume that a legislature says in a statute what it means and means in a statute what it says there."[278] "When the words of a statute are unambiguous, then . . . 'judicial inquiry is complete.'"[279] It is not the role of a court to read words into an unambiguous statute, thereby changing its meaning.[280] The statute says the amount in controversy of a claim—with absolutely no reference to costs, expenses, interests, or anything else—must be at least $25,[281] and it means what it says.[282] The court manufactures a superfluity by reading requirements into an unambiguous statute when its inquiry should already have been complete.[283]

The court also denies the comparison between attorneys' fees in the MMWA context and attorneys' fees in the context of the amount in controversy requirement of diversity jurisdiction.[284] The court distinguished the allowance of attorneys' fees in the amount in controversy calculation for diversity jurisdiction from the MMWA scenario because diversity jurisdiction attorneys' fees are substantive rights that state statutes create.[285] The court stated that this same rule does not apply to a federal statute.[286] However, the distinction is arbitrary rather than substantive.[287] Successful consumers are entitled to attorneys' fees under the MMWA because they are a substantive right.[288] The purpose of these attorneys' fees is to "[make] consumer resort to the courts feasible."[289] Providing consumers the right to recover attorneys' fees accomplishes this feasibility.[290]

2. Defense of the Legal Reasoning of the Ninth Circuit

In contrast to the Fourth Circuit, the Ninth Circuit refused to interpret "costs and expenses" differently than in its diversity jurisdiction

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276. *See id.* at 1032 n.7; *see also* 15 U.S.C. § 2310(d)(3)(A).
277. *See Saval*, 710 F.2d at 1032 n.7.
278. Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253–54 (1992).
279. *Id.* at 254 (quoting Rubin v. United States, 449 U.S. 424, 430 (1981)).
280. *See* Montgomery Cnty. v. MERSCORP, Inc., 904 F. Supp. 2d 436, 444 (E.D. Pa. 2012) (quoting Pa. Sch. Bds. Ass'n., Inc. v. Commonwealth Pub. Sch. Emps.' Ret. Bd., 580 Pa. 610, 621 (Pa. 2004)).
281. *See* 15 U.S.C. § 2310(d)(3)(A).
282. *See Germain*, 503 U.S. at 254.
283. *See* Saval v. BL Ltd., 710 F.2d 1027, 1032–33 (4th Cir. 1983).
284. *Id.* at 1033.
285. *See id.*
286. *See id.*
287. *See supra* Section III.A.
288. *See supra* Section III.A.
289. S. REP. NO. 93-151, at 7–8 (1973).
290. *See id.* at 24.

jurisprudence.[291] The Ninth Circuit recognized that the attorneys' fees authorized by the MMWA are a substantive right of the consumer plaintiff.[292] There is no meaningful difference that would justify deviating from the Supreme Court's ruling in *Missouri State Life Insurance Co. v. Jones*, which allowed attorneys' fees to be calculated in the amount in controversy requirement in diversity jurisdiction.[293] When the exclusion of "costs and expenses" from the amount in controversy requirement by statute is ambiguous as to what "costs and expenses" are, the longstanding rule of including attorneys' fees in the diversity jurisdiction context should not be abandoned.[294]

The Ninth Circuit also rebutted the argument that the inclusion of attorneys' fees into the amount in controversy would render the minimum $25 amount for individual claims superfluous.[295] As the court noted, there is no language in the statute declaring that the $25 amount must be met free of interests or costs.[296] The Ninth Circuit rejected the Fourth Circuit's rationale that Congress unintentionally left out such language because courts should not "provide for [their] preferred result."[297] The Ninth Circuit properly exercised its powers of statutory interpretation by not reading its own requirements into the text of the statute.[298] The Ninth Circuit offers a more plausible reading by properly drawing the comparison between attorneys' fees in the MMWA context and in the diversity jurisdiction context.[299] By following the recognized canons of statutory construction and prudentially limiting its reading into the statutory text, the Ninth Circuit respects the purpose of the MMWA and the intent of Congress.

D. Workability of the Rule, and Other Stare Decisis Factors

The fourth factor in overturning prior judicial precedent is the workability of the minority rule.[300] The main argument in favor of the workability of the minority rule is that allowing more consumer plaintiffs to pursue remedies in federal court fulfills the MMWA's purpose.[301] In addition, widespread adoption of the minority rule would create a more workable standard by providing uniformity throughout the judiciary. Also,

291. Shoner v. Carrier Corp., 30 F.4th 1144, 1148 (9th Cir. 2022).
292. *See id.*
293. *See id.*
294. *See supra* Section III.A.
295. *See Shoner*, 30 F.4th at 1149.
296. *See id.*
297. *Id.* at 1149 (quoting Lamie v. U.S. Tr., 540 U.S. 526, 542 (2004)).
298. *See Shoner*, 30 F.4th at 1149.
299. *See id.* at 1148.
300. *See supra* Section III.C.
301. *See supra* Section III.B.2.

the policy behind the minority rule strikes an appropriate balance by fulfilling the congressional goal of keeping wasteful small claims out of federal court while simultaneously allowing more consumer plaintiffs access to federal courts.

1. Creates Uniformity Among the Circuits

The first reason for adoption of the minority rule across the federal circuits is that such a development would create uniformity in the law among the circuits. Uniformity of the law is something to be sought.[302] In fact, one of the purposes of the U.C.C. was "to make uniform the law among the various jurisdictions."[303] Because the MMWA was created to remedy problems that arose out of the U.C.C.,[304] it is only natural that application of the MMWA should also be uniform among jurisdictions. A uniform rule among the circuits would allow consumers throughout the country to experience the same treatment and basic fairness no matter the jurisdiction in which they reside. Uniformity would also have the benefit of preventing "forum shopping," which is a problem that may loom on the horizon due to the circuit split.[305]

2. Fulfills Congressional Intent to Prevent Flooding of Federal Courts

In addition, the congressional goal is more workable because it avoids flooding federal district courts with hundreds of small claims.[306] Judge Easterbrook provided the example of the Hatfields and McCoys, who refused to settle and took a dispute over a $10 garden rake into federal court, racking up $50,000 in attorneys' fees along the way.[307] This is the exact unfortunate scenario that Congress intended to prevent with the $50,000 amount in controversy requirement.[308] If this example became the rule, then there would be no end to the miniscule breach of warranty claims that would clog up the dockets of federal district courts.

But this is not a realistic example. The fear that allowing attorneys' fees into the amount in controversy will overwhelm federal courts is dispelled by considering the words a hair's breadth above the amount in

302. *See* Maniar v. FDIC, 979 F.2d 782, 785 (9th Cir. 1992).

303. U.C.C. § 1-103(a)(3) (AM. L. INST. & UNIF. L. COMM'N 2010).

304. *See supra* Section II.B.

305. *See generally* Debra Lyn Bassett, *The Forum Game*, 84 N.C. L. REV. 333, 348–50 (2006) (providing a description of forum shopping to take advantage of differences in substantive and procedural law).

306. *See generally* S. REP. NO. 93-151, at 24 (1973) (encouraging the use of small claims court instead of federal court when appropriate).

307. *See* Gardynski-Leschuck v. Ford Motor Co., 142 F.3d 955, 958–59 (7th Cir. 1998).

308. *See supra* Section II.B.2.c.

controversy provision itself.[309] Attorneys' fees authorized by the MMWA are to be granted to a victorious consumer plaintiff.[310] However, the court has the discretion not to award attorneys' fees if it would be inappropriate and unreasonable.[311] The judge presiding over *Hatfield v. McCoy* would be at liberty to find that an award of attorneys' fees would be inappropriate for a plaintiff refusing to settle a $10 claim.[312]

3. Other Stare Decisis Factors

The second factor in overturning prior judicial precedent is the precedent's consistency with other decisions.[313] This factor weighs in favor of the majority rule, as it has been adopted by four other circuits, with only one circuit ruling in opposition.[314] However, the second factor becomes less decisive when considering the age of the precedent.[315] The majority rule is nearly 40 years old.[316] The latest court to adopt it did so nearly 25 years ago.[317] In contrast, the minority rule is one year old.[318] The third factor—legal and factual developments—weighs toward overturning because the Ninth Circuit has developed the new rule in the wake of the longstanding acceptance of the majority rule.[319] The courts that adopted the majority rule did not provide new analysis, and the Ninth Circuit was the first court to add substantially to the legal discussion on this issue since *Saval*.[320]

IV. CONCLUSION

The purpose of the MMWA is to provide higher standards in consumer product warranties and to provide consumers with a remedy if those warranties are breached.[321] Under the MMWA, consumer plaintiffs must reach a $50,000 amount in controversy to have federal jurisdiction over their MMWA claims.[322] The majority rule among circuit courts

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309. *See* 15 U.S.C. § 2310(d)(2). The amount in controversy provision is found immediately after, in § 2310(d)(3)(B).

310. *See id.* § 2310(d)(2)

311. *See id.*

312. *See id.*

313. *See* Jones v. Mississippi, 141 S. Ct. 1307, 1336 (2021) (Sotomayor, J., dissenting).

314. *See supra* Section II.C.

315. *See* Ramos v. Louisiana, 140 S. Ct. 1390, 1414–15 (2020) (Kavanaugh, J., concurring in part).

316. *See* Saval v. BL Ltd., 710 F.2d 1027, 1033 (4th Cir. 1983).

317. *See* Ansari v. Bella Auto. Corp., 145 F.3d 1270, 1272 (11th Cir. 1998).

318. *See* Shoner v. Carrier Corp., 30 F.4th 1144, 1149 (9th Cir. 2022).

319. *See supra* Section II.C.2.b.

320. *See Shoner*, 30 F.4th at 1147.

321. *See supra* Section II.B.1.

322. *See supra* Section II.B.2.c.

prevents consumer plaintiffs under the MMWA from using their attorneys' fees to reach the amount in controversy requirement.[323] This rule limits consumer plaintiff access to federal courts in contradiction to the purpose of the MMWA.[324]

Recently, the Ninth Circuit has allowed consumer plaintiffs to use their attorneys' fees to reach the amount in controversy if those fees are authorized by state statute.[325] The new rule created by the Ninth Circuit obtains uniformity in the law by matching the rule for attorneys' fees in diversity jurisdiction.[326] Further, the rule properly reads the statutory language and fulfills the statutory purpose envisioned by Congress.[327]

The circuit courts should adopt the Ninth Circuit's rule and conflicting decisions should be overturned. Plaintiffs should be allowed to include their attorneys' fees in the amount in controversy calculation because their inclusion will give effect to congressional intent and fulfill the MMWA's purpose.

323. *See supra* Section II.C.1.
324. *See supra* Section III.B.
325. *See supra* Section II.C.2.b.
326. *See supra* Section III.A.
327. *See supra* Section III.B.2.