

United States District Court  
Eastern District of Missouri  
319 U.S. Court House & Custom House  
St. Louis, Missouri

John H. Nangle  
Chief Judge

(314) 539-3603  
JCS 262-3603

May 2, 1990

The Honorable Robert F. Peckham  
Chief Judge  
Northern District of California  
Post Office Box 36060  
450 Golden Gate Avenue  
San Francisco, California 94102

Re: S.2027

Dear Bob:

I am enclosing some material concerning the above (and am sending copies to the AO so you will not be the depository). This material is as follows:


1. A letter to Chief Judge Pat Conmy of Bismarck, North Dakota, from the Chairman of the Federal Practice Committee in North Dakota and a copy of that Chairman's letter to Senator Burdick.
2. An update on my previous mailing concerning metropolitan St. Louis corporate counsel who oppose the Biden Bill. As a result, I can advise that the general counsel of the corporations indicated are opposed to the Biden Bill - Anheuser-Busch Companies, Southwestern Bell Corporation, Monsanto Company, Ralston Purina Company, McDonnell-Douglas Corporation, Emerson Electric Company, Brown Group, Inc., Edison Brothers Stores, Inc., Wetterau, Inc. and General Dynamics Corporation.

The Honorable Robert F. Peckham  
May 2, 1990  
Page 2

All of these counsel, of course, are interested in reducing costs of discovery and expediting the trial of civil cases. However, they all agree that S.2027 goes about it the wrong way.

Looking forward to seeing you on May 18, I am

Sincerely yours,



John F. Nangle

JFN:bar  
Encl.

CC: Executive Committee Members  
Mr. L. Ralph Meham  
Mr. Robert E. Feidler

PEARCE & DURICK

ATTORNEYS AT LAW

THIRD FLOOR

314 EAST THAYER AVENUE

P. O. BOX 400

BISMARCK, NORTH DAKOTA 58502

April 24, 1990

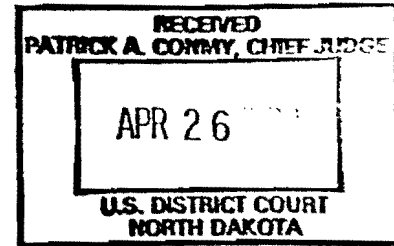
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LARRY L. BOSCHEE  
LAWRENCE BENDER  
JANET D. SEAWORTH

The Honorable Patrick A. Conmy  
Chief Judge, U. S. District Court  
Post Office Box 1578  
Bismarck, North Dakota 58502



Re: Civil Justice Reform Act of 1990

Dear Judge Conmy:

I have enclosed copies of letters I have sent to our Congressional delegation on this matter. I have been in touch with Senator Burdick's office and have been advised that the Bill is in Committee with no further action scheduled on the Bill.

I have furnished you with the article from The New York Times on the Bill. That article mentioned that the American Insurance Association has come out in support of the Bill. We represent AIA in North Dakota and I have made inquiry to AIA concerning their support of the Bill. I intend to inform AIA that I do not think the Bill is in their best interest.

If you have any suggestions as to any other avenues I should be exploring please advise me.

Very truly yours,

  
PATRICK W. DURICK, Chairman  
Federal Practice Committee

PWD: jh  
Enclosures

PEARCE & DURICK

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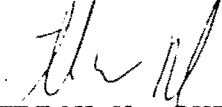
Members at Large  
Federal Practice Committee

Re: Civil Justice Reform Act of 1990

Members:

I have enclosed copies of letters I have sent to North Dakota's Congressional delegation concerning my views on the Civil Justice Reform Act of 1990 and a copy of an analysis of the Act furnished to me by Chief Judge Conmy. I have a copy of the Act in my office. If any of you would like to review the Act let me know and I will send you a copy.

Very truly yours,



PATRICK W. DURICK, Chairman  
Federal Practice Committee

PWD:jh  
Enclosures

cc: Chief Judge Patrick A. Conmy

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April 24, 1990

The Honorable Quentin Burdick  
United States Senate  
511 Hart Office Building  
Washington, D.C. 20510

Re: S.2027

Dear Senator Burdick:

I am the Chairperson of the Federal Practice Committee of the United States District Court for the District of North Dakota. The Federal Practice Committee functions in an advisory capacity to the Federal District Court in North Dakota and Chief Judge Patrick A. Conmy has requested that I review S.2027, the Civil Justice Reform Act of 1990, and advise you of any comments that I have on the Bill. My viewpoint is one of a practicing trial lawyer who has had experience in Federal District courts in North Dakota and in other states. I have reviewed S.2027 and at the outset let me state that the objective of the Bill, the reduction of expense and delay in the administration of the civil litigation portion of the Federal docket, is most a most laudable goal which everyone can endorse unequivocally.

Before commenting specifically on S.2027, I would point out that the problem of efficiently allocating judicial resources in the administration of justice is not one unique to the Federal Courts. I recently served on the Intermediate Appellate Court Study Committee of the North Dakota Bar Association which considered the problems created by the increasing number of cases on appeal in the North Dakota Supreme Court. I am presently serving on the Case Management Committee of the District Court, South Central Judicial District of the State of North Dakota. The Case Management Committee studied the problems created by the increasingly crowded docket in the District Court's workload and made recommendations to alleviate those problems. The increasing volume and complexity of litigation has created strains at all levels of the judicial system, and it is my observation that judges at all levels of the courts are working diligently to adapt to the increasing demands placed upon them.

Turning to the specifics of S.2027, the proposed legislation correctly enumerates many of the problems created by the increased volume and complexity of present day litigation in the Federal courts. The proposed legislation then mandates suggested remedies

Page 2, The Honorable Quentin Burdick  
April 24, 1990

for the problems. These remedies include the creation of different tracks for cases of differing degrees of complexity, mandatory scheduling conferences, increased judicial supervision of discovery, early scheduling of trials, and mandatory reporting statistics. The implementation of these remedies in the manner mandated by S.2027, in my estimation, would do little to solve the problems which are identified. In many instances implementation of the remedies mandated by S.2027 would be counterproductive.

This is especially true in North Dakota. The District Court for the District of North Dakota ranked first in the Eighth Circuit and seventh in the United States in the speedy processing of civil matters during the last reporting period. S.2027, if passed, would impose increased administrative burdens on the court and litigants before the court, would cut back on the responsibilities of the full time U. S. Magistrate, and would have no measurable beneficial effect in the Federal Courts in North Dakota.

The Federal Rules of Civil Procedure as presently constituted provide the means for the efficient disposition of cases which are filed in the Federal Courts whether they be complex or relatively simple. By way of example, I am presently involved in a case in Federal Court here in North Dakota which has multiple parties, numerous claims, complex facts, and novel legal theories. While discovery has been long and extensive, over thirty-five depositions have been taken in states from Hawaii to New York, the lawyers have not had any major problems with court procedures in preparing the case for trial. The length of preparation has been dictated by the complexities of the case and not by procedural limitations of the Court. Preparing this same case for trial under the system envisioned by S.2027, would entail increased costs to the litigants and more resources from the Court.

Another example of the potential impact of implementation of S.2027 in the Federal Court here in North Dakota concerns the U. S. Magistrate. North Dakota has a full time U. S. Magistrate and she is used efficiently and effectively by the Court and by litigants before the Court. S.2027 would cut back on the responsibility and authority of U. S. Magistrates. Such a decrease in responsibility would work to the detriment of the administration of justice in the District of North Dakota. The system now in place utilizes the full talents of the U. S. Magistrate to the benefit of the Court and litigants. Under S.2027 the full talents of the U. S. Magistrate would not be utilized.

In my view S.2027 is not good legislation. The objectives of the Bill are unquestionably worthwhile, but the means employed by the Bill to reach the objectives miss the mark. The Bill attempts to treat symptoms of the root problems rather than the basis of the problems. The problems of delay and expense in Federal Courts are caused in large part by the increases in volume and complexity of

Page 3, The Honorable Quentin Burdick  
April 24, 1990

litigation both civil and criminal without a commensurate increase in resources devoted to handling the litigation.

The Federal Rules of Civil Procedure provide a flexible framework within which civil litigation in the Federal System can be effectively dealt with. The success of the Federal Rules is evidenced by the fact that many states, such as North Dakota, have patterned their rules of civil procedure after the Federal Rules. The changes to the Federal Rules contemplated by S.2027 would not work to achieve the stated objectives, decreasing costs and delays in the Federal System. I urge you to vote against S.2027.

Due to time constraints I did not call a meeting of the Federal Practice Committee to consider S.2027 and my views may or may not represent the views of any or all of the members of the Federal Practice Committee. I have sent a copy of this letter to all Committee members and if those members have views they wish to express to you they can correspond with you.

If you would like to discuss any of the matters I have raised I would be happy to respond to your inquiries. S.2027 has many provisions and I have not attempted to discuss all of the provisions of the Bill in this letter. I would be happy to address any matters which I have not covered in this letter if such information would be of assistance to you.

I would like to follow this proposed legislation as it moves through Congress and I would appreciate any information your office could provide to assist me in monitoring the Bill.

Thank you for your consideration.

Very truly yours,



PATRICK W. DURICK, Chairman  
Federal Practice Committee

PWD:jh

cc: Chief Judge Patrick A. Conmy  
Members at Large, North Dakota Federal  
Practice Committee

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April 24, 1990

The Honorable Kent Conrad  
United States Senate  
361 Dirksen Building  
Washington, D.C. 20510

Re: S.2027

Dear Senator Conrad:

I am the Chairperson of the Federal Practice Committee of the United States District Court for the District of North Dakota. The Federal Practice Committee functions in an advisory capacity to the Federal District Court in North Dakota and Chief Judge Patrick A. Conmy has requested that I review S.2027, the Civil Justice Reform Act of 1990, and advise you of any comments that I have on the Bill. My viewpoint is one of a practicing trial lawyer who has had experience in Federal District courts in North Dakota and in other states. I have reviewed S.2027 and at the outset let me state that the objective of the Bill, the reduction of expense and delay in the administration of the civil litigation portion of the Federal docket, is most a most laudable goal which everyone can endorse unequivocally.

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Turning to the specifics of S.2027, the proposed legislation correctly enumerates many of the problems created by the increased volume and complexity of present day litigation in the Federal courts. The proposed legislation then mandates suggested remedies



for the problems. These remedies include the creation of different tracks for cases of differing degrees of complexity, mandatory scheduling conferences, increased judicial supervision of discovery, early scheduling of trials, and mandatory reporting statistics. The implementation of these remedies in the manner mandated by S.2027, in my estimation, would do little to solve the problems which are identified. In many instances implementation of the remedies mandated by S.2027 would be counterproductive.

This is especially true in North Dakota. The District Court for the District of North Dakota ranked first in the Eighth Circuit and seventh in the United States in the speedy processing of civil matters during the last reporting period. S.2027, if passed, would impose increased administrative burdens on the court and litigants before the court, would cut back on the responsibilities of the full time U. S. Magistrate, and would have no measurable beneficial effect in the Federal Courts in North Dakota.

The Federal Rules of Civil Procedure as presently constituted provide the means for the efficient disposition of cases which are filed in the Federal Courts whether they be complex or relatively simple. By way of example, I am presently involved in a case in Federal Court here in North Dakota which has multiple parties, numerous claims, complex facts, and novel legal theories. While discovery has been long and extensive, over thirty-five depositions have been taken in states from Hawaii to New York, the lawyers have not had any major problems with court procedures in preparing the case for trial. The length of preparation has been dictated by the complexities of the case and not by procedural limitations of the Court. Preparing this same case for trial under the system envisioned by S.2027, would entail increased costs to the litigants and more resources from the Court.

Another example of the potential impact of implementation of S.2027 in the Federal Court here in North Dakota concerns the U. S. Magistrate. North Dakota has a full time U. S. Magistrate and she is used efficiently and effectively by the Court and by litigants before the Court. S.2027 would cut back on the responsibility and authority of U. S. Magistrates. Such a decrease in responsibility would work to the detriment of the administration of justice in the District of North Dakota. The system now in place utilizes the full talents of the U. S. Magistrate to the benefit of the Court and litigants. Under S.2027 the full talents of the U. S. Magistrate would not be utilized.

In my view S.2027 is not good legislation. The objectives of the Bill are unquestionably worthwhile, but the means employed by the Bill to reach the objectives miss the mark. The Bill attempts to treat symptoms of the root problems rather than the basis of the problems. The problems of delay and expense in Federal Courts are caused in large part by the increases in volume and complexity of

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April 24, 1990

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The Federal Rules of Civil Procedure provide a flexible framework within which civil litigation in the Federal System can be effectively dealt with. The success of the Federal Rules is evidenced by the fact that many states, such as North Dakota, have patterned their rules of civil procedure after the Federal Rules. The changes to the Federal Rules contemplated by S.2027 would not work to achieve the stated objectives, decreasing costs and delays in the Federal System. I urge you to vote against S.2027.

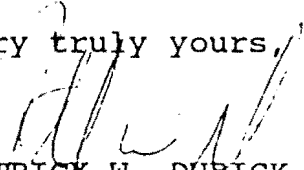
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If you would like to discuss any of the matters I have raised I would be happy to respond to your inquiries. S.2027 has many provisions and I have not attempted to discuss all of the provisions of the Bill in this letter. I would be happy to address any matters which I have not covered in this letter if such information would be of assistance to you.

I would like to follow this proposed legislation as it moves through Congress and I would appreciate any information your office could provide to assist me in monitoring the Bill.

Thank you for your consideration.

Very truly yours,



PATRICK W. DURICK, Chairman  
Federal Practice Committee

PWD:jh

cc: Chief Judge Patrick A. Conmy  
Members, North Dakota Federal  
Practice Committee

PEARCE & DURICK

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JANET D. SEAWORTH

April 24, 1990

The Honorable Byron Dorgan  
United States Congress  
109 Cannon HOB  
Washington, D.C. 20515

Re: H.R. 3898

Dear Congressman Dorgan:

I am the Chairperson of the Federal Practice Committee of the United States District Court for the District of North Dakota. The Federal Practice Committee functions in an advisory capacity to the Federal District Court in North Dakota and Chief Judge Patrick A. Conmy has requested that I review H.R. 3898, the Civil Justice Reform Act of 1990, and advise you of any comments that I have on the Bill. My viewpoint is one of a practicing trial lawyer who has had experience in Federal District courts in North Dakota and in other states. I have reviewed H.R. 3898 and at the outset let me state that the objective of the Bill, the reduction of expense and delay in the administration of the civil litigation portion of the Federal docket, is most a most laudable goal which everyone can endorse unequivocally.

Before commenting specifically on H.R. 3898, I would point out that the problem of efficiently allocating judicial resources in the administration of justice is not one unique to the Federal Courts. I recently served on the Intermediate Appellate Court Study Committee of the North Dakota Bar Association which considered the problems created by the increasing number of cases on appeal in the North Dakota Supreme Court. I am presently serving on the Case Management Committee of the District Court, South Central Judicial District of the State of North Dakota. The Case Management Committee studied the problems created by the increasingly crowded docket in the District Court's workload and made recommendations to alleviate those problems. The increasing volume and complexity of litigation has created strains at all levels of the judicial system, and it is my observation that judges at all levels of the courts are working diligently to adapt to the increasing demands placed upon them.

Turning to the specifics of H.R. 3898, the proposed legislation correctly enumerates many of the problems created by the increased volume and complexity of present day litigation in the Federal courts. The proposed legislation then mandates suggested remedies

for the problems. These remedies include the creation of different tracks for cases of differing degrees of complexity, mandatory scheduling conferences, increased judicial supervision of discovery, early scheduling of trials, and mandatory reporting statistics. The implementation of these remedies in the manner mandated by H.R. 3898, in my estimation, would do little to solve the problems which are identified. In many instances implementation of the remedies mandated by H.R. 3898 would be counterproductive.

This is especially true in North Dakota. The District Court for the District of North Dakota ranked first in the Eighth Circuit and seventh in the United States in the speedy processing of civil matters during the last reporting period. H.R. 3898, if passed, would impose increased administrative burdens on the court and litigants before the court, would cut back on the responsibilities of the full time U. S. Magistrate, and would have no measurable beneficial effect in the Federal Courts in North Dakota.

The Federal Rules of Civil Procedure as presently constituted provide the means for the efficient disposition of cases which are filed in the Federal Courts whether they be complex or relatively simple. By way of example, I am presently involved in a case in Federal Court here in North Dakota which has multiple parties, numerous claims, complex facts, and novel legal theories. While discovery has been long and extensive, over thirty-five depositions have been taken in states from Hawaii to New York, the lawyers have not had any major problems with court procedures in preparing the case for trial. The length of preparation has been dictated by the complexities of the case and not by procedural limitations of the Court. Preparing this same case for trial under the system envisioned by H.R. 3898, would entail increased costs to the litigants and more resources from the Court.

Another example of the potential impact of implementation of H.R. 3898 in the Federal Court here in North Dakota concerns the U. S. Magistrate. North Dakota has a full time U. S. Magistrate and she is used efficiently and effectively by the Court and by litigants before the Court. H.R. 3898 would cut back on the responsibility and authority of U. S. Magistrates. Such a decrease in responsibility would work to the detriment of the administration of justice in the District of North Dakota. The system now in place utilizes the full talents of the U. S. Magistrate to the benefit of the Court and litigants. Under H.R. 3898 the full talents of the U. S. Magistrate would not be utilized.

In my view H.R. 3898 is not good legislation. The objectives of the Bill are unquestionably worthwhile, but the means employed by the Bill to reach the objectives miss the mark. The Bill attempts to treat symptoms of the root problems rather than the basis of the problems. The problems of delay and expense in Federal Courts are caused in large part by the increases in volume and complexity of

Page 3, The Honorable Byron Dorgan  
April 24, 1990

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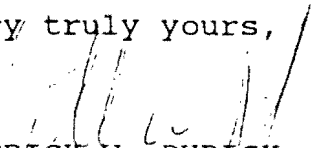
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I would like to follow this proposed legislation as it moves through Congress and I would appreciate any information your office could provide to assist me in monitoring the Bill.

Thank you for your consideration.

Very truly yours,

  
PATRICK W. DURICK, Chairman  
Federal Practice Committee

PWD:jh

cc: Chief Judge Patrick A. Conmy  
Members at Large, North Dakota Federal  
Practice Committee



ANHEUSER-BUSCH COMPANIES

Walter A. Suhre, Jr.  
Vice President and General Counsel

April 24, 1990

Mr. Veryl Riddle  
Bryan, Cave, McPheeters & McRoberts  
500 North Broadway  
St. Louis, MO 63102

Dear Veryl:

Re: Senate Bill No.2027

As General Counsel of Anheuser-Busch Companies, Inc., I join my colleagues representing other companies in the Eastern District of Missouri in support of Chief Judge John F. Nangle and his Executive Committee in opposing Senate Bill No. 2027. Those U.S. District Courts which presently operate efficiently should not be burdened with complex and unneeded administrative responsibilities.

I nonetheless urge Congress to find a less bureaucratic and rigid solution to a serious problem which is entirely too prevalent in our federal judicial system.

Very truly yours,

**GENERAL DYNAMICS CORPORATION**

**Pierre Laclède Center  
St. Louis, Missouri 63105**

25 April 1990

Robert H. Duesenberg  
Vice President & General Counsel

314-889-8319

Executive Committee  
Judicial Conference of the United States  
Attn: Chief Judge John F. Nangle  
United States District Court  
Eastern District of Missouri  
316 U.S. Courthouse & Customs House  
St. Louis, Missouri 63101

Re: Senate Bill 2027, The Civil Justice Reform Act of 1990

Dear Judge Nangle:

At the request of a local law firm, I have reviewed proposed Senate Bill, S. 2027, the Civil Justice Reform Act of 1990, and submit to you these comments in respect to the proposed legislation.

Senate Bill, S. 2027, would require extensive administrative and procedural changes in the United States District Courts, ostensibly to promote the just, speedy and inexpensive determination of civil litigation. Its objective is to contain escalating costs and growing excessive delays that characterize much of federal civil litigation.

The thrust of S. 2027 is to prescribe a system of differentiated case management; yet, it is not at all clear that case management issues lie at the heart of problems in the Judicial system in this country, including the Federal District Courts. The problems may well stem more from other sources, including the Rules of Procedure and a long period of proliferation of legislation that induces litigation, to name just two.

Indeed, some courts are not years behind in their dockets, civil or criminal; and the Federal District Courts of this circuit are, to my knowledge, among them. Notwithstanding, S. 2027 would mandate all District Courts to establish the plan prescribed in the Bill, that is, a specific detailed differentiated case management system as the plan for every District Court for expense and delay reduction. Why the prescribed system, its costs and burdens, should be thrust upon all District Courts, including District Courts now effectively run and managed is without explanation. No explanation is presented in any of the pages of the "Statement on the Introduction of the Bill" accompanying S. 2027.

**BRYAN, CAVE, McPHEETERS & McROBERTS**

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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PHOENIX, ARIZONA 85004-1019  
(602) 230-7000

1100 MAIN STREET  
KANSAS CITY, MISSOURI 64105-2112  
(816) 842-7444

VERYL L RIDDLE

May 2, 1990

VIA MESSENGER


Chief Judge John F. Nangle  
United States District Court  
Eastern District of Missouri  
316 U.S. Courthouse & Customs House  
St. Louis, Missouri 63101

Dear Judge Nangle:

As I mentioned to you earlier, in addition to the seven signatory companies whose names were attached to my letter to you of April 16, 1990, there were others who support you in your opposition to S.B. 2027, but for one reason or another were not able to sign on at that time.

In that connection, I am enclosing herewith a letter from Walter H. Suhre, Senior Vice President and General Counsel of Anheuser-Busch, expressing his views on S.B. 2027. In addition, I am authorized to include the name of The May Company as a signatory to the earlier letter. Unfortunately, Lou Garr, the General Counsel of The May Company, was not in town and as a result was unable to get the necessary clearances at May in order to become a signatory to the letter at that time.

Sincerely,



Veryl L. Riddle

VLR/dlf  
Encl.



**Southwestern Bell  
Corporation**

**James D. Ellis**  
Senior Executive Vice President  
and General Counsel

One Bell Center  
St. Louis, Missouri 63101  
Phone (314) 235-3395

April 23, 1990

The Honorable John F. Nangle  
Chief Judge  
United States District Courts  
Eastern District  
U.S. Court & Custom House  
1114 Market Street  
3rd Floor  
St. Louis, Missouri 63101

Dear Judge Nangle:

I have been involved on a number of matters and have just recently focused on the proposed Biden Bill (No. 2027).

On reviewing the Bill, I must say, as a preliminary matter, this legislation has no merit in respect to its application to the courts in the Eastern District of Missouri. This District would serve as a model for the operation of all district courts in the United States. The same is true, I might point out, in respect to all the federal district courts in the five states which we currently operate (Arkansas, Kansas, Missouri, Oklahoma and Texas).

There are many courses available to Congress to help the district courts cope with the enormous demands now being made on the court systems -- more judges etc. Adding a layer of bureaucracy is not helpful -- worse still, it is counterproductive.

Although it is a truism, it has never been more appropriate than in this instance: "If it ain't broke, don't fix it."

Sincerely,

