Jurisdictional Amount in Controversy Requirement: The Seventh Circuit Rejects the Plaintiff Viewpoint Rule - McCarty v. AMOCO Pipeline Company

William Stone Schober

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THE JURISDICTIONAL AMOUNT IN CONTROVERSY REQUIREMENT: THE SEVENTH CIRCUIT REJECTS THE PLAINTIFF VIEWPOINT RULE—MCCARTY V. AMOCO PIPELINE COMPANY

To secure federal jurisdiction under diversity of citizenship,\(^1\) section 1332 of the Judicial Code requires a showing that the value of the matter in controversy exceeds $10,000, exclusive of interest and costs.\(^2\) In suits for liquidated damages, the sum claimed in good faith by a plaintiff will generally equal a defendant’s potential liability.\(^3\) In suits for injunctive or declaratory relief, however, the opposing parties may view the particular matter in controversy from widely differing financial perspectives. The pecuniary value of the right a plaintiff seeks to enforce by an injunction may not equal

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1. The constitutional grant of diversity jurisdiction is set forth in U.S. CONST. art. III, § 2, cl. 1, which provides that “[t]he judicial Power shall extend . . . to Controversies . . . between Citizens of different States . . .” This jurisdiction was given to the federal courts by the Judiciary Act of 1789, which provides that:

   The circuit courts shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds exclusive of costs, the sum or value of five hundred dollars, and the United States are plaintiffs, or petitioners; or an alien is a party, or the suit is between a citizen of the State where the suit is brought, and a citizen of another State.

   Act of Sept. 24, 1789, ch. 20, § 11, 1 Stat. 73.
   
   The requirement that one of the parties be a citizen of the forum state was removed by the Judiciary Act of 1875, which provided that jurisdiction be granted over “a controversy between citizens of different states” if the jurisdictional amount requirement is met. Act of March 3, 1875, ch. 137, § 1, 18 Stat. 470.
   
   2. 28 U.S.C. § 1332 (1976) provides, in part:

   (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between—

   (1) citizens of different States;
   
   (2) citizens of a State, and citizens or subjects of a foreign State; and
   
   (3) citizens of different States and in which citizens or subjects of a foreign State are additional parties. . . .

   (c) For the purposes of this section and section 1441 of this title, a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business. . . .

   The amount originally fixed by the Judiciary Act of 1789 was $500. Act of Sept. 24, 1789, ch. 20, § 11, 1 Stat. 73. This figure was raised to $2,000 by Act of March 3, 1887, ch. 373, § 1, 24 Stat. 552, and to $3,000 by Act of March 3, 1911, ch. 231, § 24, 36 Stat. 1087. The last increase, to $10,000, was made by Act of July 25, 1958, Pub. L. No. 85-554, 72 Stat. 415.

   3. 1 J. MOORE FEDERAL PRACTICE ¶ 0.91 (1), at 839 (2d ed. 1979); Comment, The Jurisdictional Amount in Controversy in Suits to Enforce Federal Rights, 54 TEX. L. REV. 545, 552 (1976). The defendant may be liable for additional court costs in excess of the sum claimed by a plaintiff, but these sums are not considered in determining the amount in controversy. 28 U.S.C. § 1332 (1976).
the expenses a defendant would bear as a consequence of a decision in favor of the plaintiff. In these cases, the determination of the value of the matter in controversy will depend upon which of the two litigants' financial perspectives or "views" is considered controlling by a court. 4

The majority of federal courts use the "plaintiff viewpoint rule" to determine the value of the matter in controversy. 5 In some cases, however, the monetary value of the legal right asserted by a plaintiff is less than the $10,000 minimum. Nonetheless, it commonly occurs that in the same case a defendant could be compelled by a court to bear a substantial financial burden, by removing or altering an interfering object or modifying some activity. A court that adheres to the plaintiff viewpoint rule in this situation would be forced to deny the jurisdiction of the federal courts, even though the defendant's stake in the outcome of the case far exceeds the $10,000 minimum requirement.

Recently, in McCarty v. Amoco Pipeline Company, 6 the Court of Appeals for the Seventh Circuit faced a similar situation. In this case, the plaintiffs sought an injunction ordering the defendant to remove its $35,000 pipeline from their property. While the plaintiffs contend that their financial interest in the case was less than $10,000, 7 it was clear that removing the pipeline would result in the loss of the defendant's $35,000 investment. 8 The court of appeals, rejecting the plaintiff viewpoint rule, adopted instead the "either viewpoint rule," thus enabling the court to consider both the plaintiff's view and the defendant's view. 9 The court then held that because the cost to the defendant of removing the pipeline would exceed the $10,000 minimum, the federal courts could exercise jurisdiction over the case. 10

The McCarty decision is significant in two respects. First, the court of appeals correctly recognized the inadequacy of the plaintiff viewpoint rule. By adopting the either viewpoint rule, the various federal courts within the Seventh Circuit will be guided by a policy of logically applying the requirement of the jurisdictional amount statute and thus will avoid the unfair re-

4. To avoid confusion, the plaintiff's or defendant's financial perspectives toward the litigation are referred to as the plaintiff's view or defendant's view. The plaintiff viewpoint rule is a test under which a court considers only the plaintiff's view. Under the either viewpoint rule, a court may look to either the plaintiff's view or the defendant's view.
5. See note 18 and accompanying text infra.
6. 595 F.2d 389 (7th Cir. 1979).
7. Id. at 391.
8. The defendant filed an affidavit with the court of appeals, which stated, in pertinent part:
4. Plaintiffs have asked that Amoco be enjoined from using the easement strip across their land, and that it be ordered to remove its pipeline from such land. If such relief were granted the loss to Amoco would be the cost of constructing the pipeline at an estimated cost of $35,000. These actual damages would be exclusive of the cost of relocating the pipeline to an alternate easement strip.
9. 595 F.2d at 395.
10. Id.
suits that often arise from strict adherence to the more inflexible rule. Moreover, the *McCarty* court analyzed these procedural rules within a historical context, and thus dispelled some of the confusion that surrounds this area of civil procedure.

The purpose of this Note is threefold. First, the historical development of the viewpoint rules is discussed. Particular attention is directed toward the United States Supreme Court’s failure to state definitively its position on the question of which viewpoint rule is appropriate in suits asking for nonmonetary remedies. Next, the *McCarty* decision is analyzed, and the relative merits of the either viewpoint and plaintiff viewpoint rules are discussed. It is shown that considerations of fairness and logic warrant the utilization of the either viewpoint rule. Finally, the impact of the rule is examined, and certain limitations on the application of the rule are presented. The Note argues that the rule neither substantially alters a court’s procedure for determining jurisdiction nor significantly increases the federal court case load.

**HISTORICAL BACKGROUND**

Under section 1332 of the Judicial Code, the matter in controversy in suits involving diversity jurisdiction must exceed the sum or value of $10,000.\(^{11}\) Despite the apparent simplicity of this statutory language, the provision poses an analytical problem for the courts in suits for non-monetary remedies. Unlike suits for dollar damages, a claim for injunctive relief does not lend itself to precise valuation.\(^{12}\) The seminal case in this area is *Mississippi & Missouri Railroad v. Ward*,\(^{13}\) which involved a suit to abate a bridge as a nuisance. The United States Supreme Court held that although a sufficient amount of damage had not been sustained by the plaintiff, jurisdiction would not be denied because “the removal of the obstruction is the matter of controversy . . . and the value of the object must govern.”\(^{14}\) Unfortunately, the Court failed to specify which value and to what "object" it

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11. See note 2 supra.

12. See, e.g., Elliot v. Empire Natural Gas Co., 4 F.2d 493 (8th Cir. 1925). The court stated: “No rules as to how jurisdictional amount shall be arrived at can be laid down governing every case, for there are different shades of fact differentiating the various cases, and each one is dependent upon its own particular facts and circumstances.” *Id.* at 496. For general discussions of the various rules employed by the federal courts in valuating the jurisdictional amount in suits for injunctive relief, see Ilsen & Sardell, *The Monetary Minimum in Federal Court Jurisdiction*, 29 St. John’s L. Rev. 1, 183 (1955) [hereinafter cited as Ilsen & Sardell]; Comment, *Federal Courts: Jurisdictional Amount in Injunction Suits in Federal District Courts*, 25 Cal. L. Rev. 336 (1937); Comment, *Federal Jurisdictional Amount: Determination of the Matter in Controversy*, 73 Harv. L. Rev. 1369 (1960); Comment, *Federal Jurisdictional Amount Requirement in Injunction Suits*, 49 Yale L.J. 247 (1939); Note, *Jurisdictional Amount in the Federal District Courts*, 4 Vand. L. Rev. 146 (1950).


14. *Id.* at 492.
was referring in its determination of jurisdictional amount. The costs of removing the obstruction or object, which the defendant would bear, may have been the value in question. On the other hand, the Court may have been referring to the plaintiff's objective of sailing free from the interference of the bridge. The Court's decision is extremely confusing and to date the problem remains unsolved.

Consequently, various federal courts have developed their own procedures for determining the value of the matter in controversy in suits for injunctive relief. From this body of case law, four viewpoint rules have emerged: the plaintiff viewpoint rule, the defendant viewpoint rule, the either viewpoint rule, and the invoking party rule. The majority of federal courts utilize the plaintiff viewpoint rule, and in determining whether the jurisdictional amount requirement is satisfied, these courts look only at the benefit the plaintiff stands to gain by the lawsuit.


16. If this was the Court's rationale, then the Court utilized the defendant's view. This opinion is asserted in Comment, Closing the Courthouse Door: The Aftermath of Snyder v. Harris, 68 NW. L. REV. 1011, 1017 (1974). For a general discussion of Ward, see Kennedy, Valuing Federal Matters in Controversy: Hohlfeldian Analysis in Symbolic Logic, 35 Tenn. L. Rev. 423 (1968).

17. This language has recurred in subsequent Supreme Court cases. In Packard v. Banton, 264 U.S. 140 (1924), the Court cited Ward to support the proposition that "[t]he object of the suit is to enjoin the enforcement of the statute, and it is the value of this object thus sought to be gained that determines the amount in dispute." Id. at 142. More recently, in Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333 (1977), the Court stated: "In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation . . . ." Id. at 347. What must be understood here is that the Court has not conclusively established the exclusivity of the plaintiff viewpoint rule because in both cases, jurisdiction was upheld. See note 21 infra. The either viewpoint rule contains the plaintiff's view as a component, as well as the defendant's view. Thus, these cases do not necessarily preclude the adoption of the either viewpoint rule.

The Ward case may be explicable in that the Court erroneously considered the bridge to be a public nuisance. Thus, although the plaintiffs had not suffered damage in excess of the jurisdictional amount, the Court may have been considering the public's right to free navigation, an amount which would certainly exceed the statutory minimum. The Court stated: "The private party sues rather as a public prosecutor than on his own account . . . and acts in behalf of all others, who are or may be injured." Mississippi & Missouri R. R. v. Ward, 67 U.S. 485, 492 (1862). See 1 J. Moore Federal Practice ¶ 0.96[2], at 919 (2d ed. 1979).

18. See, e.g., Massachusetts State Pharmaceutical Ass'n v. Federal Prescription Serv., 431 F.2d 130 (8th Cir. 1970) (in diversity class action suits, the plaintiff viewpoint rule is the only valid rule); Seaboard Fin. Co. v. Martin, 244 F.2d 329 (5th Cir. 1957) (jurisdictional amount in a suit to enjoin the use of a similar corporate name is the value of the plaintiff's claimed rights); John B. Kelly, Inc. v. Lehigh Nav. Coal Co., 151 F.2d 743 (3d Cir.), cert. denied, 327 U.S. 779 (1945) (amount in a suit to enjoin the discharge of an employee must be found in the monetary loss plaintiff suffered as a result of the discharge); Central Mexico Light & Power Co. v. Munch, 116 F.2d 85 (2d Cir. 1940) (amount in a suit to restrain bondholders from suing is determined from the plaintiff's view); Pinkston v. Brotherhood of Locomotive Firemen, 69 F.2d 600 (6th Cir.), aff'd, 293 U.S. 96 (1934) (amount in a suit to enjoin association from discontinuing payments was determined by the value of the plaintiff's rights, not the total pension fund). In addition to these representative cases, the numerous decisions of the lower federal courts supporting, although not expressly, the plaintiff viewpoint rule are assembled chronologically in Annot., 30 A.L.R.2d 602, 649-50 (1952).
The plaintiff viewpoint rule is derived from the fact that in most cases a plaintiff brings the case to federal court, sets forth the claim for relief, and bears the burden of proving jurisdictional facts. The Supreme Court has stated that the sum claimed by the plaintiff controls the determination of jurisdictional amount in suits for monetary damages. Although this establishes the rule in damage suits, there are no Supreme Court decisions squarely endorsing the plaintiff viewpoint rule in suits for injunctive relief.

The decision most frequently cited in support of the plaintiff viewpoint rule in suits for injunctive relief is *Glenwood Light & Water Co. v. Mutual Light, Heat & Power Co.* In that case, the plaintiff sought to enjoin the defendant power company from constructing poles and wires that interfered with the plaintiff's business. The trial court, employing the defendant viewpoint rule, dismissed the case for lack of jurisdictional amount noting that the expense to the defendant of removing the poles did not exceed the statutory minimum. The United States Supreme Court reversed, and rejected the defendant viewpoint rule. The Court noted that the plaintiff's right to operate its plant free of the interference of the defendant's poles had a value in excess of the jurisdictional requirement. As a result, the Court

19. Kheel v. Port of New York Auth., 457 F.2d 46 (2d Cir.), cert. denied, 409 U.S. 983 (1972). In *Kheel*, the court stated that because the plaintiff must prove jurisdictional facts, the amount in controversy must be calculated by the plaintiff viewpoint rule. See also Dobie, *Jurisdictional Amount in the United States District Court*, 38 Harv. L. Rev. 733 (1925) [hereinafter cited as Dobie]; Ilsen & Sardell, *supra* note 12, at 183.

20. St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283 (1938). The Court stated that "[t]he rule governing dismissal for want of jurisdiction in cases brought in the federal court is that, unless the law gives a different rule, the sum claimed by the plaintiff controls if the claim is apparently made in good faith." *Id.* at 288.

21. The plaintiff viewpoint rule is, however, of little importance in suits for monetary relief because the sum claimed by the plaintiff will equal the defendant's potential liability. See, e.g., Inman v. Milwhite Co., 261 F. Supp. 703 (E.D. Ark. 1966). The court stated that problems do "not ordinarily arise in suits for money judgments because in such cases the plaintiff's gain is usually the defendant's loss." *Id.* at 707.


Neither Dean Dobie nor those who have accepted his view have pointed to any Supreme Court decision rejecting jurisdiction when the jurisdictional amount was satisfied from the defendant's viewpoint, but not from the plaintiff's. Only a case of this character can conclusively establish the exclusivity of the plaintiff viewpoint rule.


24. 239 U.S. at 125.

25. *Id.* at 126. The Court stated:

The district court erred in testing the jurisdiction by the amount that it would cost defendant to remove its poles and wires where they conflict or interfere with those of the complainant, and replacing them in such a position as to avoid the interference. Complainant sets up a right to maintain and operate its plant and conduct its business free from wrongful interference by defendant. This right is alleged to be of a value in excess of the jurisdictional amount, and at the hearing no question seems to have been made but that it has such value.
held that it was incorrect for the trial court to ignore the plaintiff's view when calculating whether the requisite jurisdictional amount was present.\textsuperscript{26}

Contrary to what some courts and commentators have assumed, the \textit{Glenwood} Court did not adopt unequivocally the plaintiff viewpoint rule.\textsuperscript{27} The holding in \textit{Glenwood} stated only that a federal court could not deny jurisdiction when the requisite amount in controversy was present from the viewpoint of a plaintiff. There is nothing in this case that precludes the possibility that a defendant's view may be considered as a means to securing jurisdiction. A Supreme Court case rejecting jurisdiction where the jurisdictional amount is satisfied from the defendant's view, but not the plaintiff's, would conclusively establish the plaintiff viewpoint rule. The Court has not, up to now, so ruled.\textsuperscript{28}

The rule that enables a court to consider either the plaintiff's or defendant's views is the either viewpoint rule. This rule has been adopted by a minority of courts, and is the most liberal of the viewpoint rules.\textsuperscript{29} The rule may be applied regardless of whether the case is brought originally by the plaintiff in, or removed by the defendant to, federal court.\textsuperscript{30} Some Supreme Court support for the either viewpoint rule can be found in \textit{Smith v. Adams},\textsuperscript{31} a case involving a disputed legislative election. The Court denied jurisdiction, ruling that the plaintiff had failed to establish any relationship

\textsuperscript{26. Id.}


\textsuperscript{28.} 1 W. \textsc{Barron} & A. \textsc{Holtzoff}, \textsc{Federal Practice and Procedure with Forms: Rules Edition} 112-13 n.54.2 (1960 & Supp. 1975). \textit{See} note 22 supra.

\textsuperscript{29.} There is one clear holding from the lower courts in which the plaintiff viewpoint rule was chosen, and the either viewpoint rule rejected. In Zep Mfg. Corp. v. Haber, 202 F. Supp. 847 (D. Tex. 1962), the plaintiff sued to enjoin the defendant from violating a covenant not to compete. The court recognized that the defendant stood to lose $33,000 if the injunction were granted, while the plaintiff would gain only $3300 if it were successful. The court applied the plaintiff viewpoint rule, holding that $10,000 was not in controversy, and thus denied federal jurisdiction.

\textsuperscript{30.} \textit{See}, e.g., Oklahoma Retail Grocers Ass'n v. Wal-Mart Stores, Inc., 605 F.2d 1155 (10th Cir. 1979) (jurisdictional amount in a suit to restrain violations of Unfair Sales Act is established by the defendant's costs in complying with the Act); Williams v. Kleppe, 539 F.2d 803 (1st Cir. 1976) (amount may be established in a suit to declare a statute unconstitutional by the extent of the claimed pecuniary burden on the defendants if the plaintiffs were to prevail); Committee for G.I. Rights v. Callaway, 518 F.2d 466 (D.C. Cir. 1975) (amount may be established by the cost to the defendant of a court order declaring a drug abuse program unconstitutional); Ridder Bros. Inc. v. Blethen, 142 F.2d 395 (9th Cir. 1944) (in a suit for specific performance of a contract, jurisdictional amount was established by the effect part of the relief prayed for would have on the defendant). Additional cases from the lower courts are arranged chronologically in Annot., 30 A.L.R.2d 602, 649-50 (1952).

\textsuperscript{31.} This feature distinguishes the either viewpoint rule from the invoking party rule. The latter rule provides for the consideration of the defendant's view, but only upon removal to federal court. This becomes problematical because it contradicts the requirements of section 1441 of the Judicial Code. \textit{See} notes 41-43 and accompanying text \textit{infra}.

\textsuperscript{31.} 130 U.S. 167 (1889).
between the election and some financial result that would form the basis for
determining the jurisdictional amount. Nevertheless, the Court stated in
dicta that, as a general rule, a test for determining the value of the matter in
controversy could be "the pecuniary result to one of the parties immediately
from the judgment." A number of federal courts have parroted this lan-
guage when adopting the either viewpoint rule.

A recent Supreme Court case indicates that the Court has yet to enunciate
clearly its position on the various viewpoint rules. In Illinois v. City of Mil-
waukee, the Court held that a suit against four Wisconsin cities for water
pollution would be most appropriately instituted at the district court level.
Justice Douglas, writing for a unanimous Court, noted that considerable in-
terests in the purity of interstate waters seemed to put any question of juris-
dictional amount beyond doubt. He then cited three cases in support: Glenwood, a case generally regarded, though incorrectly, as establishing
the plaintiff viewpoint rule; Mississippi & Missouri Railroad v. Ward; and
Ronzio v. Denver & R.G.W.R. Co., a case from the Tenth Circuit expressly
adopting the either viewpoint rule. Perhaps the Illinois Court was recog-

32. Id. at 176.
33. Id. at 175. See Market Co. v. Hoffman, 101 U.S. 112 (1879). The Market Co. plaintiff
sued with 205 other renters of market-place stalls to prevent the defendant from selling the
structure to another buyer. The Supreme Court established jurisdictional amount by consid-
ering the detriment to the defendant company, stating that the pleadings indicated that "the sale
which the company proposed to make, and the court below enjoined, would have realized to
the company more than $60,000. Of this benefit the decree deprives them. It is very plain,
therefore, that the appeal is one within our jurisdiction." Id. at 113-14.
34. See, e.g., Tatum v. Laird, 444 F.2d 947 (D.C. Cir. 1971), rev'd on other grounds, 408
U.S. 1 (1972) (jurisdiction may be determined by the loss to the defendant as well as the gain
plaintiff may seek); Ronzio v. Denver & R.G.W.R. Co., 116 F.2d 604 (10th Cir. 1940) (the test
for jurisdictional amount is the pecuniary result to either party that the judgment would pro-
duce); Williams v. Phillips, 360 F. Supp. 1363 (D.D.C. 1973) (jurisdictional amount in suit by
four senators challenging defendant's right to administer $790 million fund may be satisfied by
the result to either party).

Tex. 1950).

36. Id. at 93.
See notes 23-28 and accompanying text supra.
38. 67 U.S. 485 (1862).
39. 116 F.2d 604 (10th Cir. 1940). In Ronzio, the plaintiff sued to quiet title to certain water
rights. The parties stipulated that the value to the plaintiff of the right to use the water was no
more than $2,000, and the value to the defendant was of an amount exceeding the jurisdictional
minimum amount. The court held that the either viewpoint rule was applicable, and utilized
the defendant's view to satisfy the amount requirement. Id. at 606.
nizing the validity of all the tests. In any event, the matter is not, as some courts have assumed, "well-settled" by the United States Supreme Court.40

The fourth and final rule, utilized by a distinct minority of the federal courts, is the "invoking party" rule.41 Under this test, the party who invokes federal jurisdiction possesses the controlling viewpoint for purposes of determining the amount in controversy. Thus, if a plaintiff files suit originally, the court will look only to the plaintiff's view. Conversely, if a defendant removes a case to federal court, only the defendant's view will be examined.

In certain situations, however, the invoking party rule operates in a manner contrary to the provisions of the removal statute.42 Under section 1441 of the Judicial Code, a case may be removed to a federal court only if a federal court could also exercise original jurisdiction over the case.43 Under the invoking party rule, a plaintiff might be denied jurisdiction over his original suit because, from the plaintiff's view, the statutory amount requirement is not satisfied. On the other hand, the same case, after being instituted at the state court level, could be heard upon removal if, from the defendant's view, the requirement is satisfied. Thus, because it leads to results contrary to the requirements of section 1441, the invoking party rule is impracticable.44

Before McCarty, three different viewpoint rules had been employed at the district court level of the Seventh Circuit. Although most of the recent cases supported the plaintiff viewpoint rule,45 at least one older case expressly

40. C. WRIGHT, THE LAW OF THE FEDERAL COURTS 117 (2d ed. 1970). See, e.g., Purcell v. Summers, 126 F.2d 390 (4th Cir. 1942). The court stated that "[i]t is well settled that the measure of jurisdiction in a suit for injunction is the value to plaintiff of the right which he seeks to protect." Id. at 394.


42. McCarty v. Amoco Pipeline Co., 595 F.2d at 393; 1 J. MOORE FEDERAL PRACTICE ¶ 0.91[1], at 845-46 n.10 (2d ed. 1979).

43. 28 U.S.C. § 1441 (1976) provides: "(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants to the district court...."


45. See, e.g., Miller-Bradford & Risberg, Inc. v. FMC Corp., 414 F. Supp. 1147 (E.D. Wis. 1976) (defendant could not establish jurisdictional amount by the costs of complying with a disputed distributorship agreement because the test is the amount the plaintiff stands to gain by the lawsuit); Lakeside Mercy Hosp., Inc. v. Indiana State Bd. of Health, 421 F. Supp. 193 (N.D. Ind. 1975) (the value of the matter in controversy in a suit by a hospital to declare certain expenditures eligible for federal reimbursement is the value of the relief the plaintiff
employed the either viewpoint rule. 46 Dicta from one recent case, however, expressed approval for the invoking party rule. 47 In the absence of any unequivocal directive by the United States Supreme Court, it was necessary for the court of appeals in McCarty to express its opinion in unambiguous terms.

**THE McCARTY DECISION**
**BACKGROUND AND REASONING OF THE COURT**

In 1977, the Amoco Pipeline Company obtained an uncontested condemnation order against certain real estate owned by Ray and Genevieve McCarty and located in Vigo County, Indiana. 48 Amoco promptly constructed a pipeline across the easement at an estimated cost of $35,000. 49 Some months later, the state appraiser's award for the value of the condemned land, to which the McCartys filed exceptions, was submitted and a trial date was set in Vigo County Superior Court. 50 The McCartys then filed a motion requesting a reversal of the condemnation order. The state court overruled this motion. 51 The McCartys then filed another suit in Vigo County Superior Court seeking reversal of the condemnation order and an injunction ordering Amoco to remove its pipeline. Amoco removed the case to the United States District Court for the Southern District of Indiana and filed a motion for summary judgment. 52 The McCartys moved to remand the case to the state court
arguing that the $10,000 amount in controversy requirement was not satisfied. The district court denied the motion to remand, reasoning that both the value of the pipeline and the cost to Amoco of removing it exceeded the $10,000 requirement. Consequently, the district court granted Amoco’s motion for summary judgment, concluding that the McCartys’ suit was a collateral attack on the state court’s ruling and thus was barred under the doctrine of res judicata. The McCartys appealed.

The Court of Appeals for the Seventh Circuit held that the district court properly exercised jurisdiction over the case and affirmed the lower court’s grant of summary judgment. The principal issue before the court involved the method of determining jurisdictional amount in controversy in a suit for injunctive relief which had been removed from a state court. Justice Swygert, writing for the court, first surveyed the relevant United States Supreme Court case law, and outlined the development of the viewpoint rules. The McCarty court cited Glenwood Light & Water Co. v. Mutual Light, Heat & Power Co. as the primary Supreme Court case in support of the plaintiff viewpoint rule. The court held, however, that the Glenwood case does not preclude the possibility that the defendant’s view may be considered in the determination of jurisdictional amount. Moreover, the court found Supreme Court language favorable to the either viewpoint rule in Smith v. Adams and Illinois v. City of Milwaukee, although neither of these cases was directly on point. Thus, the court of appeals concluded that it was not bound by precedent to either of the rules. The court briefly examined an alternative employed by a few lower courts, the invoking party rule. The rule was found to be desirable because it ties the burden of proving jurisdiction to the controlling viewpoint, but the court


By its brief and supporting affidavit on the instant motion, defendant has demonstrated that the cost of such removal, as well as the value to defendant of not removing such pipeline, is well in excess of the required jurisdictional amount. Plaintiffs have not contested defendant's assertions by any reply brief.

The principal purpose of the requirement of a minimum jurisdictional amount in controversy is to assure that an action is substantial. The Court is satisfied that the amount in controversy in this action is in excess of Ten Thousand Dollars, exclusive of interest and costs.

54. McCarty v. Amoco Pipeline Co., No. TH 78-64-C (S.D. Ind. July 13, 1978). The court held that the action constituted a collateral attack on the state court’s order and thus was barred by the doctrine of res judicata.

55. 595 F.2d at 395.
57. 595 F.2d at 392.
58. Id.
59. 130 U.S. 167 (1889). See note 31 and accompanying text supra.
61. 595 F.2d at 393.
62. Id. at 392.
63. See notes 41-43 and accompanying text supra.
dismissed it as impracticable because in certain situations, the rule conflicts with the requirements of the removal statute.\textsuperscript{64}

Turning to the policy considerations underlying the rules, the court noted that the plaintiff viewpoint rule is a simple test and, as such, provides potential litigants with a more certain basis for predicting whether or not their case can be heard in a federal forum.\textsuperscript{65} However, the court recognized that in some cases where a defendant stands to lose a substantial sum, adherence to the plaintiff viewpoint rule would “blind federal courts to the realities of the magnitude of the controversy.”\textsuperscript{66} Quoting Professor Moore extensively,\textsuperscript{67} the court stated that the purpose of the jurisdictional amount statute was primarily to measure the substantiality of a suit and, consequently, it held that it should look to the effect of the litigation on either party to ascertain the value of the matter in controversy.\textsuperscript{68}

The court noted that it could find no prior Seventh Circuit cases squarely on point.\textsuperscript{69} The court recognized, however, that in \textit{City of Milwaukee v. Saxbe},\textsuperscript{70} it had stated that the plaintiff viewpoint rule was preferred in civil

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{64} Id. at 393. See note 44 and accompanying text supra.
  \item \textsuperscript{65} Id. at 394.
  \item \textsuperscript{66} Id.
  \item \textsuperscript{67} See 1 J. Moore Federal Practice ¶ 0.91[1], at 846 (2d ed. 1979).
  \item \textsuperscript{68} 595 F.2d at 394.
  \item \textsuperscript{69} The court discussed two Seventh Circuit cases that had been cited in support of the plaintiff viewpoint rule. In Breault v. Feighenholtz, 380 F.2d 90 (7th Cir.), cert. denied, 399 U.S. 1014 (1967), the plaintiff brought suit to set aside a will. The court of appeals held that the plaintiffs had not produced sufficient proof that the action involved the requisite value in excess of $10,000, and thus it declined to assert jurisdiction. The \textit{McCarty} court noted that the \textit{Breault} court was not required to choose between viewpoints, and therefore nothing in the case precluded the adoption of the either viewpoint rule. 595 F.2d at 394-95.
  \item \textsuperscript{70} In Motorists Mutual Ins. Co. v. Simpson, 404 F.2d 511 (7th Cir. 1968), cert. denied, 394 U.S. 988 (1969), the court of appeals rejected the defendant’s assertion that the jurisdictional amount requirement could be satisfied by the value of her compulsory counterclaim. The court based its ruling on the fact that the defendant had continuously resisted the plaintiff’s attempts to secure federal jurisdiction, and held that it would be unfair to allow her to choose a federal forum in light of her previous position. The \textit{McCarty} court held that the \textit{Simpson} case did not involve the viewpoint question and did not preclude the consideration of the defendant’s view. 595 F.2d at 395.
  \item \textsuperscript{70} 546 F.2d 693 (7th Cir. 1976). In \textit{Saxbe}, the City of Milwaukee sued the Attorney General to investigate the hiring practices of outlying suburban communities, and initiate suits against them on a nondiscriminatory basis. The court ultimately decided the case on different statutory grounds, but stated in dicta:

An application of the “either party” \textit{Ronzio} test would sustain jurisdiction in the present case. Under that decision, the test for determining the amount in controversy is the pecuniary result to either party which the judgment would directly produce. We have no difficulty in concluding that a judgment requiring the Attorney General to investigate the hiring and promotional practices of the outlying suburban communities and of initiating, on a non-discriminatory basis, pattern and practice suits against them would vastly exceed the jurisdictional amount. On the other hand, measuring the amount in controversy by the value of City’s right to be free from discriminatory prosecution would, at least on the present record, likely defeat the existence of § 1331 jurisdiction. . . . On balance, we think it preferable to adhere to the approach which measures the amount in controversy by the value of the right to be protected.

\end{itemize}
\end{footnotesize}
rights suits against federal officers. Ruling that the statement was dicta, and therefore not binding, the court nevertheless refrained from overruling *Saxbe*, stating only that “[w]hatever the merits may be of following the plaintiff viewpoint rule in civil rights actions against government officials, we decline to follow the *Saxbe* dicta. . ..”

The court then held that in this removed diversity case, the interests of fairness and equity would best be served by applying the either viewpoint rule. Jurisdiction was properly extended over the *McCarty* case because Amoco had shown, by an unchallenged affidavit, that the pecuniary result to it from a judgment in favor of the plaintiff would exceed the statutory amount. The court then affirmed the district court’s decision on the merits of the case, holding that the grant of summary judgment was proper.

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Id. at 702. The *Saxbe* court noted that other courts have generally adhered to the plaintiff viewpoint rule, but it provided no reasoning in support of its choice.

71. In general, most civil rights suits are exempted from the jurisdictional amount requirement by 28 U.S.C. § 1343 (1976), which provides in part:

   The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

   . . .

   (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

   (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

The Supreme Court has stated, however, that suits against federal officers for deprivation of constitutional rights are not covered by section 1343. Lynch v. Household Fin. Corp., 405 U.S. 538, 547 (1972). These cases must be brought under the federal question jurisdiction provided by 28 U.S.C. § 1331 (1976), which provides, in part:

   (a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States, except that no such sum or value shall be required in any such action brought against the United States, any agency, thereof, or any officer or employee thereof in his official capacity.


Although lower courts are divided on the issue . . . the sensible rule in federal question cases requires that if it can be determined from the complaint that “the value of the object” involves more than $10,000, whether looked at from the viewpoint of the Plaintiff or from the viewpoint of the Defendant, jurisdictional amount is present. This should be specially true in federal question cases, for in such cases the federal court should not strain to dismiss for want of jurisdictional amount.

Id. at 188. See also Comment, A Federal Question Question: Does Priceless Mean Worthless?, 14 ST. LOUIS U.L.J. 268 (1969). Thus, it is unclear from both *Saxbe* and *McCarty* precisely what grounds exist for not applying the either viewpoint rule in civil rights suits.

72. 595 F.2d at 395.

73. Id. at 396.
The McCarty case presents a textbook example of the major deficiency of the plaintiff viewpoint rule. If the court of appeals had adhered strictly to the rule in this case, it would have been compelled to deny jurisdiction over a case involving at least $35,000 on the grounds that the minimum jurisdictional amount of $10,000 was not present. The court avoided this result by adopting the either viewpoint rule and thereby expanded its jurisdictional amount test to include the defendant's view as well as the plaintiff's. The primary value of the plaintiff viewpoint rule is that it provides a simple test which can be easily applied by the examining court. Litigants may also benefit by the rule in that they will have a more certain standard for predicting, before coming to the courthouse, whether or not federal jurisdiction will be secured. In practice though, these considerations do not justify denying a litigant with a sizable interest in the controversy access to the federal courts. The McCarty court correctly emphasized the elements of fairness and common sense as the basis for applying the either viewpoint rule. Strict adherence to the plaintiff viewpoint rule sometimes forces defendants to be subjected to state court judgments which exceed $10,000, while denying these individuals the opportunity to litigate in a federal forum. This result seems particularly arbitrary and unfair in those cases where a party is designated as plaintiff simply because he or she "won the race to the courthouse." In some situations it is possible that a court could more easily calculate a defendant's cost in complying with a court order than it could the value of the plaintiffs' rights. In McCarty, the plaintiffs' monetary interest may have been the appraised value of the disputed easement or the value of the use of the land free of the obstructing pipeline. Given that the McCarts were

74. See 1 J. Moore Federal Practice ¶ 0.91[1], at 846 (2d ed. Supp. 1979). The author posits the following example. If plaintiff seeks an injunction to have defendant remove an office building encroaching on one foot of the plaintiff's land, the value of the matter in controversy to plaintiff may be trivial, while the expense in removal to the defendant if the injunction is granted would be clearly in excess of $10,000. In such a case the courts should recognize that a substantial controversy is involved and look to the effect of the suit on either party to the litigation.

75. Dobie, supra note 19, at 736. Dean Dobie is generally considered to be the author of the term "plaintiff viewpoint rule." He argues for adherence to the rule because such a rigid, simple test will result in more efficient adjudication of jurisdictional amount issues.

76. 595 F.2d at 395.

77. Comment, Federal Jurisdictional Amount: Determination of the Matter in Controversy, 73 Harv. L. Rev. 1369, 1373 (1960). In this article, the author argues that adherence to the plaintiff viewpoint rule is unfair, and may provoke races to the courthouse in those suits in which either party might have initiated the proceedings. See also D. Currie, Federal Courts: Cases & Materials, 434-35 (1968). Professor Currie responds to Dean Dobie's argument by asking: "Is this test [plaintiff viewpoint rule] consistent with the purpose of the requirement? Does it make sense in a day when the declaratory-judgment action often makes it only happenstance which party is the plaintiff?" Id.
appealing, in a separate state court action, the appraisal award for this particular property, these amounts would have been relatively difficult to assess.  

78 In contrast, Amoco's costs in complying with an order enjoining the pipeline were readily calculable because the obvious result of a court order would be a $35,000 loss of investment, with the additional expense of physically removing the pipeline.  

79 Thus, the either viewpoint rule applied in McCarty proved to be a more efficient administrative procedure.

In addition, strict adherence to the plaintiff viewpoint rule in suits for injunctive relief forces a defendant who has removed a case from state to federal court to argue that the value of the plaintiff's right is sufficiently high to satisfy the statutory requirement.  

80 This is an unreasonable and unnecessary burden to place on a litigant, particularly in a situation in which the jurisdictional amount question could have been easily answered by considering the defendant's view. Under the either viewpoint rule, this situation can be avoided.

Finally, utilizing the either viewpoint rule is consistent with the requirements of the jurisdictional amount statute. Section 1332 of the Judicial Code does not distinguish between the plaintiff's view and the defendant's view; it merely requires that the matter in controversy itself be of a value exceeding $10,000.  

81 The McCarty court, by extending the determination of the existence of requisite jurisdictional amount to encompass the defendant's view as well as the plaintiff's, is thus equipped with all the information necessary to render a fair decision.

Although the McCarty court did not discuss the application of the either viewpoint rule beyond the specific fact situation of a plaintiff seeking to remove an obstruction from his or her property, it would be incorrect to assume that the rule is merely an exception limited to this case. The principle  

78. See note 50 supra.  
79. 595 F.2d at 395. See note 8 supra.  
80. Upon removal to federal court, a defendant assumes the burden of proving jurisdictional facts. McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189 (1936); Hatridge v. Aetna Cas. & Sur. Co., 415 F.2d 809, 814 (8th Cir. 1969). This becomes a difficult task under the plaintiff viewpoint rule. In the McCarty case, for example, the defendant argued alternatively that the value to the plaintiffs of the disputed easement exceeded $10,000 by including the intangible value of the rights the plaintiff was suing to protect. Brief for Appellee at 11, McCarty v. Amoco Pipeline Co., 595 F.2d 389 (7th Cir. 1979). Obviously this would be speculation on the defendant's part. On the other hand, by utilizing the either viewpoint rule, the defendant was able to prove the existence of the jurisdictional amount by an affidavit. See note 8 supra.  
81. See note 2 supra.  
82. The purpose of the minimum amount requirement is to set a standard that is "not so high as to convert the Federal courts into courts of big business nor so low as to fritter away their time in the trial of petty controversies." S. REP. NO. 1930, 85th Cong., 2d Sess. 4 (1958). See Horton v. Liberty Mut. Ins. Co., 367 U.S. 348, 351 (1961); St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288 (1937). See also Senate Select Comm. on Presidential Campaign Activities v. Nixon, 366 F. Supp. 51 (D.D.C. 1973). The court stated: "Where the case is worth at least $10,000 to the defendant, the requirement is satisfied just as fully as where a plaintiff can demonstrate the $10,000 value or sum." Id. at 60.
of construing section 1332 fairly to allow a defendant's view to be considered in determining jurisdictional amount theoretically is applicable in any suit for injunctive or declaratory relief brought by a single plaintiff, or a group of plaintiffs asserting a single and undivided claim. The either viewpoint rule has, for example, been applied in other circuits in suits to compel specific performance of a contract, to enjoin violations of state sales regulations, and in suits by creditors to compel payments. 

IMPACT

The basic procedures employed by courts to determine the value of the matter in controversy in suits for injunctive relief are not altered by the adoption of the either viewpoint rule. The courts will continue to look primarily to the plaintiffs' complaint to determine what remedy the plaintiff seeks. The jurisdictional amount requirement can then be satisfied by a finding that either the value of the plaintiff's rights which have been interfered with, or, the foreseeable pecuniary burden the defendant might bear in complying with the plaintiff's remedy, exceeds the statutory minimum. The rule prohibiting the plaintiff from using collateral effects, such as the impact of a court's decision by stare decisis or estoppel, to satisfy the jurisdictional amount requirement should also apply to the defendant. Under the either viewpoint rule, only the direct costs of complying with the relief requested by the plaintiff may be considered by an examining court.

The use of the either viewpoint rule should not substantially increase the number of cases brought into federal courts. Although the Supreme Court has stated that suits involving issues of state law, and brought into federal court solely on the basis of diversity jurisdiction, might be tried more appropriately in state court, this is not a persuasive argument for the re-

83. See note 99 and accompanying text infra.
84. Ridder Bros. Inc. v. Blethen, 142 F.2d 395 (9th Cir. 1944).
85. Oklahoma Retail Grocers Ass'n v. Wal-Mart Stores, Inc., 605 F.2d 1155 (10th Cir. 1979).
86. Miller v. First Serv. Corp., 84 F.2d 680 (8th Cir. 1936). In Miller, the either viewpoint analysis was applied although the court found that neither the plaintiff nor the defendant could establish the requisite sum.
87. See, e.g., Healy v. Ratta, 292 U.S. 263 (1934). In this action to enjoin the enforcement of a state licensing requirement, the Court ruled that "the collateral effect of the decree, by virtue of stare decisis, upon other and distinct controversies may not be considered in ascertaining whether the jurisdictional amount is involved. . . ." Id. at 267. See also Mayor of Baltimore v. Postal Tel. Cable Co., 62 F. 500 (D. Md. 1894), aff'd, 156 U.S. 210 (1895); Bruce v. Manchester & Keene R.R., 117 U.S. 514 (1888); Elgin v. Marshall, 106 U.S. 578 (1882).
89. 1 J. MOORE FEDERAL PRACTICE ¶ 0.90[4], at 835 (2d ed. 1979). Professor Moore doubts that even without a minimum jurisdictional amount requirement the courts will be flooded with cases. By way of example he notes the experience under the Emergency Price Control Act of 1942, ch. 26, § 205(c), 56 Stat. 34 (1942). No evidence ever surfaced that petty claims flooded the courts, even though no minimum amount requirement was specified.
tention of the plaintiff viewpoint rule. Whatever small benefit the plaintiff viewpoint rule may provide in limiting the workload of the courts is outweighed by the unfairness of denying litigants with substantial pecuniary interests in a given case their opportunity to present it before a federal forum.

There is one area of the law in which the application of the either viewpoint rule has been restricted by the courts. The Supreme Court's recent restrictions on aggregation of claims in class action suits are, at least according to one court, applications of the plaintiff viewpoint rule. In Snyder v. Harris, a shareholder in an insurance company brought a class action suit against the firm to require it to distribute an excess profit among its subscribers. Although the plaintiff sought less than $10,000, she contended that the aggregate of all the claims of the class satisfied the jurisdictional amount requirement. The Supreme Court disagreed, ruling that the plaintiffs could not aggregate claims to fulfill the statutory requirement. The Court explained its restrictive decision, at least partially, on the grounds that the amount in controversy requirement existed to check the rising case load in the federal courts.

The Supreme Court expanded the rule of Snyder in Zahn v. International Paper Co. In that case, a number of property owners brought a class action suit against a paper company for damage allegedly caused by the discharge of wastes. The Court ruled in Zahn that each member of the plaintiff class must individually sustain damages in excess of $10,000 to be included in the case.

Recent attempts to overcome the Snyder and Zahn doctrines in class action suits requesting monetary and injunctive relief by the use of the either viewpoint rule have proved futile. It has been asserted in some recent

91. Snow v. Ford Motor Co., 561 F.2d 787 (9th Cir. 1977). In Snow, the court stated: "[I]t is clear that the [Supreme] Court applied the plaintiff's viewpoint rule—at least for a Rule 23 (b) class action not involving a request for injunctive relief." Id. at 789.
93. Id. at 333.
94. Id. at 337.
95. Id. at 340.
97. Id. at 292.
98. Id. at 295.
99. Lonquist v. J.C. Penney Co., 421 F.2d 597 (10th Cir. 1970); Massachusetts State Pharmaceutical Ass'n v. Federal Prescription Serv., Inc., 431 F.2d 130 (8th Cir. 1970). In Lonquist, four state court class actions were removed by the defendants to federal court. The complaints sought refunds and an order enjoining the defendant from charging an allegedly usurious interest rate. The court held that it would be improper to consider the total detriment to the defendant for the purpose of satisfying jurisdictional amount because the claims were separate and distinct and, as such, could not be aggregated. In Massachusetts, a diversity class action was brought originally in federal court seeking to enjoin alleged illegal competition. The court denied jurisdiction holding that the plaintiff's viewpoint rule is the only valid rule. But see Berman v. Narragansett Racing Ass'n, 414 F.2d 311 (1st Cir. 1969). In Berman, a class action brought against the defendant involved a common and undivided right. Because such claims are permissibly aggregated, the court was able to consider the total detriment to the defendant to satisfy the jurisdictional requirement.
cases that in class action suits requesting injunctive relief, the Snyder and Zahn restrictions on the aggregation of the plaintiffs' claims could be avoided by looking to the monetary impact the injunction might have on the defendant. This argument is not without merit because the defendant will be affected, in some cases, by an order compelling the defendant to bear a substantial financial burden that is quite separate from the damages request.  

In Snow v. Ford Motor Company,\(^\text{100}\) for example, the plaintiff filed a class action suit requesting $11 damages and a court order enjoining Ford from selling a defective product. Two competing lines of authority were juxtaposed. Because the Ninth Circuit had previously adopted the either viewpoint rule in suits for injunctive relief,\(^\text{102}\) the court could look to Ford's cost in complying with an injunction to satisfy the jurisdictional amount requirement.\(^\text{103}\) The Zahn doctrine, however, precluded the court of appeals from extending jurisdiction because each plaintiff in Snow claimed only $11 damages. The court refused jurisdiction, and ruled that applying the either viewpoint rule to a mixed remedy suit would evade the barriers set forth in Snyder and Zahn.\(^\text{104}\)

This is the only area of law, however, in which courts that have adopted the either viewpoint rule have consistently restricted its application. Because the Snyder and Zahn doctrines are applicable only in class action suits, the either viewpoint rule is appropriate in non-class suits for injunctive or declaratory relief.

**CONCLUSION**

The McCarty court correctly recognized that the interests of fairness and common sense require the rejection of the plaintiff viewpoint rule. By adopting the either viewpoint rule, the court avoided the arbitrary results that often arise from strict adherence to the plaintiff viewpoint rule. The court could also more accurately determine the true magnitude of the matter in controversy in complete compliance with the requirements of the jurisdictional amount statute. By utilizing the either viewpoint rule in future Seventh Circuit cases, the determination of the value of the matter in controversy will become a more logical, efficient, and fair procedure.

The McCarty decision should be required reading for any court facing the important but far too often misunderstood question of viewpoint analysis. In order to apply the jurisdictional amount requirement realistically in these cases, courts should be willing to exalt substance, by applying the either viewpoint rule, over the procedural form of the plaintiff viewpoint rule.

William Stone Schober

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101. 561 F.2d 787 (9th Cir. 1977).
102. Ridder Bros. v. Blethen, 142 F.2d 395 (9th Cir. 1944).
103. 561 F.2d at 789.
104. Id. at 791.