Two Sides to Every Story: Measuring the Jurisdictional Amount in Federal Courts

Evan A. Creutz
NOTES

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INTRODUCTION

“How did I get here?” This basic question has echoed through courthouses across the United States since the inception of our legal system. Defendants frequently wonder how one court, rather than another, came to be the arbiter of their rights. A court would violate the constitutional prohibition against “depriv[ing] any person of life, liberty or property, without due process of law” if it entered judgment against a defendant without adequately demonstrating that it had the power to do so. The United States Constitution, in broad strokes, outlines the circumstances in which the federal courts have the power to resolve disputes between citizens. These strokes are the basis of federal jurisdiction.

The doctrine of “personal jurisdiction,” or the “power of a court over the person of a defendant,” is one important limitation on the authority of federal courts. The extent of federal courts’ power over individual defendants has varied considerably over the past century. Mileposts marking the changes in personal jurisdiction are readily identifiable, and a clear understanding of the doctrine’s development

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1. U.S. Const. amend. XIV.
3. Historically, the Supreme Court has maintained tight control over the expansion of personal jurisdiction toward its outer constitutional limits. In 1877, the Court held that a state judgment was void because defendant was not served with process while physically present in the state. See Pennoyer v. Neff, 95 U.S. 714, 733-34 (1877). In International Shoe Co. v. Washington, 326 U.S. 310 (1945), the Court held that while physical presence was sufficient to confer personal jurisdiction, it was not necessary as long as defendant had “minimum contacts” with the forum state. See id. at 320. Subsequent decisions revealed that “minimum contacts” could include actions that are purposefully directed toward the forum state’s residents, even if defendant never enters the forum state. See Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476 (1985). The developments since Pennoyer have not invalidated physical presence as a sufficient rationale for establishing jurisdiction, but have merely created an analogous standard by which state procedures for establishing jurisdiction over absent defendants can be evaluated for constitutional fairness. See Burnham v. Superior

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has traditionally been fundamental to the education of beginning lawyers. On the other hand, the doctrine of “subject matter jurisdiction,” or the power of a court to hear cases of a general class, has evolved more subtly, and perhaps, with less attention.

The form of federal subject matter jurisdiction here addressed is diversity jurisdiction. “Diversity” refers to the jurisdiction of the federal courts to hear cases between citizens of different states. The constitution does not require Congress to confer diversity jurisdiction on the federal courts. Instead, Article III vests Congress with the discretionary power to implement the Constitutional subject matter jurisdiction grant through legislation. Pursuant to that authority, Congress enacted the diversity jurisdiction statute (hereinafter “section 1332”). The traditional justification behind section 1332 has been to provide out-of-state plaintiffs with a forum unfettered by the local prejudice thought to be common in the state courts. This justification is balanced, however, by the countervailing principle that, because federal courts are courts of limited jurisdiction, there is a presumption against their availability. Thus, Congress has imposed limitations on the scope of section 1332's jurisdictional grant.

One way Congress limited the scope of section 1332 was by including an “amount-in-controversy” requirement. Generally, this requirement provides that the federal courts shall have jurisdiction only over cases in which the value of the dispute exceeds a minimum monetary amount. Often, however, disputes are of different value to the adverse parties. Consider, for instance, a plaintiff who, claiming minor property damage, sues a severely injured non-resident defendant in state court for allegedly causing a car accident. Assume that plaintiff, wishing to have the case decided in the state forum, alleges damages below the statutory minimum. Defendant, believing plaintiff was at fault and wishing compensation for her astronomic

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5. See id. at 477.
6. See U.S. Const. art. III, §§ 1, 2.
7. See id.
9. See Charles Alan Wright, Law of Federal Courts § 23, at 128 (4th ed. 1983). But see Henry J. Friendly, The Historic Basis of Diversity Jurisdiction, 41 Harv. L. Rev. 483, 493 (1928) (arguing that “such information as we are able to gather... entirely fails to show the existence of prejudice on the part of the state judges”). Even if state court prejudice did not exist, however, section 1332 exists to relieve litigants' fear of prejudice. See Erwin Chemerinsky, Federal Jurisdiction § 5.3, at 275 (2d ed. 1994).
10. See Chemerinsky, supra note 9, § 5.1, at 249.
11. The other major limitation on section 1332, not addressed in this Note, is the “complete diversity” rule, which requires that each defendant be from a different state than each plaintiff. See Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267, 267 (1806).
medical expenses, may try to remove the controversy to federal court pursuant to 28 U.S.C. § 1441,13 perhaps to avoid the possibility of bias in state court.14 The lawsuit is of different value to each party, and depending on how the court measures the amount in controversy, removal to the federal forum either will or will not be available to defendant.

A belief commonly held in legal circles is that plaintiff possesses unilateral control over the disposition of her claim.15 In Louisville & Nashville R.R. Co. v. Mottley,16 the Supreme Court propagated that belief, holding that a court should look only to the questions raised in a well-pleaded complaint when determining whether federal question subject matter jurisdiction17 exists.18 The legal community has inexplicably imported this “well-pleaded complaint” rule into diversity jurisdiction, and has assumed that, for the purposes of determining the jurisdictional amount, plaintiff’s complaint always controls. This has occurred despite the fact that the Supreme Court has expressly limited Mottley to cases arising under 28 U.S.C. § 1331.19 As a consequence, a defendant whose stake in a dispute would otherwise merit adjudication in federal court is often unfairly trapped

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13. The removal statute provides: “[A]ny civil action brought in a [s]tate 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 of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441.

14. The removal statute is thought to exist primarily because of the belief that “both the plaintiff and defendant should have the opportunity to benefit from the availability of a federal forum.” Chemerinsky, supra note 9, § 5.5, at 323. Thus, also allowing a defendant to avoid state court bias, the removal statute “effectuates a primary purpose of diversity jurisdiction in providing a seemingly more neutral forum.” Id.

15. See Joseph W. Glannon, Civil Procedure: Examples and Explanations 83 (2d ed. 1992) (“The traditional rule in American courts has been (and largely, still is) that . . . the plaintiff is master of his claim.”); 14B Charles Alan Wright et al., Federal Practice and Procedure § 3702, at 46 (3d ed. 1998) (“Under well-settled principles, the plaintiff is the master of his or her claim . . . .”)


18. In Mottley, plaintiff brought suit in federal court against defendant railroad company to compel performance on a contract that conferred upon plaintiff a free railroad pass for life. See Mottley, 211 U.S. at 150. Defendant claimed as a defense that an act of Congress forbidding free railroad transportation invalidated the contract. See id. at 151. For the purposes of satisfying jurisdictional requirements, plaintiff assumed that defendant’s plan to invoke an act of Congress as a defense created a federal question for the federal court. See id. at 152. The circuit court entered judgment for plaintiff. See id. at 151. The Supreme Court, reviewing the basis for jurisdiction sua sponte, held that the mere anticipation of a defense invoking a federal question was insufficient to confer federal question jurisdiction. See id. at 152. Mottley implied that the federal question must appear on the face of plaintiff’s complaint for federal question jurisdiction to be sustainable. See id. at 153.

in state court by plaintiff's forum choice.

The unfounded application of the "well-pleaded complaint" rule to the amount in controversy in diversity cases has created an inconsistency in the treatment of adverse parties that strains the interests of justice. Because of blind allegiance to the "plaintiff as master of her claim" principle, the legal community has allowed plaintiffs greater latitude in availing themselves of the protection against prejudice, actual or merely perceived, that section 1332 provides. By assuming a more liberal standard for calculating the jurisdictional amount, one that takes into account the value of the dispute to all parties involved, courts could ensure equal availability of the federal forum to all deserving litigants.

This Note reviews the development of the jurisdictional amount requirement in diversity cases, and addresses whether the traditional limitation of the amount in controversy to plaintiff's ad damnum best serves the interests of fairness and efficiency. Part I of this Note provides a brief factual background of the amount-in-controversy requirement. This part then explains various approaches to determining the jurisdictional amount, and their theoretical underpinnings. Part II defines both permissive and compulsory counterclaims, and details their relevance to calculating the jurisdictional amount. Part III argues that the "well-pleaded complaint" rule, as courts have applied it to diversity cases in the form of the "plaintiff-viewpoint" approach, is overly rigid and should not extend beyond its original application to statutory "arising under" cases. This part advocates adopting a limited version of the "either-party" approach to determining the jurisdictional amount. Finally, this Note concludes that because no binding authority has directly addressed how a court should determine the jurisdictional amount, the legal profession should rethink its devotion to the "plaintiff-viewpoint" approach and adopt a rule that is more consistent with the policies behind diversity jurisdiction and the amount-in-controversy requirement.

I. DETERMINATION OF THE AMOUNT IN CONTROVERSY

This part briefly details the theoretical rationale behind the amount-in-controversy doctrine and explains the basic mechanics of its application to diversity actions. It then describes various approaches to determining the jurisdictional amount and illustrates how courts have employed these approaches.

A. The Amount in Controversy Summarized

The Constitution does not require that a minimum amount be in controversy between litigating parties in order for them to invoke the
subject matter jurisdiction of the federal courts. Just as the Constitution grants Congress the authority to "ordain and establish" inferior federal courts, Congress also wields the power to limit the jurisdiction of those courts. In exercising that power, Congress has passed statutes imposing minimum monetary requirements for invoking the diversity jurisdiction of federal courts.

The original Congressional intent behind the amount-in-controversy requirement is not entirely clear from legislative history. Some scholars argue that the original purpose of the requirement was to protect defendants from having to travel long distances to defend relatively small claims. Today, that reasoning is less applicable in light of the increasing feasibility of interstate travel. A more modern justification for the jurisdictional amount, as evidenced by the number of successive increases in the amount by Congress, is to reduce the caseload in an already congested federal court system.

Litigating parties cannot consent to subject matter jurisdiction, as they can to personal jurisdiction. Thus, waiving the jurisdictional

20. See U.S. Const. art. III, §§ 1, 2.
21. Id. § 1.
23. The amount-in-controversy requirement applies to all cases arising under diversity jurisdiction. See 28 U.S.C. § 1332 (1994) ("The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000 . . ."). Pursuant to 28 U.S.C. § 24, there are various classes of cases arising under federal law in which federal jurisdiction exists regardless of the amount in controversy. See Armistead M. Dobie, Handbook of Federal Jurisdiction and Procedure 132 (1928). These include suits arising under the laws pertaining to internal revenue, postal regulation, patent, copyright and trademark laws, laws regulating commerce, penalty and forfeiture law, bankruptcy, immigration, contract labor laws, and antitrust regulation. See id. Also, pursuant to 28 U.S.C. § 41, the jurisdictional amount has no application to criminal or admiralty law. See id. Further, federal courts require no minimum amount to be in controversy for suits by the United States, or for suits between citizens of the same state claiming lands under grants of different states. See id.
26. See, e.g., Henry M. Hart, Jr. & Herbert Wechsler, The Federal Courts and the Federal System 39 (1953) ("To prevent defendants from being summoned long distances to defend small claims, the jurisdiction was restricted to cases in which the matter in dispute exceeded five hundred dollars.").
27. See supra note 24.
28. See 14B Wright et al., supra note 15, § 3701, at 3-4; Note, Federal Jurisdictional Amount: Determination of the Matter in Controversy, 73 Harv. L. Rev. 1369, 1369 (1960); see also S. Rep. No. 1830-85 (1958) (explaining that the goal for setting a jurisdictional amount was to choose a figure "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").
amount is not an available alternative. When the amount in controversy appears to be inadequate, either party, or the court itself, may raise the issue at any time during the life of the litigation.\footnote{30} Once the issue surfaces, the party seeking to assert jurisdiction and avoid dismissal\footnote{31} must show that it does not “appear to a legal certainty that the claim is really for less than the jurisdictional amount.”\footnote{32}

In both the removal and original jurisdiction contexts, courts compute the amount in controversy based on the circumstances as they existed at the moment plaintiff filed suit.\footnote{33} Courts will consider only the direct effects of the possible judgment, not collateral effects that the possible judgment may have by way of res judicata or stare decisis.\footnote{34} The amount in controversy does not decrease in light of valid defenses that plaintiff anticipates in the complaint or that defendant asserts in the answer.\footnote{35} Even if plaintiff eventually fails to recover an amount above the jurisdictional minimum, federal jurisdiction does not detach.\footnote{36}

The “legal certainty” test grants courts some discretion in choosing the standard for calculating the amount in controversy.\footnote{37} As has long been the case,\footnote{38} lower courts have used this discretion to resist the ascendance of a single rule for determining the jurisdictional amount. The Supreme Court has never expressly eliminated or endorsed any method of determination, but has been grappling with the issue for over a century.

The Supreme Court suggested an early approach to determining the amount in controversy in Mississippi & Missouri R.R. Co. v. Ward.\footnote{39} In Ward, complainant, a steamboat owner, did not demand money damages, but instead sued in diversity to have a bridge abated as a

\footnote{30}{See id.}
\footnote{31}{In the removal jurisdiction context this party is the defendant, in the original jurisdiction context this party is the plaintiff.}
\footnote{32}{St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 289 (1938).}
\footnote{33}{See id. at 294.}
\footnote{34}{See Healy v. Ratta, 292 U.S. 263, 267 (1934); New England Mortgage Sec. Co. v. Gay, 145 U.S. 123, 130 (1892). If courts were to consider these collateral effects, the value of suits would increase significantly, and the availability of the federal courts would consequently extend well beyond its present scope.}
\footnote{35}{See St. Paul Mercury Indem. Co., 303 U.S. at 292.}
\footnote{36}{See id. at 289.}
\footnote{38}{See William W. Hurst, Note, Jurisdictional Amount in the Federal District Courts, 4 Vand. L. Rev. 146, 151 (1950) (“Certainly the courts have adequately demonstrated that they are not going to submit wholeheartedly to the plaintiff-viewpoint rule without an express command from the Supreme Court.”). For further discussion of the “plaintiff-viewpoint” rule, see infra Part I.B.1.}
\footnote{39}{67 U.S. (2 Black) 485 (1862).}
Because complainant had not alleged a specific dollar amount to be in controversy, but had instead asked for injunctive relief, the Supreme Court faced the novel challenge of assessing the value of the dispute to determine whether federal jurisdiction existed.41

The Ward Court addressed the jurisdictional amount issue by writing:

The character of the nuisance and the sufficiency of the damage sustained is to be judged by the courts. But the want of a sufficient amount of damage having been sustained to give the Federal Courts jurisdiction, will not defeat the remedy, as the removal of the [bridge] is the matter of controversy, and the value of the object must govern.42

Apparently satisfied that the above explanation was exhaustive, the Court shed no further light on its reasoning. Unfortunately, it is impossible to conclude with any certainty exactly what the Court meant by the “value of the object.” Such cryptic language could refer to the value of the bridge, the decrease in value of complainant’s shipping business, the cost of destroying the bridge, or the value of complainant’s right to navigate the Mississippi River free of hindrance.43 More than fifty years later, in Glenwood Light & Water Co. v. Mutual Light, Heat & Power Co.,44 the Supreme Court employed the same “value of the object” language it used in the Ward decision,45 but provided more evidence of its reasoning.

In Glenwood, complainant sought an injunction to prevent a rival company from maintaining poles and wires that would “injure or endanger the property of complainant and its customers and the safety and lives of complainant’s customers and [employees] . . . .”46 The district court held that the suit’s value was the cost to defendant of removing the offending poles and wires. Upon testimony that the cost of such an effort did not exceed the statutory minimum,47 the district court dismissed for lack of subject matter jurisdiction. In

40. See id. at 486. Complainant alleged that the bridge had made navigation of the Mississippi “dangerous and difficult,” and that the bridge had substantially increased the costs of his shipping business. Id. at 487. Complainant claimed that the bridge had caused over $1,000 in damages to his boats, and that the damage had forced him to pay increased insurance premiums. See id. Rather than suing at law, however, complainant brought his suit in equity. See id. at 488.
41. In 1862, the federal jurisdictional minimum was $300. See The Federal Judiciary Act of 1789 § 11, 1 Stat. 79.
42. Ward, 67 U.S. at 492 (citations omitted).
43. See 14B Wright et al., supra note 15, § 3703, at 114.
44. 239 U.S. 121 (1915).
45. See Ward, 67 U.S. at 492 (citations omitted).
46. Glenwood, 239 U.S. at 124.
47. In 1915, the federal jurisdictional minimum was $3,000. See Act of March 3, 1911, 36 Stat. 1091.
reversing, the Supreme Court criticized the district court's construction of the jurisdictional amount:

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 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. The relief sought is the protection of that right, now and in the future, and the value of that protection is determinative of the jurisdiction.  

The *Glenwood* Court’s reasoning supports an argument that the “value of the object” of a suit could be the value of the action to the plaintiff. The *Glenwood* opinion implies that, at the very least, the value of the complainant’s right to conduct business free from interference is sufficient to confer jurisdiction. *Glenwood* does not exclude the possibility, however, that had complainant’s interest not been of sufficient value, defendant’s stake could have counted to meet the amount requirement. As *Glenwood* illustrates, the Supreme Court’s “value of the object” approach was imprecise, and was therefore not useful as a general standard for determining the jurisdictional amount. Courts have since tried to craft standards that apply more consistently to a wide range of scenarios. Generally, three methods for determining the jurisdictional amount evolved from the original “value of the object” approach: the “plaintiff-viewpoint” approach, the “either-party” approach, and the “party-invoking-jurisdiction” approach.

B. Competing Approaches To Determination

1. The “Plaintiff-Viewpoint” Approach

Armistead Dobie, before becoming a judge for the Fourth Circuit Court of Appeals, first suggested the “plaintiff-viewpoint” approach to determining the amount in controversy in an article for the *Harvard Law Review*. Dobie perceived great confusion amongst federal courts regarding the jurisdictional amount requirement. In an effort to alleviate that confusion, Dobie proposed the following rule: “[t]he

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48. See *Glenwood*, 239 U.S. at 126.
49. Id.
50. See 14B Wright et al., supra note 15, § 3703, at 119-20.
52. See id. at 752 (“At present, [the federal courts] are working under mere congeries of rules; to call these rules a system would be an exaggerated euphemism.”).
amount in controversy in the United States District Court is always to be determined by the value to the plaintiff of the right which he in good faith asserts in his pleading that sets forth the operative facts which constitute his cause of action." In other words, under the "plaintiff-viewpoint" approach, only plaintiff's claims count toward the jurisdictional amount; defendant's counterclaims are irrelevant. Dobie argued that his position, "if consistently and bravely followed, will . . . serve materially to lighten the labors of the courts in their efforts to determine what is (and what is not) the amount in controversy in the vast number of cases that are daily brought before them." The simplicity of the "plaintiff-viewpoint" approach, a simplicity similar to that of the "well-pleaded complaint" rule, has resonated with many courts since Dobie's initial proposal. Even the Supreme Court, at times, has employed reasoning that closely resembles the arguments supporting the "plaintiff-viewpoint" approach. Perhaps the best illustration of this fact is the Court's

53. Id. at 734.
54. Id. at 752.
55. See, e.g., St. Paul Reinsurance Co. v. Greenberg, 134 F.3d 1250, 1253 (5th Cir. 1998) ("The district court must first examine the complaint to determine whether it is 'facially apparent' that the claims exceed the jurisdictional amount."); Motorists Mutual Ins. Co. v. Simpson, 404 F.2d 511, 514 (7th Cir. 1968) ("When a claim over which there is otherwise jurisdiction does not embrace an amount in controversy in excess of that required by the statute, the 'plaintiff-viewpoint' rule, under which jurisdiction is determined on the basis of what the plaintiff claims, requires dismissal of the claim."); Continental Ozark, Inc., v. Fleet Supplies, Inc, 908 F. Supp. 668, 672 (W.D. Ark. 1995) ("We believe [that the 'plaintiff-viewpoint' rule] requires us to hold that the amount at stake in a counterclaim, whether compulsory or not, may not be used in determining the amount in controversy."); Oliver v. Haas, 777 F. Supp. 1040, 1041 (D.P.R. 1991); West Virginia State Bar v. Bostic, 351 F. Supp. 1118, 1121 (S.D. W. Va. 1972); Hall v. Bowman, 171 F. Supp. 454, 456 (E.D. Mo. 1959) ("[T]he logical and the majority rule is that the question of jurisdictional amount is based upon the plaintiff's [p]etition or [c]omplaint . . . .")
56. The Supreme Court's decisions in Snyder v. Harris, 394 U.S. 332 (1969), and Zahn v. International Paper Co., 414 U.S. 291 (1973), are frequently cited as indicating the Court's intent to restrict litigants' access to federal courts in diversity actions tightly, a policy that would be well-served by the "plaintiff-viewpoint" approach. Snyder and Zahn stand for the proposition that every member of a class action must independently meet the jurisdictional amount requirement. See Chemerinsky, supra note 9, § 5.3, at 293. These cases have been severely criticized as unduly restricting the availability of class action lawsuits. See, e.g., Brian Mattis & James S. Mitchell, The Trouble with Zahn: Progeny of Snyder v. Harris Further Cripples Class Actions, 53 Neb. L. Rev. 137 (1974). While Zahn may indicate the Supreme Court's inclination to restrict diversity jurisdiction severely, that is far from a settled conclusion. This is especially true considering that the Seventh and Fifth Circuit Courts of Appeals have held that 28 U.S.C. § 1367 overrules Zahn. See Stromberg Metal Works, Inc. v. Press Mechanical, Inc., 77 F.3d 928, 930-32 (7th Cir. 1996); In re Abbott Labs., 51 F.3d 524, 527-29 (5th Cir. 1995). These courts reason that because section 1367(b), which carve[s] out exceptions to section 1367(a)'s general grant of supplemental jurisdiction over related claims, does not list class action lawsuits as an exception, supplemental jurisdiction over them must exist. See Stromberg Metal Works, 77 F.3d at 931-32; In re Abbott Labs., 51 F.3d at 527.
decision in *St. Paul Mercury Indemnity Co. v. Red Cab Co.*\(^5\)

In *St. Paul Mercury Indemnity Co.*, the Supreme Court held that "[t]he inability of plaintiff to recover an amount adequate to give the court jurisdiction does not . . . oust the jurisdiction."\(^6\) An Indiana corporation, Red Cab, had entered into an insurance contract with a Minnesota insurer.\(^7\) The complaint alleged that Red Cab's employees had suffered injuries during the term of the insurance contract, for which they made claims.\(^8\) Red Cab brought suit in state court claiming $4,000 in damages for the alleged breach,\(^9\) an amount exceeding the applicable jurisdictional minimum.\(^10\) The insurer removed to federal district court in southern Indiana.\(^11\) Defendant waived a jury trial and the district court entered judgment for Red Cab in the amount of $1162.98.\(^12\) The insurer appealed, but the circuit court refused to decide on the merits because, based on its reading of the record, the amount in controversy was not adequate to give the district court jurisdiction.\(^13\) The circuit court took the position that the amount of the actual recovery, rather than the damages originally claimed, was determinative of the amount in controversy. The circuit court's reasoning implied that federal subject matter jurisdiction could detach subsequent to the commencement of suit if plaintiff failed to recover damages exceeding the jurisdictional minimum.

In reversing the circuit court's ruling,\(^14\) the Supreme Court employed reasoning that resembled that of the "plaintiff-viewpoint" approach:

The intent of Congress drastically to restrict federal jurisdiction in controversies between citizens of different states has always been rigorously enforced by the courts. The rule governing dismissal for want of jurisdiction in cases brought in the federal court is that, unless law gives a different rule, the sum claimed by the plaintiff controls if the claim is apparently made in good faith.\(^15\)

If read independently from context, the Court's language directly endorses a "plaintiff-viewpoint" approach to determining the jurisdictional amount. It is important to note, however, that the issue

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\(^5\) 303 U.S. 283 (1938).
\(^6\) Id. at 289.
\(^7\) See id. at 284.
\(^8\) See id. Further, Red Cab alleged that the insurer had knowledge of the claims, investigated them, yet after the expiration of the contract, denied liability. See id.
\(^9\) See id. at 285.
\(^10\) In 1937, the federal jurisdictional minimum was $3,000. See Act of March 3, 1911, 36 Stat. 1091.
\(^12\) See id.
\(^13\) See *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 90 F.2d 229, 230 (7th Cir. 1937), rev'd, 303 U.S. 283 (1938).
\(^15\) Id. at 288.
decided in *St. Paul Mercury Indemnity Co.* concerned the point in time from which a court should calculate the jurisdictional amount. The decision did not address what elements a court should include in its initial calculation. Thus, *St. Paul Mercury Indemnity Co.* did not foreclose the possibility that approaches to measuring the amount in controversy other than the “plaintiff-viewpoint” would develop.

2. The “Either-Party” Approach

The “plaintiff-viewpoint” rule ignores defendant’s stake in the litigation for the purposes of calculating the jurisdictional amount. As discussed in Part III, this is problematic when defendant’s pecuniary interest in the lawsuit is greater than plaintiff’s, because the party with the most to lose ends up having the least control over the litigation. To address this imperfection, some courts have developed an approach that measures the value of a dispute from the position of either or both parties. These courts therefore include a defendant’s counterclaims when measuring the amount in controversy. Supporters of the “either-party” approach contend that a plaintiff’s complaint “initiates the legal action, but it is not the totality of the controversy. It is merely the portion of the controversy for which plaintiff seeks relief.” As Professor James Moore, an advocate of the “either-party” approach, argues:

If the jurisdictional amount requirement serves any salutary function

68. See discussion infra Part III.A.

69. See Spectacor Management Group v. Brown, 131 F.3d 120, 122 (3d Cir. 1997) (“Where the circumstances surrounding a plaintiff’s claim require a defendant to assert a counterclaim under Rule 13(a), defendant’s claim is part of the controversy set forth in the plaintiff’s complaint.”); Ronzio v. Denver & R.G.W.R. Co., 116 F.2d 604, 606 (10th Cir. 1940) (“In determining the matter in controversy, we may look to the object sought to be accomplished by the plaintiffs’ complaint: the test for determining the amount in controversy is the pecuniary result to either party which the judgment would directly produce.” (emphasis added)); Roberts Mining & Milling Co. v. Schrader, 95 F.2d 522, 524 (9th Cir. 1938) (“[Defendant’s] counterclaim was sufficient to bring the case within the jurisdiction of the [d]istrict [c]ourt, regardless of the lack of jurisdictional averments in the bill of complaint.”); Home Life Ins. Co. v. Sipp, 11 F.2d 474, 476 (3d Cir. 1926); Swallow & Assocs. v. Henry Molded Prods., Inc., 794 F. Supp. 660, 663 (E.D. Mich. 1992) (“[C]onsideration of the amount in controversy should include... the damages pled in a compulsory counterclaim.”); Lange v. Chicago, Rock Island & Pac. R.R. Co., 99 F. Supp. 1, 3 (S.D. Iowa 1951); American Sheet & Tin Plate Co. v. Winzeler, 227 F. 321, 324 (N.D. Ohio 1915) (“[W]hen the jurisdictional amount is in question, the tendering of a counterclaim in an amount which in itself, or added to the amount claimed in the petition, makes up a sum equal to the amount necessary to the jurisdiction of this court, jurisdiction is established, whatever may be the state of the plaintiff’s complaint.”); Lee v. Continental Ins. Co., 74 F. 424, 425 (D. Utah 1896) (“[T]he amount involved in a counterclaim is a part of the subject-matter in dispute . . . .”).

70. Generally, these courts include only defendant’s compulsory counterclaims, and exclude any permissive counterclaims from the jurisdictional amount calculation. See discussion infra Part II.

71. Spectacor, 131 F.3d at 122.
it is to measure the substantiality of the claim. We believe that the substantiality of the claim can best be gauged by reference to what is actually at stake in the litigation rather than by strict reference to plaintiff's claim for relief.\textsuperscript{72}

As is the case with the "plaintiff-viewpoint" rule, the Supreme Court has never specifically endorsed an "either-party" approach, but reasoning supporting it has appeared in various Supreme Court decisions.

In \textit{Kirby v. American Soda Fountain Co.},\textsuperscript{73} plaintiff filed suit in state court alleging $1,500 in damages,\textsuperscript{74} an amount below the then $2,000 federal jurisdictional minimum.\textsuperscript{75} Later, plaintiff filed an amended complaint that alleged damages in excess of the jurisdictional amount.\textsuperscript{76} Defendant removed to federal court and there filed a counterclaim for $1,700.\textsuperscript{77} Plaintiff filed for remand to state court, arguing that the court should have considered only his original complaint when determining jurisdiction.\textsuperscript{78} The district court denied plaintiff's motion to remand, and plaintiff appealed.\textsuperscript{79}

The Supreme Court affirmed the lower court's ruling that the suit was indeed removable.\textsuperscript{80} To do so, the Court need only have relied on the value of plaintiff's amended complaint.\textsuperscript{81} Instead, the Court observed, "[i]n the first place, the whole record being considered, the value of the matter in dispute might well have been held to exceed two thousand dollars, exclusive of interests and costs . . . . Taking the bill, defendant's answer and the cross bill together, the jurisdictional amount was made out."\textsuperscript{82} The \textit{Kirby} Court's consideration of defendant's counterclaim suggests that it would have approved of an "either-party" approach to calculating the amount in controversy. The \textit{Kirby} decision was not a Supreme Court anomaly; the Court has employed similar reasoning in other decisions. One of the more famous examples, famous by way of the controversy it incited, is \textit{Horton v. Liberty Mutual Insurance Co.}\textsuperscript{83}

Plaintiff Horton, a Texas resident, was injured while working for an employer insured by defendant Liberty Mutual, a Massachusetts

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\item \textsuperscript{72} 1A James Moore et al., Moore's Federal Practice \textsuperscript{\textcopyright} 0.167[8], at 500-01 (2d ed. 1996).
\item \textsuperscript{73} 194 U.S. 141 (1904).
\item \textsuperscript{74} See id. at 142.
\item \textsuperscript{75} See Act of March 3, 1887, 24 Stat. 552.
\item \textsuperscript{76} See \textit{Kirby}, 194 U.S. at 142.
\item \textsuperscript{77} See id.
\item \textsuperscript{78} See id. at 142-43.
\item \textsuperscript{79} See id. at 143.
\item \textsuperscript{80} See id. at 146.
\item \textsuperscript{81} See Dobie, \textit{Jurisdictional Amount}, \textit{supra} note 51, at 747.
\item \textsuperscript{82} \textit{Kirby}, 194 U.S. at 144-45 (citations omitted).
\item \textsuperscript{83} 367 U.S. 348 (1961).
\end{itemize}
Horton filed a claim with the Texas Industrial Accident Board against both his employer and Liberty Mutual alleging $14,035 in damages. After hearings, the Board awarded Horton $1,050. Liberty Mutual immediately brought suit in federal district court, alleging that [Horton] had claimed, was claiming and would claim $14,035, but denying that [Horton] was entitled to recover anything at all under Texas law. Liberty Mutual used the $14,035 it anticipated Horton would claim in damages as its basis for subject matter jurisdiction. Horton, also unsatisfied by the Board's decision, filed suit in state court for the full $14,035. Additionally, Horton moved to dismiss the district court suit, arguing that the amount in controversy was only the amount of the award, $1,050, not the amount of his original claim, $14,035. The district court dismissed for lack of subject matter jurisdiction, holding that the amount in controversy was indeed only the amount of the award. The circuit court reversed, and the Supreme Court granted certiorari "to decide the important jurisdictional questions" raised by the case.

The Supreme Court affirmed the circuit court's ruling, and held that the amount in controversy was sufficient for the district court to exercise subject matter jurisdiction over Liberty Mutual's diversity suit. Although Liberty Mutual brought suit in federal court in order to avoid paying the $1,050 award, the Court reasoned that the applicable Texas law "leaves the entire $14,035 claim open for adjudication in a de novo court trial, regardless of the award." The Court went on to make the contentious declaration that "[n]o matter...

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84. See id. at 349.
85. $14,035 was the statutory maximum recovery for worker's compensation claims under Texas law. See id.
86. See id.
87. See id.
88. Texas worker's compensation law permitted either the employee or the insurance company, if dissatisfied with the Board's award, to bring suit "in the county where the injury occurred to set aside said final ruling." Id. In that event, the court would decide the issue de novo, with the party claiming compensation bearing the burden of proof. See id.
89. Id. at 349-50.
90. See id. at 350.
91. See id.
92. In 1960, the federal jurisdictional minimum was $10,000. See Act of July 25, 1958, 72 Stat. 415.
93. See Horton, 367 U.S. at 350. To complicate matters, Horton contemporaneously filed what he designated a compulsory counterclaim for $14,035 in the district court, subject to his motion to dismiss. See id. The Supreme Court did not address this claim in its decision, but implied doubts as to whether the counterclaim arose from the same transaction or occurrence as Liberty Mutual's suit in federal court. See id. n.3.
94. See id. at 350.
95. Id.
96. See id. at 355.
97. Id. at 354.
which party brings it into court, the controversy remains the same; it involves the same amount of money and is to be adjudicated and determined under the same rules.\textsuperscript{98}

One interpretation of \textit{Horton} is that if plaintiff asserts in the complaint that defendant will bring a counterclaim in an amount exceeding the statutory minimum, then the jurisdictional amount is met. This reading is contrary to the principles of the "plaintiff-viewpoint" approach. Some lower courts have viewed as determinative the fact that Horton claimed damages above jurisdictional amount in both state court and in federal court as a conditional counterclaim.\textsuperscript{99} Thus, these courts would hold that, if Horton had asked for too little in his federal counterclaim, jurisdiction would not have existed even though his subsequent state court claim, and Liberty Mutual's original claim before the Board, exceeded the federal jurisdictional minimum.\textsuperscript{100} This reasoning, however, makes Liberty Mutual's invocation of federal jurisdiction incongruously dependent on what Horton decided to ask for after the initial pleading.\textsuperscript{101}

Some scholars, advocating a restrictive view of \textit{Horton}, argue that the decision does not address what method is appropriate for calculating the jurisdictional amount.\textsuperscript{102} Instead, these scholars contend that the \textit{Horton} decision hinged on the fact that the suit in question was before the district court for de novo review.\textsuperscript{103} Thus, the issue before the federal court was identical to that before the Board: whether to award Horton the full $14,035 that Texas law allowed.

Yet another interpretation of \textit{Horton} treats the lawsuit as a declaratory judgment action at equity.\textsuperscript{104} Under this logic, the insurance company's subsequent suit in federal court was a request for declaration of non-liability.\textsuperscript{105} In declaratory judgment actions, any amount subject to declaratory relief determines the amount in controversy.\textsuperscript{106}

The \textit{Horton} dissent recognized that the majority's reasoning was open to multiple interpretations, and worried that the decision would cause undue confusion in the lower courts:

The Court turns a new furrow in the field of diversity jurisdiction today and, in so doing, plows under a rule of almost a quarter of a

\textsuperscript{98} Id.
\textsuperscript{99} See, e.g., Insurance Co. of North America v. Keeling, 360 F.2d 88, 90-91 (5th Cir. 1966).
\textsuperscript{100} See id. at 91.
\textsuperscript{101} See 14B Wright et al., supra note 15, § 3706, at 222.
\textsuperscript{102} See id.
\textsuperscript{103} See id. at 222-23.
\textsuperscript{105} See id.
JURISDICTIONAL AMOUNT

century's standing--the rule that in determining jurisdiction, "the
sum claimed by the plaintiff controls if the claim is apparently made
in good faith."107

The dissent went on to point out that "[t]his is the first time the Court
has let a plaintiff affix jurisdiction by prophesying what the defendant
would or might claim, rather than by stating what the plaintiff itself
did claim."108

Unless clarified by the Supreme Court, Horton will continue to be
"difficult to the point of impossibility" to digest.109 The Third Circuit
Court of Appeals has accurately summarized Horton's reverberation
in the legal community: "[p]erhaps because Horton has so troubled
commentators and courts, it has been conspicuously absent from
discussions of the effect of counterclaims upon the amount in
controversy ...."110 Regardless, the controversy surrounding Horton
has provided advocates of the "either-party" approach with the means
to argue reasonably that their position is consistent with Supreme
Court jurisprudence.

3. The "Party-Invoking-Jurisdiction" Approach

As is the case with the "either-party" approach, the "party-
invoking-jurisdiction" approach developed out of the dissatisfaction
felt by some in the legal community with the "plaintiff-viewpoint"
rule.111 But not all of those opposed to the tight restrictions prescribed
by the "plaintiff-viewpoint" rule are comfortable with the highly
permissive policy suggested by the "either-party" approach. The
"either-party" approach directly contradicts the "plaintiff-viewpoint"
rule, as a court can look to any and all claims made by either party
when assessing jurisdiction. Under the "either-party" standard,
defendants can clinch their choice of a federal forum by bringing
counterclaims against plaintiffs, thus raising the stakes of the suit
above the federal jurisdictional minimum. Allowing such a practice
runs afoul of the traditional notion112 that plaintiff is sole master of her
claim.

A somewhat more conservative approach adopted by a minority of
courts is to count only the stake of the party invoking the jurisdiction

(1938)).
108. Id. at 356 (Clark, J., dissenting).
109. 14B Wright et al., supra note 15, § 3706, at 220.
111. See 1 James Moore et al., Moore's Federal Practice '1991'1, at 817
(2d ed. 1996); Wright, supra note 9, § 34, at 192-93; 14B Wright et al., supra note 15, § 3703, at
121-25.
112. See supra note 15.
of the federal forum. Thus, on removal, defendant's interest in the litigation, exclusive of plaintiff's interest, would determine the jurisdictional amount. Although the "party-invoking-jurisdiction" approach broadens the jurisdiction of federal courts to a lesser extent than the "either-party" approach, both share the same theoretical differences from the "plaintiff-viewpoint" rule: depending on the circumstances, a court can look beyond the initial pleading when determining the amount in controversy. The "party-invoking-jurisdiction" approach, however, has a serious flaw: it violates statutory language providing that removal of an action is possible only when the action could have been brought in federal court originally. Perhaps for this reason, courts have rarely applied the "party-invoking-jurisdiction" approach.

While the "plaintiff-viewpoint" approach has maintained a majority following in the federal court system, it is an imperfect model. Fact scenarios arise that Dobie's approach is not equipped to adequately handle. Often, defendant's monetary stake in the lawsuit, as represented by her counterclaims, is greater than plaintiff's stake. The "plaintiff-viewpoint" rule fails to recognize that, in such situations, it is not appropriate to allow plaintiff unilateral control over forum selection. As Dobie himself observed, "the plaintiff-viewpoint theory seems subjected to its severest test in the case of the counterclaim." The next part provides a brief description of counterclaims' main features, and outlines scenarios in which courts have considered including counterclaims in the jurisdictional amount calculation.

II. PERMISSIVE AND COMPULSORY COUNTERCLAIMS

This part first enumerates important features of both Rule 13(b) permissive counterclaims and Rule 13(a) compulsory counterclaims. It then describes the way in which, depending on what viewpoint the court assumes to determine the amount in controversy, compulsory counterclaims shift the balance of power between plaintiff and defendant in asserting jurisdiction.

A. Permissive Counterclaims

The Federal Rules of Civil Procedure provide that "[a] pleading

114. See 1 Moore et al., supra note 111, ¶ 0.91[1], at 819.
116. The "party-invoking-jurisdiction" approach measures plaintiff's claims originally, but switches standards on removal. The "either-party" approach avoids violating section 1441 by applying the same standard both originally and on removal.
117. See discussion infra Part III.A.
118. Dobie, Jurisdictional Amount, supra note 51, at 744.
may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.\textsuperscript{119} The Rules refer to such counterclaims as "permissive counterclaims."\textsuperscript{120} A defendant does not waive\textsuperscript{121} her right to raise permissive counterclaims in a later suit by not doing so in her initial answer.\textsuperscript{122} The philosophy supporting permissive counterclaims is that it is convenient for parties to dispose of all claims that exist between them, even if only tangentially related, in a single suit.\textsuperscript{123} Citing this policy argument as support, defendants have tried to convince courts to include permissive counterclaims in the jurisdictional amount in three scenarios.

In the first scenario, plaintiff's original complaint alleges damages sufficient to satisfy the amount-in-controversy requirement. Defendant then pleads a permissive counterclaim valued less than the jurisdictional minimum. Defendant would argue that because the core dispute meets jurisdictional requirements, the court should hear related disputes in the interest of judicial economy.\textsuperscript{124} This argument is inconsistent with a literal reading of the federal supplemental jurisdiction statute, 28 U.S.C. § 1367. That statute requires that permissive counterclaims have an independent basis for jurisdiction in order to be heard in federal courts.\textsuperscript{125} Courts have consistently interpreted that requirement to mean that jurisdiction over permissive counterclaims is unsustainable unless the amount involved exceeds the statutory minimum.\textsuperscript{126}

The second scenario occurs when plaintiff's complaint alleges an amount below statutory requirements. The value of defendant's permissive counterclaim, however, would raise the amount in controversy above the jurisdictional minimum if added to the value of the core claim.\textsuperscript{127} If courts allowed this, a state court defendant could

\begin{itemize}
  \item \textsuperscript{119} Fed. R. Civ. P. 13(b).
  \item \textsuperscript{120} Id.
  \item \textsuperscript{121} For further discussion of waiver of the right to raise counterclaims in future actions as the issue relates to the determination of the amount in controversy, see infra note 137 and accompanying text.
  \item \textsuperscript{122} Compare Fed. R. Civ. P. 13(b) ("A pleading may state as a counterclaim . . . .") (emphasis added)), with Fed. R. Civ. P. 13(a) ("A pleading shall state as a counterclaim . . . .") (emphasis added)). For a more complete discussion of Rule 13(a) counterclaims, see infra Part II.B.
  \item \textsuperscript{123} See Teply & Whitten, supra note 104, at 444.
  \item \textsuperscript{125} See 28 U.S.C. § 1367(a) (1994) (providing that district courts shall have supplemental jurisdiction only over claims that are "part of the same case or controversy" as the original claim).
  \item \textsuperscript{126} See Pro Medica, Inc., 331 F. Supp. at 232.
  \item \textsuperscript{127} See, e.g., Home Life Ins. Co. v. Sipp, 11 F.2d 474, 476 (3d Cir. 1926). This situation arises only when defendant's permissive counterclaim is below the jurisdictional minimum. Otherwise, defendant could independently file the claim in federal court without resorting to any procedural slight of hand.
\end{itemize}
remove to federal court on the basis of his permissive counterclaim. Indeed, a plaintiff might even argue for including the permissive counterclaim as part of the jurisdictional amount if her original claim did not meet the statutory minimum. Dicta from cases decided before the adoption of the Federal Rules of Civil Procedure indicate that some courts accepted this type of aggregation. There is no recent authority, however, that suggests that subject matter jurisdiction exists in these circumstances. It would be unreasonable to allow defendant to assert claims not directly related to the original suit and thereby vest a federal court with jurisdiction when she could not have brought the claims in federal court independently.

Yet a third scenario arises when defendant attempts to aggregate several permissive counterclaims in order to meet the required jurisdictional amount, thus rendering the counterclaims eligible for federal adjudication. Courts have generally not allowed this tactic. Some courts rejecting it in the removal context, however, have allowed it when plaintiff's claim is independently sufficient to satisfy federal jurisdictional requirements. Nonetheless, this scenario does

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128. See id.
129. See Central Commercial Co. v. Jones-Dusenbury Co., 251 F. 13, 19 (7th Cir. 1918) (“For purposes of jurisdiction it has been frequently held that in cases similar to the instant case the matter involved includes the demands of both plaintiff and defendant.”); American Sheet & Tin Plate Co. v. Winzeler, 227 F. 321, 324 (N.D. Ohio 1915) (“It is established, of course, that, when the jurisdictional amount is in question, the tendering of a counterclaim in an amount which in itself, or added to the amount claimed in the petition, makes up a sum equal to the amount necessary to the jurisdiction of this court, jurisdiction is established, whatever may be the state of the plaintiff's complaint.”).
130. See 14B Wright et al., supra note 15, § 3706, at 214.
132. A plaintiff might argue for allowing aggregation of defendant's permissive counterclaims in this situation, hoping to remove eventually to federal court. An early version of the removal statute permitted removal by either party. See Act of March 3, 1875, ch. 137, § 2, 18 Stat. 470. The language of the present statute refers only to defendants, and courts generally do not interpret that language as affording plaintiffs the right to remove. See Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108 (1941). But see Note, supra note 28, at 1380-81 (criticizing the Shamrock Oil & Gas Corp. decision as inconsistent with the legislature's intent when it revised the removal statute). Typically, courts justify their position regarding plaintiff removal on the theory of waiver, or on a strict reading of 28 U.S.C. § 1441. See Joel M. Feinberg, Establishing Federal Jurisdictional Amount by a Counterclaim, 21 Mo. L. Rev. 243, 244 (1956). There have been, however, rare instances when courts have permitted plaintiff removal. See Chambers v. Skelly Oil Co., 87 F.2d 853, 854 (10th Cir. 1937) (holding that under state procedural rules, a counterclaim "is a petition against the plaintiff who becomes in effect a defendant thereto"); Carson & Rand Lumber Co. v. Holtzclaw, 39 F. 578, 580 (E.D. Mo. 1889) (characterizing a non-resident plaintiff as a "defendant" for the purposes of removal when the resident defendant brought a counterclaim in excess of the federal jurisdictional amount).
133. See, e.g., Seneca Falls Mach. Co., 246 F. Supp. at 273. Defendant would argue for allowing aggregation solely to satisfy the requirements of 28 U.S.C. § 1367. If this argument failed, defendant could simply bring a new suit in federal court, in which
not arise frequently, and thus has minimal impact on federal jurisdiction.

As described above, the treatment of Rule 13(b) permissive counterclaims with respect to the jurisdictional amount is fairly well-settled. Courts generally do not interpret the supplemental jurisdiction statute as allowing the use of permissive counterclaims, either aggregated together or aggregated with plaintiff's complaint, to sustain federal jurisdiction. Although adopting a contrary position would be convenient for litigants, eased access to federal courts would lead to gridlock in the federal docket. The cost would simply be too high. A cost-benefit analysis yields less clear-cut results, however, when contemplating the inclusion of Rule 13(a) compulsory counterclaims in the jurisdictional amount.

B. Compulsory Counterclaims

Compulsory counterclaims did not exist at law prior to 1938, although there was such a provision in the old Federal Equity Rules. Unlike permissive counterclaims, a defendant must plead compulsory counterclaims in his initial answer, or lose the right to do so in the future. The Federal Rules of Civil Procedure provide that a defendant "shall" plead all counterclaims arising from the same "transaction or occurrence" as the original claim, unless adjudication of those counterclaims is impossible without the presence of third parties. Compulsory counterclaims need not independently satisfy federal jurisdictional requirements, such as the jurisdictional


136. The Federal Rules do, however, contain a relief provision: "When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment." Fed. R. Civ. P. 13(f).

137. The Federal Rules do not specifically prescribe this result, but courts generally agree that it is consistent with Congressional intent. See, e.g., Baker v. Gold Seal Liquors, Inc., 417 U.S. 467, 469 n.1 (1974) ("A counterclaim which is compulsory but is not brought is thereafter barred." (citation omitted)). Many advocates of including compulsory counterclaims in the jurisdictional amount rely on this point as justification. See Lange v. Chicago, Rock Island & Pac. R.R. Co., 99 F. Supp. 1, 2 (S.D. Iowa 1951) ("The 'matter in controversy' here is not the amount which plaintiff claims, but is also that which under necessity the defendant must assert to be litigated if it is to resist the plaintiff's demands and enforce its own .... [The defendant] is deprived of any choice."). This reasoning elevates the importance of protecting non-resident defendants from bias in state court above the importance of limiting the federal docket.

138. Compulsory counterclaims may arise in any lawsuit, no matter how plaintiff originally invoked the jurisdiction of the federal forum.

amount,\textsuperscript{140} to be heard in federal court.\textsuperscript{141}

The circumstances in which a court might consider compulsory counterclaims to be part of the amount in controversy are uncomplicated: a plaintiff's claim fails to allege the jurisdictional amount, but defendant's counterclaim, either on its own\textsuperscript{142} or in combination with plaintiff's claim,\textsuperscript{143} exceeds the statutory minimum. Courts wishing to restrict access to the federal forum adhere to the "plaintiff-viewpoint" approach, and exclude compulsory counterclaims from the jurisdictional amount calculation. Courts following the "either-party" approach consider defendant's compulsory counterclaims, either by themselves or in conjunction with plaintiff's complaint, when assessing jurisdiction, thus lowering the barriers to the federal forum. Those courts advocating use of the "party-invoking-jurisdiction" approach also increase the availability of the federal forum by allowing a defendant wishing to remove to provide the jurisdictional basis when plaintiff has not. The choice between approaches has ramifications beyond establishing the scope of federal jurisdiction, however. Whether a defendant can modify the jurisdictional features of a lawsuit has a direct effect on plaintiff's control over forum selection. The question becomes, then, whether there are circumstances that warrant allowing defendant to gain access to the federal forum even though plaintiff, through artful pleading, has attempted to trap her in state court. The next part argues that there are such circumstances, and proposes that a limited version of the "either-party" approach best resolves those situations.

III. SUPERIORITY OF THE "EITHER-PARTY" APPROACH

This part criticizes the "plaintiff-viewpoint" approach, demonstrating that it yields anomalous and undesirable results in some situations. It then proposes that limited application of the "either-party" approach would more effectively ensure that parties are not unduly disadvantaged by their status as "defendants" rather than "plaintiffs." Under the "either-party" approach, a plaintiff could

\textsuperscript{140} See Harry Shulman & Edward C. Jaegerman, Some Jurisdictional Limitations on Federal Procedure, 45 Yale L.J. 393, 415-17 (1936). While a contrary rule would discourage defendants from removing to federal court, it would also encourage plaintiffs to originally file in federal court to avoid counterclaims. See id. at 416. The resultant increase in forum shopping would negate any benefits derived from discouraging removal. See id.

\textsuperscript{141} Indeed, the supplemental jurisdiction of compulsory counterclaims would apply even if defendant brought counterclaims pursuant to state law against non-diverse parties. This conclusion flows from the observation that because compulsory counterclaims need not have an independent basis for jurisdiction, their own jurisdictional features are irrelevant.

\textsuperscript{142} See, e.g., Roberts Mining & Milling Co. v. Schrader, 95 F.2d 522, 524 (9th Cir. 1938).

\textsuperscript{143} See, e.g., Home Life Ins. Co. v. Sipp, 11 F.2d 474, 476 (3d Cir. 1926).
not deprive a deserving defendant of a federal forum merely by winning the race to the courthouse.

A. The "Plaintiff-Viewpoint" Dilemma

The strongest rationale for challenging the majority consensus as to the "plaintiff-viewpoint" approach is that it evolved from the "well-pleaded complaint" rule, a rule devised solely for federal question jurisdiction. By ignoring the origin and limitations of the "well-pleaded complaint" rule, courts have dangerously allowed the law concerning determination of the jurisdictional amount in diversity actions to develop without any real scrutiny. Consequently, the "plaintiff-viewpoint" rule's flaws have gone largely unnoticed, and even when noticed, have often been summarily disregarded. This has led to a gross inequality in the treatment of plaintiffs and defendants in the federal courts with respect to forum selection.

The key failing of the "plaintiff-viewpoint" approach appears most clearly in the context of removal jurisdiction. Strict adherence to Dobie's rule creates a "race to the courthouse" when one party's stake in the litigation is greater than the other party's. Imagine a lawsuit in which both a resident party and a non-resident party have damages above the statutory minimum. In an effort to prevent the non-resident from taking advantage of the federal forum, the resident may choose to file a claim in state court for less than the federal jurisdictional amount. State law might compel the non-resident to file a counterclaim, or lose her right to litigate the matter in the future. She will not be able to remove, however, because only the resident's claim will count toward the jurisdictional amount. Thus, by losing the race to the courthouse, the non-resident will also lose the opportunity to have her claim heard in federal court.

To protect her rights, the non-resident might file a parallel suit in federal court. This option, however, will not necessarily protect the non-resident's interests. If the state court renders judgment first, that verdict will be res judicata to the federal suit. Knowing this, the resident party can choose to file her claim in federal court as a counterclaim, hoping that the first forum to render judgment does so in her favor, or attempting delay in the forum she has deemed less

144. See discussion supra Part I.B.1.
145. See Iowa Lamb Corp. v. Kalene Indus., Inc., 871 F. Supp. 1149, 1155 (N.D. Iowa 1994) (criticizing the fact that "[a] plaintiff may even avoid federal jurisdiction or thwart attempts at removal by claiming less than the jurisdictional amount").
146. This consequence would be seen with respect to every issue in contention, because issues decided in one forum would be binding on the other.
147. Rule 13(a) provides that counterclaims are not "compulsory" if "at the time the action was commenced the claim was the subject of another pending action." Fed. R. Civ. P. 13(a). This provision ensures that although the non-resident's claim might be heard in federal court, the resident's claim against him will be heard in state court if she so wishes.
sympathetic to her interests. In this scenario, there would be no incentive for the resident to allow consolidation of all claims in one forum because doing so would only help the non-resident. The resultant multiple litigation, however, would defeat the interests of judicial economy.

A possible way of protecting the non-resident's interest would be for the federal court to enjoin the state court proceeding. This solution is foreclosed, however, because such aggressive action by a federal court generally violates the Anti-Injunction Act. The Act provides that, "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." Unless the federal forum was very close to reaching a settlement or judgment, it would be unable to impede the state action.

As illustrated above, the "plaintiff-viewpoint" rule is too rigid to ensure that a party's access to the federal forum is not diminished by the "defendant" classification. The rule for determining the jurisdictional amount should depend "upon the circumstances thereof; and, inasmuch as fact settings are infinitely varying, it is evident that a principle or principles which shall govern all cases cannot be formulated." In the removal context, the "plaintiff-viewpoint" approach allows the party with the least at stake to dictate forum preference merely by filing suit first. In order to prevent overly formalistic reasoning from disadvantaging parties on the sole basis that they did not win the race to the courthouse, a more flexible approach is necessary for determining the amount in controversy.

**B. The "Either-Party" Solution**

Adopting a limited version of the "either-party" approach, and thereby allowing compulsory counterclaims to independently satisfy the jurisdictional amount requirement, exclusive of plaintiff's complaint, would cure the defects inherent in the "plaintiff-viewpoint" rule. Under this approach, federal jurisdiction, both removal and original, would exist provided that at least one party's interest in the litigation independently exceeds the minimum jurisdictional amount. Plaintiff would no longer be able to deprive a deserving defendant of a federal forum by quickly filing a small claim in state court.

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148. See *Asset Allocation & Management Co. v. Western Employers Ins. Co.*, 892 F.2d 566, 572 (7th Cir. 1989) (staying other action and thus compelling claim to be filed as counterclaim).
150. *Id.*
152. See discussion supra Part I.B.2.
Additionally, a limited "either-party" rule would boost efficiency in the courts overall. Parties desiring to take advantage of the federal forum would be saved the effort of having to re-file lawsuits in opposite positions when defendant's stake is above the jurisdictional amount, but plaintiff's claim proves to be insufficient.\textsuperscript{153}

Further, the limited "either-party" rule is consistent with litigant rights that courts already recognize. Where plaintiff had wanted the federal forum originally, but failed to claim sufficient damages, she would welcome a rule allowing defendant's claim to fill the jurisdictional void.\textsuperscript{154} By the same token, defendant, if she does not want to be in federal court, retains the right to counterclaim for an amount below the jurisdictional minimum and move to dismiss for lack of subject matter jurisdiction.\textsuperscript{155} By allowing defendant to choose her forum, a court can avoid "the ridiculous result that would sacrifice the choice of forum of the litigant with the greater monetary interest at stake."\textsuperscript{156} This logic applies equally in the removal context.\textsuperscript{157}

A more permissive application of the "either-party" approach than this Note proposes, one that would allow aggregation of plaintiff's and defendant's claims to meet the jurisdictional minimum, would also effectively address the "plaintiff-viewpoint" rule's shortcomings, but would represent a sizable expansion in the scope of federal jurisdiction. Courts hesitant to increase the size of the already immense federal docket would be unlikely to accept such a rule. A limited "either-party" approach represents a compromise: federal

\footnotesize{\textsuperscript{153} See Merchants Heat & Light Co. v. J.B. Clow & Sons, 204 U.S. 286, 289 (1907) ("[B]y setting up its counterclaim the defendant became a plaintiff in its turn, invoked the jurisdiction of the court in the same action and by invoking submitted to it.").}

\footnotesize{\textsuperscript{154} See Note, supra note 28, at 1377.}

\footnotesize{\textsuperscript{155} Some courts predicate allowing compulsory counterclaims to be part of the amount in controversy on whether defendant has objected to jurisdiction. See, e.g., Fenton v. Freedman, 748 F.2d 1358, 1359-60 (9th Cir. 1984) (holding that jurisdiction existed over each claim because the parties did not object to jurisdiction prior to filing their counterclaims). If defendant has objected to jurisdiction, it seems reasonable to honor his wishes. See Spectacor Management Group v. Brown, 131 F.3d 120, 128 (3d Cir. 1997). A minority of courts argues that bringing a compulsory counterclaim and allowing it to become part of the jurisdictional amount functions like a waiver of the right to object to subject matter jurisdiction. See Roberts Mining & Milling Co., 95 F.2d 522, 524 (9th Cir. 1938) ("Consequently, from and after the filing of the counterclaim, the [d]istrict [c]ourt had jurisdiction of this case."). Such courts reason that "the defendant, if he elects to sue upon his claim in the action against him, assumes the position of an actor and must take the consequences." Merchants Heat & Light Co., 204 U.S. at 290. This result seems illogical, however, because the right to object to subject matter jurisdiction is perpetual. See supra note 30 and accompanying text.}


\footnotesize{\textsuperscript{157} In such a case, however, fairness may require allowing the plaintiff the option to remove. See supra note 132. A state court plaintiff's interests change significantly when defendant brings a counterclaim against her that exceeds the federal jurisdictional minimum.}
jurisdiction would expand beyond its present reach only when a defendant files a compulsory counterclaim for an amount exceeding the jurisdictional minimum. Thus, the policy of keeping small claims out of federal court is preserved, but not at the expense of defendant’s rights. In this way, the limited “either-party” approach does not so much expand jurisdiction as merely recognize and enforce the principles behind established jurisdictional rules.158

Another problem with allowing aggregation of both parties’ claims for the purpose of meeting jurisdictional requirements is that doing so resembles “bootstrapping.” A court could cure a subject matter jurisdiction defect in plaintiff’s claim by adding the value of defendant’s compulsory counterclaim, and then assert supplemental jurisdiction over defendant’s counterclaim that by itself did not exceed the jurisdictional minimum. Such conduct arguably violates Rule 82 of the Federal Rules of Civil Procedure, which provides that “[t]he Federal Rules shall not be construed to extend or limit the jurisdiction of the United States district courts . . . .”159 By applying the “either-party” rule only when defendant’s claim independently exceeds the jurisdictional amount, courts can avoid this difficulty.

Critics of the “either-party” approach argue that the “plaintiff-viewpoint” rule yields more consistency and predictability.160 Some courts contend that allowing compulsory counterclaims, but not permissive counterclaims, to provide the basis for removal would make federal jurisdiction subject to state procedural rules distinguishing permissive counterclaims from compulsory counterclaims, a consequence that would breed inconsistency.161 This argument incorrectly assumes, however, that federal courts would use state classifications. For the very purpose of preserving consistency and predictability, federal courts would likely continue to use the classifications that the Federal Rules of Civil Procedure provide.162 In so doing, courts can ensure that similar cases receive the same

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158. See Lange v. Chicago, Rock Island & Pac. R.R. Co., 99 F. Supp. 1, 2 (S.D. Iowa 1951) (“We believe that what we here decide does not enlarge—It but recognizes—the [C]ongressional purpose . . . .”).
160. See Dobie, Jurisdictional Amount, supra note 51, at 752.
162. See Feinberg, supra note 132, at 248 (“[N]o reason appears why district courts could not use the definition of compulsory counterclaim contained in Rule 13(a), Federal Rules of Civil Procedure, rather than the relevant state practice code definition.”).
treatment in each district court across the country.

Critics observe that because counterclaims cannot diminish the recovery sought by plaintiff, thereby divesting a court of jurisdiction, allowing counterclaims to count in the jurisdictional amount, and thereby vest a court with jurisdiction, would be non-uniform. This logic ignores the fact that compulsory counterclaims are not defenses to a plaintiff's cause of action. They are affirmative claims arising out of the same events as plaintiff's claim. The rule preventing counterclaims from divesting jurisdiction protects plaintiff from being unfairly deprived of her choice of forum. Allowing counterclaims to fulfill the jurisdictional amount requirement would not unfairly deprive plaintiff of her rights. As evidenced by the removal statute, when a controversy is large enough for federal adjudication, an in-state plaintiff's forum preference is not a priority.

One possible problem with allowing counterclaims to count toward the jurisdictional amount centers on court sanctions. While plaintiffs bear the risk of paying costs for filing a claim that leads to a recovery below the jurisdictional amount, defendants have no such liability. Thus, under the rule herein proposed, a removing defendant could bring a frivolous counterclaim for the sole purpose of gaining access to federal court, and not have to worry about suffering repercussions. Congress could easily solve this problem, however, by amending section 1332 to provide for defendant sanctions. Such an amendment would have no undesirable collateral effects on the functioning of federal courts.

A limited version of the "either-party" approach serves the interests of procedural fairness and judicial economy far better than the "plaintiff-viewpoint" rule. The impact of employing such a standard on predictability and consistency would be negligible, and doing so would not contradict any established authority. Allowing the pecuniary interest of either party to satisfy jurisdictional requirements allocates control of the litigation to the party with the most at stake, rather than to the party who has won the race to the courthouse. Consequently, the jurisdictional determination would depend on justifiable factors, rather than capricious party classifications.

163. See supra note 35 and accompanying text.
164. See Keyser v. Lyons Fin. Serv., 88 F. Supp. 816, 818 n.1 (E.D. Pa. 1950); see also Dobie, Jurisdictional Amount, supra note 51, at 745 ("If a defense is not to be considered as reducing the amount in controversy, should it be used to increase that amount?").
165. See discussion supra Introduction.
166. See Fed. R. Civ. P. 11(c).
CONCLUSION

This Note's advocacy of a limited version of the "either-party" approach to determining the jurisdictional amount relies on common sense. The desire to increase efficiency in the federal courts by limiting the scope of federal jurisdiction is laudable. That desire should not, however, take priority over procedural consistency, a feature of the justice system that is at the heart of due process. To prevent open access to federal courts on the basis of the arbitrary distinction between plaintiff and defendant unduly elevates form over substance. The limited "either-party" approach would expand federal jurisdiction beyond its traditional scope, but would still be well within constitutional limits. In all cases where one party's stake exceeds the statutory minimum, jurisdiction would exist. Dogged advocacy of the "plaintiff-viewpoint" approach is irrational in that it ignores the alternative more capable of achieving consistent results. Too often, the "plaintiff-viewpoint" rule creates a double standard, improperly allowing plaintiffs greater latitude in controlling forum selection than defendants. Further, the "plaintiff-viewpoint" approach is based on applying to diversity jurisdiction a rule that was designed to limit only federal question jurisdiction. If the "well-pleaded complaint" rule is to be applied to diversity jurisdiction, either the Supreme Court or Congress should expressly say so. The integrity of the legal system suffers when the rule of law materializes without authoritative examination.