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The Eye of the Beholder: a Defendant-Reliant Approach to Valuing Injunctive Relief for the Purposes of the Amount in Controversy Requirement.

JASON SCHWALM*

I. INTRODUCTION

For most law students, subject matter jurisdiction is a familiar and entirely unglamorous topic of conversation. Subject matter jurisdiction is required for access to a federal court,[1] and exists, in the form of diversity jurisdiction under 28 U.S.C. § 1332, where the parties are of diverse state citizenship and where the amount in controversy is over $75,000.[2]

During this discussion in Civil Procedure I, the average 1L may also learn that determining the amount in controversy is not always a simple matter. In a suit for liquidated damages, the amount stated in the pleading controls, but not all plaintiffs seek a clear, explicit dollar amount.[3] Where a plaintiff seeks some form of equitable relief, such as an injunction, courts are split over how best to value the controversy, noting that "[a]lthough there are cases holding that the viewpoint of either the plaintiff or the defendant may be used, the majority rule is that the jurisdictional amount is to be tested by the value to the plaintiff of the object that is sought to be gained."[4] Usually, the discussion ends here.

Meanwhile, in the scholarly literature, the argument has only just begun. Attempting to untangle the web of cryptic and often contradictory Supreme Court opinions on the matter,[5] academics have written, at length, about how best to value the amount in controversy when injunctive relief is sought. A

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1. *See* JACK H. FRIEDENTHAL, MARY KAY KANE & ARTHUR R. MILLER, CIVIL PROCEDURE 10-13 (3d ed. 1999).

2. 28 U.S.C. § 1332(a) (2006). "The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000 . . . and is between – (1) citizens of different States[.]"

3. "[T]he sum claimed by the plaintiff controls if the claim is apparently made in good faith . . . . But if, from the face of the pleadings, it is apparent, to a legal certainty, that the plaintiff cannot recover the amount claimed . . . the suit will be dismissed." St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283, 288-89 (1938).

4. FRIEDENTHAL et al., *supra* note 1, at 47.

5. In particular, the seminal case in this area, *Mississippi and Missouri Railroad Co. v. Ward*, is "extremely confusing" and fails "to specify what value and to what 'object' [the Court] was referring in its determination of jurisdictional amount." William S. Schober, Note, *The Jurisdictional Amount in Controversy Requirement: The Seventh Circuit Rejects the Plaintiff Viewpoint Rule* – McCarty v. Amoco Pipeline Company, 29 DEPAUL L. REV. 933, 935-36 (1980). Judge Learned Hand found this same Supreme Court opinion "at best ambiguous." M & M Transp. Co. v. City of New York, 186 F.2d 157, 158 (2d. Cir. 1950).

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seminal Harvard Law Review article, published in 1925, argues that as we accept the plaintiff's estimation of liquidated damages, so should we accept the plaintiff's estimation of the monetary value of any equitable relief sought.[6] In the alternative, a number of articles have since been published arguing that, in the name of equity, both the plaintiff's and defendant's perspectives should be considered, to ensure that any case deserving a federal forum receives one.[7]

If the question, "From whose perspective should we value injunctive relief for the purposes of the amount in controversy requirement?" has already been asked and answered – to the point of exhaustion, some might say – why is it worth asking again? Ultimately, it is worth asking again for two reasons: (1) The Sixth Circuit is the last of the circuit courts of appeals to definitively answer the question, and it so stands in a strong position to weigh the varying arguments; and (2) In the numerous arguments regarding this question, little has been said of the nature of injunctive relief itself (the very thing being valued).

To provide historical background, this note will begin by examining both sides of the circuit court split. In analyzing the strengths and weaknesses of the majority "plaintiff's view" rule and the minority "either viewpoint" rule, particular attention will be paid to the justification for each approach. It is worthy of mention, at the outset, that these justifications entirely omit any discussion of the thing being valued: an order of injunctive relief. Instead, the majority and minority rules immediately ask, "From whose perspective should we value this relief?"

Ultimately, this note will argue in favor of a defendant-reliant approach to the valuation of injunctive relief. This approach is both mindful of the nature of injunctive relief and faithful to the Supreme Court's jurisprudence on the issue as well.

II. HISTORY

A. The Amount in Controversy Requirement and its Purposes

Subject matter jurisdiction is a necessary precondition for any case to be heard in federal court.[8] The requirements for diversity jurisdiction, a type of

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6. "A rigid adherence to [the plaintiff's viewpoint] rule, it is submitted, will prove a ready help in the solution of those problems which seem to give the greatest difficulty to federal judges; any relaxation of the rule can only breed (and has bred) a regrettable confusion." Armistead M. Dobie, *Jurisdictional Amount in the United States District Court*, 38 HARV. L. REV. 733, 734 (1925).

7. *See* Schober, *supra* note 5; Greta N. Hininger, *Two Heads are Better Than One: Making a Case for the Either Party Viewpoint for Removal*, 69 MO. L. REV. 275 (2004); Karen L. Williams, Ninth Circuit Review, *The Jurisdictional Amount Requirement – Valuation from the Defendant's Perspective*, 11 LOY. L.A. L. REV. 637 (1978).

8. *See supra* note 1 and accompanying text.

subject matter jurisdiction, are outlined in 28 U.S.C. § 1332.[9] Per the statute, the parties must be diverse of citizenship, and the amount in controversy must be greater than $75,000.[10]

It is generally agreed that the amount in controversy requirement serves a key function: preserving federal court resources for cases of sufficient import.[11] Since the Judiciary Act of 1789, the amount in controversy requirement has frequently been reaffirmed by Congress and increased apace with inflation.[12] Despite the seemingly clear objective of limiting access to federal courts, Congress's zeal has been mitigated by the belief that the amount in controversy should not, on the other hand, "be so high as to convert the federal courts into courts of big business[.]"[13]

In an effort to reconcile these two contradictory impulses, the amount in controversy requirement has been continually revalued.[14] However, the dollar amount required by § 1332 will always be somewhat arbitrary. Ultimately, it is unavoidably true that "the importance of a case to the parties or to the development of the law may not always be accurately reflected by the amount in controversy[.]"[15] Nevertheless, lacking a more effective gating mechanism for access to the federal courts, we rely on a threshold dollar amount.

B. Meeting the Amount in Controversy

When a plaintiff seeks monetary damages, the amount in controversy requirement is easily satisfied. In such a situation, "[t]he sum claimed by the

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9. "The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000 . . . and is between – (1) citizens of different States." 28 U.S.C. § 1332(a) (2006).

10. *Id.*

11. "The most reasonable objective to attribute to the jurisdictional minimum is that of enabling federal courts to devote adequate attention to 'important' matters by keeping small claims off the dockets." Note, *Federal Jurisdictional Amount: Determination of the Matter in Controversy*, 73 HARV. L. REV. 1369, 1369 (1960); *see also*, Tatum v. Laird, 444 F.2d 947, 950 n.2 (D.C. Cir. 1971).

12. The Judiciary Act of 1789 set the jurisdictional amount at $500. Judiciary Act of 1789, ch. 20, § 11, 1 Stat. 73 (1789) (codified at various sections in Title 28 of the United States Code). A century later, Congress raised the amount to $2,000. Judiciary Act of 1887, ch. 373, § 1, 24 Stat. 552 And a few decades after that, Congress raised the amount to $3,000. Judiciary Act of 1911, ch. 231, § 24, 36 Stat. 1091. Congress increased the amount again in 1958, to $10,000, Judiciary Act of 1958, Pub. L. No. 85-554, § 1, 72 Stat. 415, before settling, most recently, at the current amount, of $75,000. 28 U.S.C. § 1332(a) (2006). This is so despite continued criticism from scholars. *See generally* Thomas D. Rowe, Jr., *Abolishing Diversity Jurisdiction: Positive Side Effects and Potential for Further Reforms*, 92 HARV. L. REV. 963 (1979).

13. S. REP. NO. 1830, at 4 (1958), *reprinted in* 1958 U.S.C.C.A.N. 3099, 3101.

14. *See supra* note 12 and accompanying text.

15. Note, *Federal Jurisdictional Amount: Determination of the Matter in Controversy*, 73 HARV. L. REV. 1369, 1369 (1960).

plaintiff controls if the claim is apparently made in good faith."[16] This good faith requirement affords plaintiffs considerable latitude in pleading. In fact, good faith may still exist, despite "[t]he inability of the plaintiff to recover an amount adequate to give the court jurisdiction[.]"[17] The sum pleaded by the plaintiff controls unless the defendant can show "to a legal certainty that the claim is really for less than the jurisdictional amount[.]"[18]

Unfortunately, a plaintiff does not always neatly articulate a dollar amount in his complaint. Where monetary damages alone will not provide adequate compensation to a plaintiff, or where the amount of damages owed is too speculative to be calculated, a plaintiff will often seek injunctive relief.[19] Having made the determination that an injury cannot be easily stated in monetary terms, attempting to state the injury in monetary terms for the purposes of the jurisdictional minimum seems an absurd exercise.

Equitable remedies are, by their very nature, often times fundamentally irreducible to a dollar amount. An equitable remedy, such as injunctive relief, will often be granted when, for some reason, "courts of law cannot afford an adequate or commensurate remedy in damages."[20] An inability to calculate damages may be simply a matter of practicability, where the "damages flowing from [a certain type of] losses are difficult to compute."[21] Still other times, a court may refuse to calculate damages because the right in question defies monetary valuation.[22] Where damages result from an affront to some intangible right, and not because of mere computational difficulties, a court may find it difficult to work the square peg of injunctive relief into the round hole of the amount in controversy requirement.[23]

In cases where injunctive relief is sought, amount in controversy determinations are also difficult because of the frequent asymmetry between a plaintiff's expected benefit and a defendant's expected liability. If a plaintiff

16. *St. Paul*, 303 U.S 283, 288.

17. *Id.* at 289.

18. *Id.*

19. *See* Hininger, *supra* note 7, at 286.

20. Bonaparte v. Camden & A. R. Co., 3 F.Cas. 826, 827 (C.C.D.N.J. 1830).

21. Basicomputer Corp. v. Scott, 973 F.2d 507, 512 (6th Cir. 1992).

22. *See* Barry v. Barry, 46 U.S. 103, 120 (1847) (declining to exercise jurisdiction over a custody dispute, saying that the issue was "evidently utterly incapable of being reduced to any pecuniary standard of value").

23. *See* Giancana v. Johnson, 335 F.2d 366 (7th Cir. 1964) (refusing to assign monetary value to the right to be free from FBI surveillance). Note further, that courts faced similar problems before Congress eliminated the amount in controversy requirement for federal question jurisdiction. 28 U.S.C. § 1331 (2009); CHARLES A. WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, 14AA FEDERAL PRACTICE AND PROCEDURE § 3702 (3d ed. 2009) (the "courts were faced with a problem of how to determine whether actions to enforce civil rights, based on the inherent value of those rights . . . met the jurisdictional amount requirement").

pleads a sum certain, the relief the plaintiff seeks and the liability the defendant suffers will typically be the same.[24] However, it is not always the case that relief and liability exist in a one-to-one ratio. Many times, injunctive relief is sought in cases where "the benefit of the action to the plaintiff will have a different value than the burden imposed on the defendant should relief be granted."[25]

C. From Whose Perspective Should Injunctive Relief Be Valued?

The value of injunctive relief may be different for each party to a suit. As a result, a court must determine the appropriate standard with which to value injunctive relief. The various circuit courts of appeals are, more or less, evenly split on this issue.[26] A slight majority of the circuits argue that injunctive relief should be valued from the plaintiff's perspective; in contrast, the other circuits argue that courts should look beyond the plaintiff's perspective in an effort to strike some kind of balance between the value to both the plaintiff and the defendant.[27]

1. The Plaintiff's Viewpoint Approach

The plaintiff's viewpoint rule is applied by a majority of federal courts.[28] The Eighth Circuit stated this rule in *Massachusetts State Pharmaceutical Ass'n v. Federal Prescription Service, Inc.,* when it flatly rejected "the proposition that the amount in controversy is valued by the 'thing to be accomplished by the action' as to either the plaintiff or the defendant, whichever is the higher."[29] Ultimately, the court in *Massachusetts State*

24. WRIGHT ET AL., *supra* note 23, §3703.

25. *Id.*

26. *Compare* Kheel v. Port of N.Y. Auth., 457 F.2d 46, 48-50 (2d Cir. 1972), *and In re* Corestates Trust Fee Litig. v. Corestates Bank, 39 F.3d 61, 65-66 (3d Cir. 1994), *and* Alfonso v. Hillsborough County Aviation Auth., 308 F.2d 724, 726-28 (5th Cir. 1962), *and* Massachusetts State Pharm. Ass'n v. Fed. Prescription Serv, Inc., 431 F.2d 130, 132-33 (8th Cir. 1970), *and* Snow v. Ford Motor Co., 561 F.2d 787, 789-90 (9th Cir. 1977), *and* Ericsson GE Mobile Commc'ns, Inc. v. Motorola Commc'ns & Elec, Inc., 120 F.3d 216, 220 (11th Cir. 1997) (following the plaintiff viewpoint rule), *with* Berman v. Narragansett Racing Ass'n, 414 F.2d 311, 316 (1st Cir. 1969), *and* Gov't Employees Ins. Co. v. Lally, 327 F.2d 568, 569 (4th Cir. 1964), *and* McCarty v. Amoco Pipeline Co., 595 F.2d 389, 395 (7th Cir. 1979), *and* Ronzio v. Denver & R.G.W.R. Co., 116 F.2d 604, 606 (10th Cir. 1940), *and* Smith v. Washington, 593 F.2d 1097, 1099-1101 (D.C. Cir. 1978) (following the either viewpoint rule).

27. *See supra* note 26 and accompanying text (the Sixth Circuit remains the only undecided circuit.). A third perspective, which advocates estimating the jurisdictional amount from the perspective of the party seeking jurisdiction, exists in some districts of the Sixth Circuit, but has not been accepted in any other circuits or the scholarly literature. *See* Bedell v. H.R.C. Ltd., 522 F.Supp. 732, 735 (E.D. Ky. 1981); *see also* WRIGHT ET AL., *supra* note 23, § 3703.

28. *See supra* note 26.

29. *State Pharm. Ass'n*, 431 F.2d at 132 n.1.

Pharmaceutical Ass'n explained: "[t]he amount in controversy is tested by the value of the suit's intended benefit to the plaintiff."[30] The Eighth Circuit's pronouncement is archetypal of traditional formulations of the plaintiff's viewpoint rule.[31]

Perhaps the greatest benefit offered by the plaintiff's viewpoint approach is clarity.[32] As early as 1925, Dean Armistead Dobie noted that "there is still confusion and conflict both in the statement of the rules by which the amount in controversy shall be determined[,] and in the application of those rules to the concrete case before the court."[33] His cure for this confusion was simple: "[T]he 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[.]"[34] The plaintiff's viewpoint rule is further justified "by the historical tradition that the plaintiff is the master of the forum and is empowered to choose the court system and venue in which litigation will proceed."[35]

Despite these justifications, there remain many drawbacks to the plaintiff's viewpoint rule. To begin with, valuation from the perspective of the plaintiff, to the exclusion of the perspective of the defendant, impedes another of Congress's primary goals in the creation of diversity jurisdiction: the protection of defendants from bias at the hands of state courts.[36] Congress sought to afford a federal forum to out-of-state defendants to protect such parties from the potential prejudice of locally elected state court officials.[37] Moreover, under the plaintiff's viewpoint rule, a plaintiff who seeks an injunction of minimal value to himself – but one that would impose significant liability on a defendant – may not do so in federal court, as he would not meet the requirements for diversity jurisdiction under § 1332. This is so, despite Congress's intention to afford a federal forum to claims of great value.

The plaintiff's viewpoint rule also limits the circumstances permitting a federal court to exercise removal jurisdiction. Pursuant to 28 U.S.C. § 1441, a defendant is permitted to remove a case from state court to federal court only if

30. *Id.* at 132.

31. 15 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 102.109[3] (3d ed. 1997) ("the value of the cause of action or the amount in controversy is determined only on the basis of what the plaintiff will recover or avoid losing if the suit is successful[.]").

32. *See* WRIGHT ET AL., *supra* note 23, § 3703 ("[t]esting the sufficiency of the amount in controversy from the perspective of the plaintiff's viewpoint is likely to produce greater certainty of result and promote simplicity in terms of deciding the jurisdictional amount question.").

33. *Dobie, supra* note 6, at 734.

34. *Id.* (emphasis added).

35. WRIGHT ET AL., *supra* note 23, § 3725.2.

36. *See* John P. Frank, *The Case for Diversity Jurisdiction*, 16 HARV. J. ON LEGIS. 403, 409-10 (1979); Henry J. Friendly, *The Historic Basis of Diversity Jurisdiction*, 41 HARV. L. REV. 483, 495 (1927-28).

37. *See* Buford v. Sun Oil Co., 319 U.S. 315, 336 (1943) (Frankfurter, J., dissenting).

the case could have originally been brought in federal court.[38] However, under the plaintiff's viewpoint approach, removal jurisdiction would not be available to a defendant who stands to suffer great losses from an order of injunction, if the injunction would yield only minimal benefits to the plaintiff.[39]

Additionally, because of the statutory limitations placed on removal jurisdiction, the plaintiff's viewpoint rule incentivizes gamesmanship in pleading. Under 28 U.S.C. § 1446, removal is forbidden after one year, irrespective of any amendments to the pleading that may be made.[40] Consequently, a plaintiff may purposefully understate the value of a claim and then, after a year, amend the pleading to increase the amount. Although this increased amount would then meet the requirement for original jurisdiction under § 1441, a defendant would nevertheless be unable to remove this case to federal court because of the timing limitations of § 1446.[41]

2. The Either Viewpoint Approach

In response to the plaintiff rule's shortcomings, a number of circuit courts have adopted the either viewpoint rule.[42] Recognizing that the amount in controversy requirement exists, primarily, to provide a federal forum to high-stakes complaints, many courts reason that, "[a]lthough the plaintiff-viewpoint rule has much to recommend it, it should not be applied if to do so destroys jurisdiction when a substantial claim clearly in excess of the minimum amount is involved."[43] After a lengthy discussion of the issue in *McCarty v. Amoco Pipeline Co*., the Seventh Circuit likewise concluded that the plaintiff viewpoint rule should not be allowed to "blind federal courts to the realities of the magnitude of the controversy."[44]

Additionally, the either viewpoint rule rectifies many other problems attendant on the application of the plaintiff's viewpoint rule. By allowing a federal forum for all cases of great import, the either viewpoint rule limits the likelihood of state court bias against out-of-state defendants.[45] Moreover, the either viewpoint rule destroys any incentives that might encourage

38. 28 U.S.C.S. § 1441(a) (LexisNexis 2009).

39. Removal jurisdiction would not be available because the amount in controversy requirement for diversity jurisdiction would not be met, and so the claim could not have originally been brought in federal court.

40. 28 U.S.C.A. § 1446 (West 2009).

41. WRIGHT ET AL., *supra* note 23, § 3725.

42. *See supra* note 26.

43. 15 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 102.109[4] (3d ed. 1999).

44. McCarty v. Amoco Pipeline Co., 595 F.2d 389, 394 (7th Cir. 1979).

45. *See* Hininger, *supra* note 7 at 288-89; Brittain Shaw McInnis, Comment, *The $75,000.01 Question: What is the Value of Injunctive Relief?*, 6 GEO. MASON L. REV. 1013, 1026 (1997-98) (scholars note there is a particular risk of bias against out of state corporations.).

jurisdictional gamesmanship or forum shopping by a plaintiff attempting to impede a defendant's access to the federal courts.[46]

Though the either viewpoint rule provides results which are more equitable to the parties involved, it remains the minority view.[47] Advocates of the plaintiff's viewpoint rule continue to stress that their rule provides greater certainty of results and simplicity in application.[48] Ultimately, the debate rages on with no end in sight.

III. ANALYSIS

The circuit split has long persisted, and each sides' arguments have been heard time and again. However, this note does not counsel in favor of one circuit or another: it advocates against them all. The legislative history behind the creation of the amount in controversy requirement, from which the plaintiff's viewpoint and either viewpoint rules draw their support, is spotty and much debated. The stated objective of this note, developing an alternative approach to the valuation of the amount in controversy, is best accomplished by a careful consideration of the thing being valued: injunctive relief.

Injunctive relief is fundamentally defendant-focused. As such, plaintiff-reliant methods of valuing injunctive relief misapprehend the fundamental nature of this equitable remedy. Moreover, the defendant-reliant approach to valuing injunctive relief draws its support from the language of the Supreme Court's seminal holdings on the issue, particularly the Court's holding in *Mississippi and Missouri Railroad Co. v. Ward*.[49]

A. The Defendant-Focused Nature of Injunctive Relief

On close examination, one finds the offending conduct of a defendant at the very heart of injunctive relief. An injunction, "[a] court order commanding or preventing an action[,]" forces a defendant to comply with some order from the court.[50] Eschewing any attempt to quantify the harm suffered by the plaintiff,[51] a court, when granting injunctive relief, merely ensures that this harm will not happen again.

The court's decision to grant injunctive relief is a matter of discretion.[52]

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46. McInnis, *supra* note 45, at 1034.

47. *See supra* note 26.

48. *See Kheel*, 457 F.2d at 48-49.

49. 67 U.S. 485, 492 (1862) ("[t]he removal of the obstruction is the matter of controversy, and the value of the object must govern.").

50. BLACK'S LAW DICTIONARY 800 (8th ed. 2004).

51. *See* Bonaparte, 3 F. Cas. at 827 (injunctions are available only "where courts of law cannot afford an adequate or commensurate remedy in damages.").

52. Clark v. Thompson, 206 F. Supp 539, 543 (S.D. Miss. 1962) ("[t]he granting of an injunction is

The availability of injunctive relief to any given plaintiff is dependent on "traditional principles of equity jurisdiction."[53] These traditional principles are not easily defined. Ultimately, the court's discretionary power is exercised via fact-specific inquiry, as courts "look to the practical realities and necessities inescapably involved in reconciling competing interests[.]"[54] Injunctive relief is necessarily the result of a careful balancing of these competing interests, as "equitable remedies are a special blend of what is necessary, what is fair, and what is workable." [55]

Courts will not grant injunctive relief when an adequate legal remedy is available.[56] Consequently, a plaintiff has not met the "irreparable harm" requirement for a preliminary injunction if the harm "is fully compensable by money damages."[57] However, courts have found money damages to be inadequate where "the nature of the plaintiff's loss may make damages very difficult to calculate."[58] In *Ferrero v. Associated Materials*,[59] the Eleventh Circuit Court of Appeals reasoned that the loss of good will and long-standing customer relationships is "difficult, if not impossible, to determine monetarily."[60] Likewise, in *Basicomputer v. Scott*, the Sixth Circuit Court of Appeals upheld the issuance of an injunction because "competitive injuries and loss of goodwill are difficult to quantify."[61] A plaintiff who is unable to put a dollar amount on his claim finds an alternative avenue for recovery in the equitable remedy of injunctive relief.

In the absence of a legal remedy or, more to the point, in the absence of calculable monetary damages, the court shifts its focus from the harm that the plaintiff has suffered to the act that the defendant has committed.[62] Rather than compensating the plaintiff with monetary damages for the harm that has befallen him, the court instead demands the defendant's compliance, turning its

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discretionary and dependent upon the facts of each case.").

53. Grupo Mexicano de DeSarrollo v. Alliance Bond Fund, Inc., 527 U.S. 308, 319 (1999) (quoting 11A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2941 (2d ed. 1995).

54. Lemon v. Kurtzman, 411 U.S. 192, 201 (1973).

55. *Id.* at 200.

56. If a plaintiff "can bring a legal action and seek damages that will compensate him fully," no equitable remedy is available. 11 CHARLES A. WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 2944 (3d ed. 1998).

57. Basicomputer Corp. v. Scott, 973 F.2d 507, 511 (6th Cir. 1992).

58. Roland Machinery Co. v. Dresser Industries, Inc., 749 F.2d 380, 386 (7th Cir. 1984).

59. 923 F.2d 1441 (11th Cir. 1991).

60. *Ferrero*. 923 F.2d at 1449.

61. *Basicomputer*, 973 F.2d at 512.

62. This can come in the form of an affirmative or negative injunction, either demanding a certain type of behavior or forbidding a certain type of behavior. In short, a defendant's harm-causing act may actually be an omission.

attention to the cessation of future activities that would work further harm.[63]

For the clearest indication that a court's primary consideration when granting injunctive relief is the cessation of the defendant's harm-causing act, one need only consider the requirements for an order of injunctive relief.[64] The order of injunction is addressed specifically to the enjoined[65] and must "describe in reasonable detail . . . the act or acts restrained or required."[66] In addition, "the injunction [must] be framed so that those enjoined will know what conduct the court has prohibited."[67] In describing the "act or acts restrained or required," an order of injunction need not make any mention whatsoever of the benefit that the plaintiff expects to derive in order to comply with the rule's requirements.[68] The order of injunction concerns, exclusively and entirely, the defendant's behavior.

Just as the harm that an injunction-seeking plaintiff has suffered is impossible to calculate, so too is the benefit that a plaintiff hopes to derive from this injunction speculative and uncertain. Market forces and other contingencies determine the monetary benefit that might accrue to an injunction-receiving plaintiff. This monetary benefit is not guaranteed, or in fact even mentioned, by the rule.[69]

In injunctive relief scenarios, the ratio of a defendant's loss to a plaintiff's gain is not necessarily one-to-one.[70] Conversely, "[i]n suits for liquidated damages, the sum claimed in good faith by a plaintiff will generally equal a defendant's potential liability."[71] Injunctive relief claims lack, for the parties involved, the predictability of money damage claims. The inability to satisfactorily calculate damages is, as discussed above, a necessary precondition for the granting of an equitable remedy.[72]

Unable to state with specificity the damages suffered, a plaintiff seeks to

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63. *See* United States v. W. T. Grant Co., 345 U.S. 629, 633 (1953) (providing that "[t]he purpose of an injunction is to prevent future violations[]" and, moreover, demand that there be "some cognizable danger of recurrent violation[]" for an injunction to be issued.).

64. *See* FED. R. CIV. P. 65(d)(1).

65. *See* 14A FERDINAND S. TINIO, CYCLOPEDIA OF FEDERAL PROCEDURE § 73.85 (3d ed. 2002) (providing that an injunction must "be framed so that those enjoined will know what conduct the court has prohibited.").

66. FED. R. CIV. P. 65(d)(1)(C).

67. Tinio, *supra* note 65, § 73.85 .

68. *See* FED. R. CIV. P. 65(d)(1)(C).

69. *See id.* at (d).

70. "One reason that it is so much harder to value injunctive relief in monetary terms is because the value can be different for each party involved." Hininger, *supra* note 45, at 286-87.

71. Note, *The Jurisdictional Amount in Controversy Requirement: The Seventh Circuit Rejects the Plaintiff Viewpoint rule*—McCarty v. Amoco Pipeline Company, 29 DePaul L. Rev. 933, 933 (1979-80).

72. *Bonaparte*, 3 F. Cas. at 827 (providing that injunctions are available only "where courts of law cannot afford an adequate or commensurate remedy in damages.").

enjoin a defendant's offending conduct; however, not only is the plaintiff unable to state his or her damages in monetary terms, the benefit that the plaintiff ultimately derives from the injunction will be equally incalculable. In *State Chartered Banks in Washington v. People's National Bank of Washington*, the plaintiff acknowledged as much, asserting that the damages were "prospective and not easy of evaluation[.]"[73]

The benefit that a plaintiff derives from an injunction is speculative because injunctions do not guarantee benefits to plaintiffs; rather, they merely enjoin the conduct of defendants.[74] A court that orders an injunction will "describe in reasonable detail . . . the act or acts restrained or required."[75] A court makes no claim or guarantee of the result of an injunction. What happens to the plaintiff following the injunction is out of the court's hands.

On one hand, it is undoubtedly true that the average plaintiff pursues an injunction because he expects to derive a certain benefit from the cessation of the defendant's offending conduct. Given the cost – in time and money – of a court proceeding, this expected benefit is usually monetary. When A seeks to enjoin B from conducting marching band practice at three o'clock in the morning, it is more than likely because A wants a good night sleep so that she will not be fired for napping on the job, not because A dislikes John Phillip Souza marches.

On the other hand, a court's powers at equity only extend for the purposes of injunctive relief to order a defendant to act or cease to act in a certain way.[76] The court may command or prevent an action of the defendant, but the court is certainly not providing an express guarantee to the plaintiff of the monetary gain that he expects to derive from the injunction. A court might enjoin B from conducting marching band practice at three o'clock in the morning. However, if A is fired three days later for gross incompetence, the fact that she did not derive the benefit from the injunction, as originally anticipated, is of no legal consequence.

The uncertainty surrounding the pecuniary benefit that a plaintiff expects to derive from an injunction is most apparent where market forces are involved. In unfair competitions suits, for example, a plaintiff is bewilderingly called on to state "the difference between the value of the plaintiff's business without the unfair or unlawful competition and the value of the business with it."[77] This is so despite the very nature of injunctive relief: the plaintiff has admitted that she

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73. State Chartered Banks in Washington v. Peoples Nat'l Bank of Washington, 291 F.Supp. 180, 186 (W.D. Wash. 1966).

74. *See* Tinio, *supra* note 65.

75. FED. R. CIV. P. 65(d)(1)(C).

76. *See* Tinio, *supra* note 65.

77. *State Pharm. Ass'n*, 431 F.2d at 132.

is unable to articulate her damages in monetary terms in the first place. Moreover, it is not difficult to imagine a situation in which a plaintiff's estimation of this value will be rendered inaccurate by intervening market forces.[78]

Ultimately, courts are unconcerned with the benefit that a plaintiff expects to derive from the issuance of an injunction. If the terms of an injunction are violated, courts do not attempt to award damages to the plaintiff by determining what the plaintiff would have yielded, had the injunction been followed. More often, injunctions are enforced through contempt proceedings.[79]

Admittedly, there is a general rule that "[t]he amount actually recovered is not the test of jurisdiction[.]"[80] Even where a plaintiff ultimately fails to sustain a claim resulting in damages of over $75,000, this will not defeat jurisdiction.[81] However, the uncertainty of the benefits that might result from an injunction is not raised here as an argument to defeat jurisdiction; it is raised only as an argument that courts are mistaken when looking to plaintiffs for the jurisdictional amount. If a plaintiff only has access to injunctive relief because she is unable to calculate her damages with certainty,[82] why would we then rely on her estimation of the value of an injunction when looking for the jurisdictional minimum?

Moreover, although courts forgive a discrepancy between claimed benefit and actual benefit, this leniency is predicated on the plaintiff's good faith in pleading.[83] Such leniency is hardly appropriate here, where the plaintiff's pursuit of damages is defined by his inability to state those damages with any certainty. An estimate could not possibly be made in good faith when the party admits, at the outset, that he has no idea of the value of his damages.

Where an amount cannot be pled in good faith, a method for determining the value of the relief sought should be as definite as possible. The plaintiff's anticipated benefit is merely the likely, but still speculative, result of injunctive relief. Only the express terms of the injunction – which command or prevent

78. This is different than the ways in which a monetary judgment can be said to be speculative. It is true that a money award from the court does not guarantee that the plaintiff will actually receive this amount, insofar as a defendant may be insolvent and so, judgment proof. This, however, is not the kind of uncertainty which surrounds the plaintiff's expected benefit from injunctive relief. With money damages, there is no guarantee that the plaintiff will receive the amount she is owed. However, with injunctive relief, there is no clear measure of what that amount is in the first place. Moreover, a change in circumstances could drastically alter the amount that this injunction would ultimately be worth, with one shift in market conditions resulting in a windfall, another resulting in a loss.

79. *See* Bullock v. United States, 265 F.2d 683, 689 (6th Cir. 1959).

80. TINIO, *supra* note 65, § 2.188.

81. *Id.*

82. *See Bonaparte,* 3 F. Cas. at 827.

83. *See* Columbia Pictures Corp. v. Grengs, 257 F.2d 45, 47 (7th Cir. 1958).

some action of the defendant – are guaranteed by the injunction. Anything that occurs subsequently is outside of the court's power.

The plaintiff, unable to state his damages with specificity, turns the court's attention to the defendant's harm-causing act. And, as will be further discussed below, it is here that courts should look when determining whether the jurisdictional minimum is met.

B. The Supreme Court's Understanding of Injunctive Relief

Armed with a more precise definition of injunctive relief, we now consider how injunctive relief should be valued. Under the traditional approach – the plaintiff's viewpoint test articulated in *Glenwood Light & Water Co. v. Mutual Light, Heat, & Power Co.*[84] – the value of an injunction is the loss that the plaintiff would suffer were the defendant's conduct not enjoined.[85] The *Glenwood* Court used the loss that the plaintiff would suffer as the measuring stick for the amount in controversy,[86] despite the fact that injunctions make no mention of this loss. If the value to the plaintiff is not what the court is empowered to grant or guarantee, then why should this value be used to determine whether the jurisdictional minimum is met?

1. The Traditional View of "the Value of the Right Sought to be Protected."

When courts determine the value of injunctive relief, "jurisdiction is to be tested by the value of the object or right to be protected against interference."[87] Historically, defining "the right sought to be protected" is no simple matter. The result of this difficulty has been a circuit court split and over 100 years of often conflicting Supreme Court pronouncements.[88]

The majority of the circuits,[89] as well as some Supreme Court cases,[90]

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84. *See* Glenwood Light & Water Co. v. Mutual Light, Heat & Power Co., 239 U.S. 121, 125 (1915).

85. *See id.*

86. *Id.*

87. McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178, 181 (1936).

88. On the one hand, the Court held that "the removal of the obstruction is the matter of controversy, and the value of the object must govern" in finding that the jurisdictional amount was met by the cost to the defendant of destroying a bridge which impeded river navigation. Mississippi and Missouri R.R. Co. v. Ward, 67 U.S. 485, 492 (1862). On the other hand, the Court held that the "Complainant sets up a right to maintain and operate its plant and conduct its business free from wrongful interference by defendant . . . [t]he relief sought is the protections of that right, now and in the future, and the value of that protection is determinative of the jurisdiction," in finding that the jurisdictional amount was by the loss suffered by a plaintiff-telephone company due to a defendant-telephone company's obstructing wires. *Glenwood*, 239 U.S. at 126.

89. *See supra* note 27.

90. *See Glenwood*, 239 U.S. at 126; *see also McNutt*, 298 U.S. at 181; Buck v. Gallagher, 307 U.S.

endorse a plaintiff's viewpoint definition of "the right sought to be protected." Under the majority's analysis, the value of the right sought to be protected is the loss that the plaintiff would suffer were the defendant's conduct not enjoined.[91]

In *Glenwood*, the plaintiff sought the right to "conduct its business free from wrongful interference by defendant."[92] The interference, in this instance, was caused by the defendant erecting telephone poles and stringing telephone wires in close proximity to the plaintiff's own wires "for the purpose and with the intent of interfering with and harassing [the plaintiff-] complainant."[93]

The Court stated that "the jurisdictional amount is to be tested by the value of the object to be gained by complainant."[94] The defendant alleged that the object to be gained by complainant was the removal of the offending poles and wires, the cost of which would not have met the jurisdictional minimum.[95] The plaintiff-complainant claimed that the object to be gained was the recovery of "damage caused by defendant to complainant or its business or property," the value of which would have met the jurisdictional minimum.[96]

The Court then quoted *Mississippi & Missouri Railroad Co. v. Ward*, stating that "the removal of the obstruction is the matter of controversy."[97] Although this "removal of the obstruction" language appears to be perfectly synonymous with the defendant's position that the cost of the removal of the offending poles and wires should govern, the Court accepted the plaintiff's argument.[98] The *Glenwood* Court held that the value of the removal of the obstruction is not the value of the obstruction itself (or the cost of its removal), but it is the monetary gain that the plaintiff-corporation anticipated would flow to it after the removal of the obstruction.[99]

Following the principle articulated in *Glenwood*, many subsequent cases and treatises have likewise argued that the value of "the right sought to be protected" is whatever monetary gain the plaintiff anticipates he will receive if the protection is offered.[100] Friedenthal's *Civil Procedure* explains the value of

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95, 99 (1939); Packard v. Banton, 264 U.S. 140, 142 (1924); Hunt v. Washington State Apple Adver. Comm'n, 432 U.S. 333, 347 (1977).

91. *See supra* note 26.

92. *Glenwood*, 239 U.S. at 126.

93. *Id.* at 123.

94. *Id.* at 125.

95. *Id.* at 124-25.

96. *Id.* at 124-25.

97. *Glenwood*, 239 U.S. at 125 (quoting *Ward*, 67 U.S. at 492).

98. *Id.* at 126.

99. *See id.* at 125-26.

100. *See supra* note 26; *see also* 14B CHARLES A. WRIGHT, ET. AL, FEDERAL PRACTICE AND PROCEDURE § 3708 (3d ed. 1998).

the right sought to be protected in the context of a "suit to enjoin infringement of a trade name in the state of Louisiana[.]"[101] Friedenthal follows the *Glenwood* Court's position that the value of the injunction is "the value of the right to be protected[.]"[102] Like the *Glenwood* Court, this textbook's authors then make the leap that the value of this right is "the value to the plaintiff of its claimed right[.]"[103] Such an analysis measures the jurisdictional amount by the profit that the injunction-seeker expects to reap, once the wrongful interference is removed, despite the litany of court pronouncements and procedural rules which focus not on the result of the removal of the interference, but on the removal itself.[104]

2. "The Value of the Right to be Protected" Reconsidered in Light of the Nature of Injunctive Relief.

Many courts hold that the "monetary value of the object of the litigation" is that value which would "flow to the plaintiffs if the injunction were granted."[105] However, this focus on the plaintiff's anticipated monetary benefit runs counter to the principle that courts award injunctive relief only when damages at law are an insufficient remedy.[106] An injunction would be granted precisely because the plaintiff believes himself or herself to be incapable of calculating damages. When considered in light of the defendant-focused nature of an order of injunction, *Glenwood's* holding – and the holding of so many of the cases following *Glenwood* – places an undue emphasis on the plaintiff's anticipated benefit.

Glenwood's majority opinion correctly stated that the plaintiff seeks "a right to maintain and operate its plant and conduct its business free from wrongful interference by defendant . . . [and that] . . . [t]he relief sought is the protection of that right[.]"[107] It is also true that the plaintiff in *Glenwood* anticipated that this relief would yield a certain pecuniary value.[108] However, it is not this pecuniary value that the plaintiff demands of the court.[109]

The plaintiff has no right to seek an injunction which explicitly guarantees the profits from the infringed upon business enterprise.[110] This injunction only

101. FRIEDENTHAL ET AL., *supra* note 1, at 46.

102. *See id.; see also Glenwood*, 239 U.S. at 126.

103. FRIEDENTHAL ET AL., *supra* note 1, at 46.

104. *Mississippi and Missouri R.R. Co.*, 67 U.S. at 492.

105. Leonard v. Enterprise Rent-a-Car, 279 F.3d 967, 973 (11th Cir. 2002).

106. Injunctions are available only "where courts of law cannot afford an adequate or commensurate remedy in damages." *Bonaparte,* 3 F. Cas. at 827.

107. *Glenwood*, 239 U.S. at 126.

108. *See id.* at 124.

109. *See id.*

110. *See Buck*, 307 U.S. at 99.

guarantees that the plaintiff may pursue this enterprise unimpeded by the defendant's interference. The order of injunction states nothing other than what conduct of the defendant is to be commanded or prevented.[111] If the market for the plaintiff's good or service were to evaporate tomorrow, the plaintiff's injunction would be rendered economically valueless, but the plaintiff would not be deprived of the right that was won in court. If the value to the plaintiff is not what the court is empowered to grant or guarantee, then why should this value be used to determine whether the jurisdictional minimum is met?

IV. RESOLUTION

The value of "the right sought to be protected" need not be understood as the value that the plaintiff expects to derive from the injunction. Other Supreme Court cases, as well as language in the *Glenwood* case itself, can be marshaled in favor of valuing an injunction from the defendant's perspective.[112] This defendant-reliant approach fits comfortably within the analytical framework already employed by some district courts in the Sixth Circuit.

A. An Alternative Interpretation of "the Value of the Right to be Protected"

Admittedly, support for the defendant-reliant approach must be measured against the long history of plaintiff's viewpoint decisions. The *Glenwood* case appears to be a fairly straightforward endorsement of the notion that the value of the right to be protected is equal to the value of that right to the person seeking the protection. Dean Armistead Dobie wrote that, "the Glenwood case would seem to settle pretty definitely that the 'value of the object' is the value to the plaintiff of the right he asserts,"[113] and that "it is hoped, the curtain has been rung down on this long and labored controversy."[114]

However, *Glenwood* is far from the only landmark decision on this issue. Predating *Glenwood* was a line of cases originating with the Court's 1862 decision in *Mississippi and Missouri Railroad Co. v. Ward*, a case from which the *Glenwood* holding departed.[115] *Ward* and its progeny understood the object of the litigation in much narrower terms: when taken with a close analysis of what, precisely, is being granted by an order of injunction, these cases support a

111. *See* FED. R. CIV. P. 65(d).

112. *Glenwood*, 239 U.S. at 126 (quoting *Ward,* 67 U.S. at 492 (focusing on "the removal of the obstruction")).

113. Dobie, *supra* note 6, at 743 n.33.

114. *Id.* at 743.

115. *See Ward*, 67 U.S. 485; *Glenwood*, 239 U.S. at 126.

defendant-reliant approach.[116]

In *Ward*, a bridge crossing the Mississippi River was at issue.[117] Due to the angle at which this bridge rested relative to the flow of the river, a system of cross-currents and eddies developed.[118] The complainant, Ward, alleged that the bridge was "a great obstruction to navigation – amounting to a prominent nuisance" and, as a consequence, his shipping interests suffered injury and delay.[119] In determining whether jurisdiction existed, the Court looked to "[t]he character of the nuisance and the sufficiency of the damage sustained[.]"[120] Ultimately, the Court turned its attention away from the damage sustained by the plaintiff, and it focused on the damage-causing object, the bridge itself.[121] The Court noted that "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 obstruction is the matter of controversy*, and the value of the object must govern."[122]

It is true that *Ward* has been the subject of much confusion.[123] Judge Learned Hand believed that the Court's holding "was at best ambiguous."[124] Dean Armistead Dobie, who argued that *Glenwood* had settled "rather effectively" this question, went on to lament, "it is somewhat to be regretted that the Glenwood case did not cite and expressly overrule [the line of cases building off of *Ward*]."[125] However, the *Ward* Court's method of articulating the matter in controversy is a perfect analogue to the order of injunction it would subsequently give. "[T]he removal of the obstruction is the matter of controversy"[126] precisely because the removal of the obstruction is the thing that an order of injunction would command.[127]

More assistance is found in dicta from a later case, *Smith v. Adams*.[128] In *Smith*, the law of the pre-statehood territory of Dakota "left the designation of a county-seat to the voters of the county[.]"[129] The outcome of this election would determine whether the county would "acquire or lose a parcel of land . . .

116. *See Ward*, 67 U.S. at 492.
117. *Id.* at 491.
118. *Ward*, 67 U.S. at 494 .
119. *Id.* at 491.
120. *Id.* at 492.
121. *See id.* at 493-96.
122. *Id.* at 492 (emphasis added).
123. FRIEDENTHAL ET AL., *supra* note 1, at 47.
124. M & M Transp. Co. v. City of New York, 186 F.2d 157, 158 (2d Cir. 1950).
125. Dobie, *supra* note 6, at 743-44 n.34.
126. *Ward*, 67 U.S. at 492.
127. *See supra* notes 62-63 and accompanying text.
128. Smith v. Adams, 130 U.S. 167 (1889).
129. *Smith*, 130 U.S. at 173.

exceeding in value $5,000."[130] The plaintiff, Adams, brought an action to contest the validity of the election, arguing that the jurisdictional amount was met by the value of the land, the apportionment of which would be determined by the outcome of the election.[131] The Court rejected this argument.

The *Smith* Court first notes that "jurisdiction in this case depends upon whether the amount in dispute, exclusive of costs, exceeds the sum designated. By matter in dispute is meant the subject of litigation, the matter upon which the action is brought and issue is joined[.]"[132] The Court then engaged in a lengthy discussion to define "the subject of litigation."[133] In this discussion, the Court distinguished, usefully, between two different injunction scenarios in an attempt to define the object of the litigation for the purposes of the amount in controversy.[134]

The first of these situations arose in an earlier case, *Smith v. Whitney*,[135] "where the application was for a writ of prohibition restraining proceedings by court-martial against an officer[.]"[136] Here, the matter in dispute was the potential dismissal of the officer from service, thereby "'depriving him of a salary as paymaster-general during the residue of his term[.]'"[137] In such a case, the value of the "matter in dispute" could be understood as the value of the injunction to the plaintiff, because the plaintiff's potential gain and the defendant's potential loss were identical: the plaintiff's salary.[138] If the court martial were to be enjoined, the plaintiff's continued employment would yield to him his yearly salary; this salary is precisely what the defendant would be required to pay.[139]

The Court distinguished this scenario from the situation at hand in *Smith*, noting that, even though the employment termination example is correct, "we do not perceive how it can help the appellants."[140] In *Smith*, the plaintiff – representing the county's interest via a statutory provision allowing citizens to challenge the election's validity – alleged that an injunction forcing certain election results would result in the acquisition of a parcel of land exceeding $5000 in value.[141] Adams further alleged that the acquisition of this parcel of

130. *See id.* at 176.
131. *See id.* at 175-76.
132. *Id.* at 175.
133. *See id.*
134. *Smith*, 130 U.S. at 175-76.
135. Smith v. Whitney, 116 U.S. 167 (1886).
136. *Id.* 116 U.S. at 175.
137. *Smith*, 130 U.S. at 175-76 (quoting *Whitney*, 116 U.S. at 173).
138. *See id.*
139. *See id.*
140. *Id.* at 176
141. *Id.*

land was "the matter in dispute" for the purposes of determining the jurisdictional amount.[142] However, the Court soundly rejected this argument.[143]

The outcome of the election was the matter in dispute, not the acquisition of the land.[144] This result is because "the acquisition or loss of the land in question is not a necessary consequence of the election for the county-seat," as this outcome is only the anticipated result of the election and is not guaranteed by law.[145] The Court could find no rule "by which the benefit the county may gain, or the damage it may suffer . . . can be estimated."[146]

B. Employing a Defendant a Defendant-Reliant Approach in the Sixth Circuit

Throughout the past decade, a handful of cases have presented this question to the Sixth Circuit. In each case, the court has acknowledged the existence of the circuit split, but it declined to weigh on this "jurisdictional morass."[147] In the meantime, various district courts within the Sixth Circuit have followed bold and unique lines of jurisprudence unconsidered by other federal courts.[148]

A defendant-reliant approach to valuing injunctive relief would fit comfortably within the space already created by certain district court decisions in the Sixth Circuit. In *Bedell v. H.R.C. Ltd.*,[149] the Federal District Court for the Eastern District of Kentucky considered a plea to enjoin the construction of a low-income housing development which violated certain zoning ordinances.[150] The court found that the jurisdictional minimum had been met where "the defendant ha[d] already expended more than $400,000 in the

142. *Smith*, 130 U.S. at 176.

143. *See id.*

144. *See id.*

145. *Id.*

146. *Id.*

147. *Olden v. LaFarge Corp*., 383 F.3d 495, 503 (6th Cir. 2004).

148. Wright's Federal Practice & Procedure notes the existence of a third approach, which values the relief from the perspective of the party seeking jurisdiction. WRIGHT ET AL., *supra* note 23, § 3703. Under this approach, the perspective of a plaintiff, bringing an action in federal court under 28 U.S.C. § 1332, is used. *See id.* However, where this same plaintiff brings suit in state court and a defendant seeks removal jurisdiction under 28 U.S.C § 1441, the defendant's perspective is used. *See id.* The United States District Court for the Eastern District of Kentucky appears to have followed this approach in *Bedell v. H.R.C. Ltd*. 522 F. Supp. 732 (E.D. KY 1981). In *Bedell*, the court found that "it is clear that the requisite jurisdictional amount exists, for the defendant has already expended more than $400,000[.]" *Id.* at 736. In so ruling, the court did not consider the plaintiff's burden at all, even under the more permissive either viewpoint approach. Regardless, the court still found that the amount in controversy requirement was met. *Bedell*, 522 F. Supp. at 736.

149. *Bedell*, 522 F. Supp. at 732.

150. *Id.* at 733.

construction project involved[.]"[151] In so ruling, the *Bedell* court did not engage in consideration of the value of the injunction to the plaintiff.[152] The "object of the litigation" was not whatever nebulous benefit the plaintiff might yield from the defendant's adherence to the zoning codes or from the absence of low-income housing. The "object of the litigation" was the cessation of a construction project already underway, which had a discrete, non-speculative value of "more than $400,000 . . . most of which . . . [would] be lost, if [the construction project] is terminated."[153]

In *Bedell*, the Eastern District Court of Kentucky did not claim to follow a defendant-reliant approach.[154] In fact, this case is an oft-cited example of the approach by which valuation is made from the perspective of the party seeking jurisdiction.[155] Nevertheless, *Bedell* nicely illustrates the advantages of a defendant-reliant approach whereby both the clarity offered by the plaintiff's viewpoint rule and a strict, faithful adherence to the nature and purpose of injunctive relief can be found.[156]

V. CONCLUSION

This area of procedure has grown in a seemingly *ad hoc* fashion, and it has been the subject of continued scholarly disagreement for decades.[157] Moreover, the exhaustive debate surrounding the amount in controversy requirement and injunctive relief has led us ever-farther from the heart of the matter. The nature of injunctive relief itself provides the most useful guide in creating a method to value this equitable remedy. In addition, looking at the nature of injunctive relief, we find it fundamentally defendant-focused.

The Sixth Circuit has the opportunity to reevaluate this awkwardly formed area of procedure. Rather than merely picking sides in a now stale, much-debated circuit court split, the Sixth Circuit should consider a new approach to this issue: a defendant-reliant approach to the valuation of injunctive relief.

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151. *Id.* at 736.

152. *See id.*

153. *Id.*

154. *See Bedell,* 522 F. Supp. at 735-36.

155. MOORE ET AL., *supra* note 31, ¶ 102.109 n. 21.

156. In terms of clarity, the defendant-reliant approach has the added benefit that "[t]he defendant is far more likely to have access to the proof necessary to prove his own potential costs . . . Allowing the court to consider the cost to a defendant will often simplify the proof involved . . . [.]" *Bergrstrom v. Burlington N. R.R. Co*., 895 F.Supp. 257, 262 (D. N.D. 1995).

157. *See supra* note 5 and accompanying text.