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Using Equity to Set Amount in Controversy in Class Actions for Injunctive Relief

Without opening the floodgates to removal of class actions to federal courts, limited use of the either-viewpoint rule would be salutary

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FROM THEIR first day in law school, students are taught the distinctions between law and equity. Nonetheless, many of them become accustomed to the notion that in the merger, equity took a backseat to law and stayed there. Noting this, the creators of the Federal Rules of Civil Procedure designed the system of rules to allow more equity into the system, specifically to prevent the rise of form over substance.[1]

DIVERSITY JURISDICTION REQUIREMENT

The amount-in-controversy requirement of the U.S. diversity of citizenship statute highlights the tension between law and equity, a tension that if left unresolved will continually lead to inconsistent and unfair results. The U.S. Supreme Court had a rare opportunity recently to ease the tension between law and equity by selecting a fair method for calculating the required amount-in-controversy for federal diversity jurisdiction, now $75,000, in *Ford Motor Co. v. McCauley*, but after granting certiorari, the Court dismissed the writ as improvidently granted.[2]

In order to invoke federal court diversity jurisdiction or to remove a state law claim from state to federal court, 28 U.S.C. § 1332 requires a showing of complete diversity between the parties and an amount in controversy that exceeds $75,000. While the rationale for diversity jurisdiction in federal court has never been clearly expressed, many legal scholars claim the purpose to be two-fold: to allow out-of-state defendants to escape state bias and to allow well-resourced federal courts to handle large cases better.[3] The amount-in-controversy requirement, which has been increased by Congress over the years, seems designed to strike a balance between keeping smaller cases from federal courts, while at the same time allowing large, nationally important interstate cases to be decided by federal courts.

Ford Motor Co. v. McCauley focuses on

1. *See generally* Stephen N. Subrin, *How Equity Conquered Common Law: The Federal Rules of Civil Procedure in Historical Perspective*, 135 U. PA. L. REV. 909 (1987); Thomas Merton Woods, *Wielding the Sledgehammer: Legislative Solutions for Class Action Jurisdictional Reform*, 75 N.Y.U. L. REV. 507 (2000).

2. In re Ford Motor Co./Citibank (South Dakota), N.A., Cardholder Rebate Program Litig., 264 F.3d 952 (9th Cir. 2001), *cert. granted sub nom.* Ford Motor Co. v. McCauley, 534 U.S. 1126 (2002), *direction to file supplemental briefs*, 123 S.Ct. 29 (2002), *cert. dismissed as improvidently granted*, 123 S.Ct. 584 (2002).

3. *See* Evan A. Cruetz, *Two Sides to Every Story: Measuring the Jurisdictional Amount in Federal Courts*, 68 FORDHAM L. REV. 1719, 1720; John Beisner and Sessica D. Miller, *They're Making a Federal Case Out of It . . . in State Court*, 25 HARV. J.L. & PUB. POL'Y 143, 154 (2001).

the inclusion of injunctions in calculating the amount-in-controversy requirement to establish federal jurisdiction over class actions. A defendant's cost of complying with an injunction sought by a class action should satisfy the amount-in-controversy requirement, when the compliance will cost the defendant more than $75,000, whether it covers the entire class or a single member of the class.[4] In other words, courts must look to the cost of the injunction from a defendant's perspective in the context of class actions when the number of plaintiffs is irrelevant.

There is conflict among the federal courts of appeals in managing multistate class actions involving injunctive relief and its relation to the tension between law and equity. Looking to the value of an injunction from the viewpoint of either party, known as the "either-viewpoint" rule, would help resolve the circuit court confusion.

CIRCUIT CONFLICTS

A. Law-Equity Split

The origins of the paradox of the amount-in-controversy requirement can be traced to the tension between law and equity in the creation of rules of civil procedure. The legal technicalities in the diversity-removal statutes and the resulting paradox are symptoms of common law's dominance over equity.

Pursuant to its powers under Article III of the U.S. Constitution, Congress conferred subject matter jurisdiction on the federal courts when it enacted the diversity statute to allow federal courts to hear cases between citizens of different states, traditionally justified on the fear that local prejudices preclude fair trials for out-of-state defendants.[5] This was complemented by the removal statute which allowed defendants to remove a claim from state court to a federal court.

By including an amount-in-controversy requirement, Congress limited the scope of the diversity and removal statutes. While actions for specific monetary relief pose little challenge for courts, cases seeking equitable relief raise major problems in calculating whether the claim satisfies the amount-in-controversy requirement.[6]

The challenge in valuing an injunction is a direct result of the merger of equity and law.[7] While spawning an American justice system from the English system, federal rules of procedure for courts of law, which dealt with monetary punishment, merged with those from courts of equity, which mediated disputes where the remedy sought was based less on dollar signs and more on restoring the completeness of the injured party, such as rescission, injunction, and specific performance. The result of this merger is a constant equity-law tension that continues into modern times. In fact, the Federal Rules of Civil Procedure represented a revolutionary approach, as they borrowed heavily from equity while rejecting the narrow and restraining common law features that historically had dominated.[8]

Eventually, however, equity triumphed with passage of the Rules Enabling Act, 28 U.S.C. §§ 2071-2077, and the adoption of the Federal Rules of Civil Procedure, which were guided pointedly by many legislators' distaste for allowing technicalities to interfere with favorable case outcomes based on the merits. Still, there was a concern that "modern procedure was in danger of going overboard, that oversimplified practice in a merged system would ultimately lead to chaos."[9] This concern is ex-

4. This is the actual question on which the U.S. Supreme Court granted certiorari in Ford Motor Co. v. McCauley.

5. *See* CHARLES ALAN WRIGHT, LAW OF FEDERAL COURTS 23, at 128 (4th ed. 1983) (traditional justification). *But see* Henry Friendly, *The Historic Basis of Diversity Jurisdiction*, 41 HARV. L. REV. 483, 493 (1928) (arguing no bias on part of state judges).

6. *See* 14B CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3703 (1998).

7. *See* Brittain Shaw McInnis (Comment), *The $75,000.01 Question: What Is the Value of Injunctive Relief?* 6 GEO. MASON L. REV. 1013, 1014 (1998).

8. *See generally* Subrin, *supra* note 1, at 919-21, 923, 970; McInnis, *supra* note 7, at 1014.

9. Subrin, *supra* note 1, at 992.

emplified in the challenge of calculating the value to be placed on an injunction sought by a plaintiff class for satisfying the amount-in-controversy requirement, compounded in the context of multi-party complex litigation.

B. Calculating Value of Injunction

How should a court value an injunction in the context of a class action? Competing for dominance are three "viewpoint" rules, or methods for calculating its value. First, by examining the value of the injunction to the plaintiff (the "plaintiff-viewpoint" rule, also known as the "plaintiff- controlling" rule, which states that the value of an injunction is determined solely from the plaintiff's potential gain or loss. Second, by examining the injunction's value from either party's perspective (the "either-viewpoint" rule). Third, by looking to the value placed on the injunction by the party seeking federal jurisdiction (the "party-invoking" rule). It is important to note that the major debate stems from the conflicting use of the first two rules. This is because the party-invoking rule does not resolve the conflict in the system. Plaintiffs and defendants both may be denied access when a court decides, without motion, that no jurisdiction exists.[10]

A slight majority of circuits value the injunction from the viewpoint of the plaintiff and reject the either-viewpoint rule in the context of class actions on the ground that its application would be contrary to the U.S. Supreme Court's rule of non-aggregation.[11] However, some circuits prefer applying the either-viewpoint rule, finding that it does not violate the principle of non-aggregation when the injunction would cost the same to the defendant regardless of the number of plaintiffs. The conflicts continue.[12]

C. The Decisions

The Second, Third, Fifth, Eighth, Ninth and 11th Circuit have adopted the plaintiff-viewpoint rule, while the First, Fourth, Seventh, 10th and D.C. Circuits use the either-viewpoint rule. The Sixth Circuit has no published decision regarding the specific issue.

1. Plaintiff-viewpoint Rule

- *Kheel v. Port of New York Authority*, 457 F.2d 46, 49 (2d Cir.), *cert. denied*, 409 U.S. 983 (1972). The court held that "the amount in controversy is calculated from the plaintiff's standpoint."
- *In re Corestates Trust Fee Litigation*, 39 F.3d 61, 65 (3d Cir. 1994). The court stated that the "amount in controversy in an injunctive action is measured by the value to plaintiff to conduct his business or personal affairs free from the activity sought to be enjoined. The value to the plaintiffs in this action therefore is the cost to them of the continued imposition of the allegedly excessive sweep fees."
- *Alfonso v. Hillsborough County Aviation Authority*, 308 F.2d 724, 727 (5th Cir. 1962). The court held that the "value to the plaintiff of the right to be enforced or protected determines the amount in controversy" where hunting land is at stake).
- *Massachusetts State Pharmaceutical Ass'n v. Federal Prescription Services Inc.*, 431 F.2d 130, 132 n.1 (8th Cir. 1970). The court stated, "The amount in controversy is tested by the value of the suit's intended benefit to the plaintiff."
- *Ford Motor Co. v. McCauley*, 264 F.3d 952 (9th Cir. 2001), discussed below,

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10. *See also* JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 102.190 [1]-[4] (3d ed. 2001) (noting that the either-viewpoint and plaintiff-invoking rules arise from courts' dislike for the plaintiff-viewpoint rule, but invoking rule is not preferred).

11. Snyder v. Harris, 394 U.S. 332 (1969), *aff'g* 390 F.2d 204 (8th Cir. 1968); Zahn v. Int'l Paper Co., 414 U.S. 291 (1973), *aff'g* 469 F.2d 1033 (2d Cir. 19720, *aff'g* 53 F.R.D. 430 (D. Vt. 1971).

12. *See* Alice M. Noble-Allgire, *Removal of Diversity Actions When the Amount in Controversy Cannot be Determined from the Face of Plaintiff's Complaint: The Need for Judicial and Statutory Reform to Preserve Defendant's Equal Access to Federal Courts*, 62 MO. L. REV. 681, 754 (concluding that federal judiciary can begin to resolve much of the conflict "by adopting a single, uniform standard for-determining whether the amount in controversy requirement has been satisfied).

demonstrates the confusion by trying to reconcile cases and rejects the either-viewpoint rule.

- *Ericsson GE Mobile Communications Inc. v. Motorola Communications & Electronics Inc.*, 120 F.3d 216, 219 (11th Cir. 1997). The court noted the "uncertainty as to whether the plaintiff-viewpoint rule governs in this circuit or whether courts are free to consider the value of the object of the litigation to either party," and it concluded that the circuit should adopt the plaintiff-viewpoint rule.

2. Either-viewpoint Rule

- *Berman v. Narragansett Racing Ass'n*, 414 F.2d 311 (1st Cir. 1969). The court looked to the cost of compliance with an injunction for a common fund's distribution and further noted that the settled rule is that when "several plaintiffs unite to enforce a single title or right in which they have a common and undivided interest, it is enough if their interests collectively equal the jurisdictional amount."
- *Government Employees Insurance Co. v. Lally*, 327 F.2d 568, 569 (4th Cir. 1964). The court held that the "test of 'value to either party' in determining the amount in controversy is especially appropriate where, as here, an insurance company, insuring a defendant being sued in a state action for an amount far in excess of" the jurisdictional amount").
- *Crosby v. America Online Inc.*, 967 F.Supp. 257, 264 (N.D. Ohio 1997). The either-viewpoint rule "makes the most sense, because the amount in controversy in a lawsuit exceeds [$75,000] if either the plaintiff or defendant will have to pay that amount."
- *Justice v. Atchison, Topeka & Santa Fe Railway Co.*, 927 F.2d 503, 505 (10th Cir. 1991). The court stated that the "amount in controversy may be established by looking at the defendant's cost of complying with the injunction . . . the vast majority of courts have measured the amount in controversy in injunction cases by looking at either the cost to the defendant or the value to the plaintiff."
- *Smith v. Washington*, 593 F.2d 1097, 1099 (D.C. Cir. 1978). The court stated, "In assessing whether a complaint satisfies [legal certainty] standard, a court may look either to 'the value of the right that plaintiff seeks to enforce or to protect' or to the cost to the defendants to remedy the alleged denial." The court quoted from *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 347 (1977), which held that a complaint should not be dismissed unless it appears "to a legal certainty" that the plaintiff's claim does not meet the minimum amount, further noting that "costs of compliance" may be considered in computing the amount in controversy.

EITHER-VIEWPOINT RULE IS BEST METHOD

Courts should look at the value of the injunction from the viewpoint of either party because this method is the most equitable and viable method.[13] More important, application of the either-viewpoint rule in the context of class actions seeking injunctive relief is an important step in resolving the paradox of the amount-in-controversy requirement.

The either-viewpoint rule represents the best choice for inserting equity into law for several reasons.

First, while no Supreme Court decision clearly favors one rule, the either-viewpoint rule is generally more in line with the trend of U.S. Supreme Court decisions because of its ability to reduce abuse of the system, a principle the Court values.[14]

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13. The earliest Supreme Court case on the matter, Smith v. Adams, 130 U.S. 167, 175 (1889), stated that "the pecuniary value of the matter in dispute may be determined, not only by the money judgment prayed . . . but in some cases by the increased or diminished value of the property directly affected by the relief prayed, or by the pecuniary result to one of the parties immediately from the judgment." *See* McInnis, *supra* note 7, at 1041 (noting that Smith v. Adams language precisely favors the either-viewpoint rule but is obiter dictum and therefore not binding).

14. McInnis, *supra* note 7, at 1043 (citing cases to conclude that Court's general trend is to prevent "abusive manipulation of the system" and that the

Second, the either-viewpoint rule makes the most sense economically because it considers the full matter in controversy.[15]

Third, the either-viewpoint rule allows equal opportunity for either side to escape to federal court, while the plaintiff-viewpoint rule unfairly advantages the plaintiff.[16]

Fourth, the either-viewpoint rule represents the best compromise between expansion of diversity jurisdiction and its traditional limitation based on fear that state court cases would overflow federal dockets.[17]

Fifth, the either-viewpoint rule is more contextually appropriate. While some courts find that the either-viewpoint rule seems to conflict with the non-aggregation rule, the apparent conflict is based on a misinterpretation of Supreme Court cases and the misapplication of the non-aggregation rule outside its original context of monetary claims. The non-aggregation rule should not be applied to class actions that seek injunctive relief, but even if it were applied, the appropriate "corollary rule" would be that no two defendants could aggregate their compliance costs to satisfy the amount-in-controversy requirement. Furthermore, the plaintiff-viewpoint rule originally applied specifically to federal question jurisdiction, while the either-viewpoint rule was meant to be applied to diversity class actions for injunctive relief when correctly construed.[18]

Sixth, and most important, the either-viewpoint rule preserves the balance between rules of equity and rules of law by giving judges greater discretion in awarding relief.[19] If taken on face that the non-aggregation rule contradicts the either-viewpoint rule's application in any class action context, then a rule designed for remedies at law (money) would subsume a rule designed for remedies in equity (the injunction). Allowing the non-aggregation rule to prohibit use of the either-viewpoint rule for evaluating class action claims for injunctive relief exacerbates the tension between law and equity. Law is allowed to subvert equity and, as a result, continually leads to paradoxical and inconsistent results among the federal circuits.

FORD MOTOR CO. V. MCCAULEY

A. A Missed Opportunity

The U.S. Supreme Court should require use of the either-viewpoint rule in class actions seeking injunctive relief, especially when the rule is already applied in the context of individual claims. While using the rule in class actions for injunctive relief may allow more state law cases into federal court, even in the worst case scenario, that would represent only a mild expansion of diversity jurisdiction because the rule already applies to individual claims.

Unfortunately, the Court passed the opportunity to do this when it decided not to

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either-viewpoint rule best achieves this goal in reducing forum shopping and abuse).

15. *Id.* at 1036-37 (explaining that Congressional language "in controversy" is applied to whole dispute and that it may be viewed as an ex post means of setting prices to coerce the marketplace to reach resolution). *See also* MOORE'S, *supra* note 10, at § 102.109 [3] ("one may reasonably question whether the plaintiff viewpoint rule legitimately fosters the purposes served by the jurisdictional minimum" because it does not take into consideration financial stakes at risk).

16. McInnis, *supra* note 7, at 1729 ("plaintiff viewpoint rule ignores the defendant's stake in the litigation," so some courts value counterclaims to offset this disproportional effect).

17. Cruetz, *supra* note 3, at 1741-42 (advocating limited either-party approach to provide best compromise between diversity expansion and diversity restriction).

18. *Id.* at 1744; McInnis, *supra* note 7, at 1045-46 (explaining why "common and undivided interest" exception to non-aggregation rule is ignored by some courts and that prorating money figure for injunction misunderstands defendant's burden). *See* In re Brand Name Prescription Drugs Antitrust Litig., 123 F.3d 599, 610 (7th Cir. 1997), *cert. denied*, 522 U.S. 1153 (1998).

19. JOHN J. COUND ET AL., CIVIL PROCEDURE 490 (6th ed. 1993) ("availability of specific relief through the injunction or specific performance when compensatory relief through judgment for damages for damages would be inadequate was the chief basis for drawing common law causes into equity"). *See also* FLEMING JAMES JR. ET AL., CIVIL PROCEDURE §§ 1.4-1.7 (4th ed. 1992) (describing historical rise of equity jurisdiction).

hear *Ford Motor Co. v. Cauley*. That case presented a rare opportunity for the Court to decide whether it is proper to use the either-viewpoint rule to calculate the amount-in-controversy for class actions claiming injunctive relief.

The case arose from the 1997 cancellation of the 1993 Ford/Citibank credit card rebate program, which allowed consumers to spend money on the card to earn later discounts on Ford cars and trucks. Cardholders filed actions in Alabama, California, Illinois, New York, Oregon, and Washington state courts, claiming various frauds and the wrongful termination of the rebate program, and seeking, among other penalties, reinstatement of the program. On diversity grounds, Ford and Citibank removed the cases to federal court and petitioned the Judicial Panel on Multidistrict Litigation to consolidate and transfer to a single district. The cases were transferred to the U.S. District Court for the Western District of Washington, and the named plaintiffs in turn filed a consolidated complaint, pleading diversity on the basis of "billions of dollars" owed to the certified class.

However, the district court sua sponte dismissed the case after Ford/Citibank's arguments failed to persuade it that the claim satisfied the jurisdictional threshold amount required for diversity. Because the district court dismissed, rather than remanding the consolidated complaint, this unique procedural history represented a rare situation that allowed the Supreme Court's timely review. Had the district court merely remanded the actions, they would be unreviewable by the Supreme Court because 28 U.S.C. § 1447(d) prevents remand orders from being subjected to any type of appellate review. Therefore, *Ford Motor Co. v. McCauley* represented a unique and rare opportunity for Court.

B. Ninth Circuit Decision

In deciding that the either-viewpoint rule did not apply to class actions seeking injunctive relief, the Ninth Circuit not only confused precedent, but also added to the confusion among the circuits and misconstrued when a court may apply the either-viewpoint rule. Of the many problems with the decision, two major ones stand out: its misinterpretation of the Supreme Court's decision in *Snyder v. Harris* and its failure to apply the either-viewpoint rule.

1. Misinterpretation of Snyder

Seeking to reconcile the application of the either-viewpoint rule by various other jurisdictions, the court misconstrued *Snyder's* non-aggregation rule by holding that the rule is not applicable in the class action context when the plaintiff's claims for injunctive relief are "separate and distinct" and the cost of complying with the injunction would be the same whether done for six million plaintiffs or a single plaintiff. Under the *Snyder* rule, class members are not allowed to aggregate their claims to satisfy the amount-in-controversy requirement because it would undermine the purpose of the requirement. As some courts assert, this means that plaintiffs with miniscule damages may not "dodge" the non-aggregation rule simply by requesting an injunction.[20]

However, just as the non-aggregation rule prevents a class action from fabricating federal jurisdiction, *Snyder* should not steal federal jurisdiction from claims for injunctive relief that, had they been brought individually and tested under the either-viewpoint rule, would have satisfied the jurisdictional requirement. As circuits have demonstrated, courts may apply the either-viewpoint rule for "separate and distinct" claims without violating *Snyder* sim-

20. Snow v. Ford Motor Co., 561 F.2d 787, 788-91 (9th Cir. 1977) (holding there is "inherent conflict" between either viewpoint rule and non-aggregation rule). *See also* Packard v. Provident Nat'l Bank, 994 F.2d 1039, 1050 (3d Cir. 1993), *vacating and remanding* 799 F.Supp. 540 (E.D. Pa. 1992) (either-viewpoint rule in any class action setting would "eviscerate" Snyder's holding); Massachusetts State Pharm. Ass'n v. Fed. Prescription Serv. Inc., 431 F.2d 130, 132 (8th Cir. 1970) (Snyder precludes either-viewpoint rule); Lonnquist v. J.C. Penney Co., 421 F.2d 597, 599 (10th Cir. 1970) ("separate and distinct" claims cannot be aggregated because that would look to "total detriment").

ply by evaluating whether the cost of compliance with the injunction in favor of *one* plaintiff would exceed the minimum requirement.[21]

While the Ninth Circuit conceded that the costs of complying with the injunction would exceed $75,000, it rejected the test-for-one-plaintiff approach of other circuits by declaring it "fundamentally violative" of the requirement's purpose to prevent small diversity actions from entering federal court. But the court failed to clarify what it considered a small diversity action. Reinstating the credit program would hardly be a small endeavor.

The court compounded the already deep division among the federal circuits by adding a new exception to the analysis. After conceding that the cost of compliance for a single plaintiff would exceed the amount-in-controversy requirement, it concluded that using that as a basis for diversity jurisdiction would violate the principle of keeping "small diversity suits out of federal court." This new exception undermines the court's analysis and conflicts directly with the precedent from *In re Brand Name Prescription Drugs Antitrust Litigation*, on which it purported to rely, because *Brand Name* allows the test-for-one plainiff.[22]

Second, the Ninth Circuit's failure to recognize that the certified class asserts a "common and undivided interest," which would have allowed the either-viewpoint rule's application even by its own analysis, also represents an error. When plaintiffs "unite to enforce a single title or right in which they have a common and undivided interest," the amount-in-controversy requirement may be satisfied by evaluating the entire claim because "such claims cannot disaggregated to begin with."[23] While most courts and leading scholars concede that the definition of "common and undivided" is ambiguous and unsettled, some general paradigms apply, for when a defendant would be "indifferent to the number of plaintiffs or when the number of plaintiffs in the suit does not affect the award," courts have determined that the interest is "common and undivided."[24] When a class prays for specific, identical injunctive relief, compliance does not depend on the number of plaintiffs.

More important, the fixed compliance cost is a hallmark of a claim asserting a "common and undivided" interest, thus representing an exception to the non-aggregation rule.[25] In other words, Ford contended in its petition for certiorari, because compliance for one plaintiff would be no different from compliance for all plaintiffs, the claim may be categorized as "common and undivided." That each plaintiff charged purchases and accrued rebates individually, not as group, and that each held individual contracts with Ford/Citibank seems irrelevant, the petition stated.

More than anything, the Ninth Circuit seemed concerned with opening the floodgates for defendant corporations to squeeze into federal court simply because of various ministerial and clerical costs in complying with an injunction. While this concern may have some general merit, courts have been able to distinguish between costs requiring a business to overhaul its entire structure versus paying mere administrative costs.

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21. In re Brand Name, 123 F.3d at 610; In re Microsoft Corp. Antitrust Litig., 127 F.Supp. 2d 702, 719 n.16 (D. Md. 2001) (stating test-for-one plaintiff approach); Del Vecchio v. Conseco Inc., 230 F.3d 974, 977-78 (7th Cir. 2000) (either-viewpoint rule means that defendant faces multiple claims for injunctive relief, "each of which must be separately evaluated"); In re Cardizem CD Antitrust Litig., 90 F.Supp.2d 819, 834-35 (E.D. Mich. 1999) (adopting In re Brand Name approach).

22. 123 F.3d 599, 610 (7th Cir. 1997), *cert. denied*, 522 U.S. 1153 (1998). *See also* Kunter v. Warner-Lambert Co., 265 F.3d 853, 860 (9th Cir. 2001), issued four days after, in which the Ninth Circuit rejected reliance on Brand Name.

23. *See* Ford Motor Co. petition for a writ of certiorari, at 17, *citing* Snyder repeatedly.

24. McInnis, *supra* note 7, at 1046 (noting that "one successful plaintiff would get the same relief as a thousand").

25. *See* In re Cardizem Antitrust Litig., 90 F.Supp.2d at 836 (cost of compliance, when not dependent on number of plaintiffs, constitutes "common and undivided interest" as "integrated claim"). *See also* Huffman v. Vulcan Materials Co., 19 F.Supp.2d 475, 483 (M.D. N.C. 1998) (claim was "common and undivided" because compliance would be same if one plaintiff as well as all).

2. Subverting Equity

The floodgates concern is further trumped when concerns of equity enter the argument. By not looking to the holistic value of the injunction to Ford, the Ninth Circuit subverted the very notion of equity in law by finding irrelevant the undisputed fact that the cost of compliance would exceed the amount-in-controversy requirement whether for one or 60 million plaintiffs. The court stated that plaintiffs may not transform, through sheer alchemy, an action providing minimal benefits into a diversity action simply by seeking injunctive relief.[26] However, this concern, if applied in the context of actions resting solely on injunctions, would preclude defendants would being able to remove cases and plaintiffs from filing in federal court. This rationale would dispose of any value of an injunction, even when neither party knows that value. Similarly, if one plaintiff joined a class for the same injunction, the claim would not meet the jurisdictional requirement.

Ford Motor Co. v. McCauley represents a departure from a system based on equity as well as law. It is not equitable to demand from one side that the value of an injunction, a remnant of equity courts, can be quantified only in terms of the plaintiffs' view, who, in *Ford Motor*, did not dispute the case's removal to federal court. The jurisdictional amount was enacted "to measure substantiality of the suit," therefore courts should not determine the amount in controversy by looking only to the plaintiffs' potential gains.[27] It is illogical and inequitable to apply the either-viewpoint rule for individual claims but not class claims, when the cost of compliance is the same regardless the number of class members. However, this is the very rationale that many circuits, on the basis of *Snyder*'s non-aggregation rule, have used as the appropriate analysis for rejecting the either-viewpoint rule in class action cases. Equity, in a sense, is lost in the context of a class action, but present in an individual claim praying for the same equitable remedy.

LIMITING EITHER-VIEWPOINT RULE TO INJUNCTIONS

Application of the either-viewpoint rule should be limited to class actions specifically requesting injunctive relief. First, if the either-viewpoint rule is applied outside the context of injunctions—for attorney's fees or punitive damages, for instance—the separation of powers would be vitiated. Second, over-application would give too great an advantage to defendants. Applying the either-viewpoint rule to class actions for injunctive relief should not mean that federal courts seize jurisdiction over all multi-state class actions, as has been proposed by some federal legislation and special interest groups. There should not be a new type of diversity based solely on impact grounds.[28]

CONCLUSION

Maintaining the balance between law and equity and also between plaintiffs and defendants in class actions seeking injunctive relief serves two purposes. By resolving the paradox of the jurisdictional amount-in-controversy requirement, the either-viewpoint rule reinserts equity into a rigid law system. The tension between the non-aggregation rule and the either-viewpoint rule mirrors the tension between the law and equity that has existed ever since courts of equity merged with courts of law. By restricting the rule to the context of class actions for injunctive relief, the either-viewpoint rule represents the best hope for balancing the interests of all parties and the fairness of the system as a whole.

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26. *Citing* support from Smiley v. Citibank, 863 F.Supp. 1156, 1164 (C.D. Cal. 1993)).

27. *See* MOORE'S, *supra* note 10, at § 102.109 [4].

28. *See* Woods, *supra* note 1, at 541 (reformers should find some type of compromise so as to avoid letting all class actions into federal court). *See generally* Glenn Danas (Comment), *The Interstate Class Action Jurisdiction Act of 1999: Another Congressional Attempt to Federalize State Law*, 49 EMORY L.J. 1305, 1357 (expressing concern over how far legislation may go in its effect on the justice system and warning that as judicial arm of government, Supreme Court should not make laws in deciding Ford Motor Co.).