

Indus. Inc. v. Imperato, 338 F.2d 449, 451 (3d Cir. 1964); Fed. R. Civ. P. 12(h)(3). The parties immediately briefed the issue. For this court to have subject matter jurisdiction, the amount in controversy must "exceed[] the sum or value of \$75,000, exclusive of interest and costs" for each plaintiff. 28 U.S.C. § 1332(a); See also Zahn v. International Paper Co., 414 U.S. 291, 294-295 (1973).

The trial concluded several days ago. Based on the answers of the jury to special interrogatories, the court entered judgment in favor of BFI and against four of the plaintiffs: Harold M. Davis, Nicholas Martell, O. John Fuchs, Jr., and Michael Rittenhouse and Richard Masterson as Co-Executors of the Estate of John S. Rittenhouse. As it turned out, we clearly had subject matter jurisdiction over these plaintiffs, each of whose claims was in excess of \$75,000 when the complaint was filed. As to the four remaining plaintiffs, the court did not enter a judgment on the merits, pending a decision on the jurisdictional question. It is that issue that is now before us.

Although the complaint alleges that the amount in controversy as to each plaintiff is in excess of \$75,000 exclusive of interest and costs, it is undisputed that the maximum principal sum BFI would have owed to each of the remaining plaintiffs as of the time of the filing of the complaint would have been as follows:

Pollyanne Y. Giantonio, Ex'x.	\$44,402.45
Thomas A. Masterson	\$45,766.28

David Knauer	\$62,163.42
Rodney Thompson	\$35,521.96

Furthermore, it is undisputed that the maximum principal amounts to which these four plaintiffs would have been entitled as of the time of trial would have been as follows:

Pollyanne Y. Giantonio, Ex'x	\$60,207.78
Thomas A. Masterson	\$62,057.08
David Knauer	\$84,290.89
Rodney Thompson	\$48,166.22

The question presented is whether we have the power to hear the claims of plaintiff David Knauer who did not meet the in excess of \$75,000 threshold when the complaint was filed but did so by the time of trial or to hear the claims of the other three plaintiffs (Giantonio, Masterson, and Thompson) who met the jurisdictional amount at neither point, but whose future damages under the contract could raise their damages, they argue, to more than \$75,000 each.

While plaintiffs have the burden to establish that the requisite amount is at issue, we must proceed with the action unless it "appears to a legal certainty that the claim is really for less than the jurisdictional amount" St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 289 (1938) The court must dismiss if either from "the face of the pleadings" or "from the proofs" the statutory minimum is not satisfied. Id. The required amount must be in controversy at the time the complaint is filed. See Smith v. Sperling, 354 U.S. 91, 93 n.1 (1957)

When the validity of a contract is in issue, we must take into account, for jurisdictional purposes, the entire amount due throughout its life. See Keck v. Fidelity & Cas. Co., 359 F.2d 840, 841 (7th Cir. 1966); Hilley v. Massachusetts Mut. Life. Ins. Co., Civ. A. No. 98-386, 1998 WL 717329 (E.D. Pa. Sept. 17, 1998). This action, however, does not involve the validity of the contract. No one is seeking to repudiate it. No one is claiming that it was induced by fraud or that it was ultra-vires. See generally New York Life Ins. Co. v. Viglas, 297 U.S. 672, 676 (1936). Instead, we are simply concerned with the interpretation of one section of the document which describes the method for calculating royalties.¹

Significantly, the plaintiffs have not sought to obtain a judgment for monies due beyond the time of the trial. There is no acceleration clause in issue. Moreover, any royalties not yet accrued are not at all certain. They will depend on the amount of trash to be received into the landfill in the future as well as renewal of BFI's five year permit from the Commonwealth to continue to operate.

Absent special circumstances, the Supreme Court has rejected the inclusion of future installments in calculating the jurisdictional amount. In Aetna Cas. & Sur. Co. v. Flowers, 330 U.S. 464 (1947), a plaintiff brought an action in the Chancery

¹ One issue before the court also involved the interpretation of a provision of the assignment of rights to certain of the plaintiffs. For our purposes here, that is not relevant.

Court in Tennessee to recover death benefits under the state's workers' compensation law. She sought benefits of \$5,000. The defendant removed the case to federal court even though the payments under state law were to be paid in installments and might never reach the then federal jurisdictional level of in excess of \$3,000. While holding that federal subject matter jurisdiction existed, the Supreme Court explained:

If this case were one where judgment could be entered only for the installments due at the commencement of the suit . . . , future installments could not be considered in determining whether the jurisdictional amount was involved, even though the judgment would be determinative of liability for future installments as they accrued But this is not that type of case. For the Tennessee statute which creates liability for the award contemplates a single action for the determination of claimant's right to benefits and a single judgment for the award granted.

Aetna, 330 U.S. at 467-468.

Unlike Aetna, the claims about which we are concerned do not arise under a statute or common law principle which contemplates a single action for future benefits. As Justice Cardozo observed in Viglas,

a party to a contract who has no longer any obligation of performance on his side, but is in the position of an annuitant or a creditor exacting payment from a debtor, may be compelled to wait for the installments as they severally mature, just as a landlord may not accelerate the rent for the residue of the term because the rent is in default for a month or for a year.

Viglas, 297 U.S. at 680. This is the situation we face.

Plaintiffs are simply creditors seeking to collect the royalty

installments from BFI as they become due under the contract. As such, plaintiffs cannot include their anticipated future payments in order to satisfy the jurisdictional amount.

In Gray v. Occidental Life Ins. Co., 387 F.2d 935 (3d Cir. 1968), the Court of Appeals reached a result in conformity with the analysis discussed in Aetna. The plaintiff claimed weekly disability payments under an insurance policy for a period beyond the date of the filing of the complaint. In upholding the dismissal for lack of the requisite amount in controversy under 28 U.S.C. § 1332, the Court of Appeals declared:

But there is nothing to indicate that plaintiff could possibly obtain a judgment beyond the approximate amount of \$2,242 which had already accrued when the complaint was filed. There is no basis for acceleration of any payments falling due after the filing of the complaint so as to render them payable when the action was instituted. In such a situation the jurisdictional requirement in diversity is not met.

Gray, 387 F.2d at 936 (emphasis added). See also Hilley, 1998 WL 717329 at *1; Laver v. Chubb Life Ins. Co., Civ. A. No. 96-587, 1996 WL 162337 (E.D. Pa. April 4, 1996). Thus, plaintiffs Giantonio, Masterson, and Thompson cannot proceed in this court because we cannot count future installments when computing the amount in controversy.

This leaves plaintiff Knauer whose claim was in excess of \$75,000 by the time of trial, but not when this action was instituted. As noted above, subject matter jurisdiction is determined as of the time the complaint is filed. See Smith, 354

U.S. at 93 n.1. Change in citizenship of the parties after the commencement of a suit does not affect the court's diversity jurisdiction. See Republic Nat'l Bank v. United States, 506 U.S. 80, 88 (1992). Likewise, "events occurring subsequent to the institution of suit which reduce the amount recoverable below the statutory limit do not oust jurisdiction." St. Paul Mercury, 303 U.S. at 289-290. We do not see any reason why the rule should be different if later events increase the amount due before the judgment is entered, particularly since the jurisdictional statute must be strictly construed. See Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 377 (1978).

The amount in controversy as to plaintiffs Giantonio, Masterson, Knauer, and Thompson was "to a legal certainty" less than \$75,000.01 as of the time when the complaint was filed. St. Paul Mercury, 303 U.S. at 289; 28 U.S.C. § 1332(a). Accordingly, we will dismiss the action as to these plaintiffs for lack of subject matter jurisdiction.²

² We do not believe Weinberger v. Wiesenfeld, 420 U.S. 636 (1975) requires a different result. In that federal question case, involving social security payments, there was a request for an injunction to compel future payments. Apparently, the statute authorized such relief. No such statute is applicable here.