

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

CHRISTY DAUZAT
Plaintiff

* CIVIL ACTION NO.

*

* SECTION

*

VERSUS

* JUDGE

*

GPS HOSPITALITY PARTNERS IV, LLC
AND TRAVELERS INDEMNITY COMPANY

* MAGISTRATE

*

Defendants

*

*

* * * * *

NOTICE OF REMOVAL

TO: The Honorable Judges
of the United States District Court
for the Western District of Louisiana

Defendant, **GPS HOSPITALITY PARTNERS IV, LLC (“GPS”)**, respectfully submits
this Notice of Removal of the above-styled matter, and as cause therefore shows as follows:

1.

On February 12, 2018, the attached Petition was filed in the Tunica-Biloxi Tribal Court for
the Tunica-Biloxi Tribal Nation, State of Louisiana, entitled *Christy Dauzat v. GPS Hospitality
Partners IV, LLC and Travelers Indemnity Company*, bearing case number 2018-002.¹

2.

The suit seeks damages for personal injuries allegedly sustained by Plaintiff due to a slip
and fall on February 13, 2017, at a Burger King restaurant in Marksville, Louisiana.

3.

The Petition asserted that Plaintiff’s damages did not exceed \$50,000.00.

¹ See Ex. A, Plaintiff’s Petition for Damages.

4.

In the Petition for Damages, Plaintiff asserted “[t]he defendants are indebted unto petitioner for damages as are reasonable in the premises, including general and special damages, in an amount less than \$50,000.00.”²

5.

In responding to discovery in 2019, Plaintiff provided that her medical bills totaled \$13,380.54.³

6.

On May 15, 2025, Plaintiff filed a Motion for Leave to File First Supplemental and Amended Petition for Damages which was granted by the Tunica-Biloxi Tribal court on September 2, 2025.⁴ In the Supplemental and Amended Petition (the “Amended Petition”), Plaintiff now alleges that her damages exceed \$75,000.⁵ Further, in the Amended Petition, Plaintiff for the first time names the Tunica-Biloxi Indians of Louisiana, Inc., as an additional Defendant in this suit.

7.

Plaintiff has no arguable claim under Louisiana law for recovery against defendant, Tunica-Biloxi Indians of Louisiana, Inc. and thus, Tunica-Biloxi Indians of Louisiana, Inc. was improperly joined.

8.

As explained herein, because Plaintiff has no arguable or reasonable basis on which to state a cause of action against defendant, Tunica-Biloxi Indians of Louisiana, Inc., the joining of this

² Exhibit A, Petition for Damages.

³ Exhibit B, Plaintiff’s Discovery Responses Dated August 6, 2019, p. 8.

⁴ Exhibit C, Order Granting Motion for Leave to File First Supplemental and Amended Petition.

⁵ Exhibit D, Plaintiff’s Motion for Leave to File First Supplemental and Amended Petition.

defendant and the alleged lack of diversity caused by his presence does not bar removal to this court.

I. Removal Is Proper Because This Court Has Jurisdiction Pursuant to 28 U.S.C. § 1332

9.

28 U.S.C. § 1332 provides federal district courts with concurrent original jurisdiction in cases “where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between – (1) citizens of different States[.]”

a. The Amount in Controversy Exceeds \$75,000

10.

The Fifth Circuit has explained that for purposes of establishing removal jurisdiction, a defendant may demonstrate that the amount in controversy exceeds \$75,000.00, “in either of two ways: (1) by demonstrating that it is ‘facially apparent’ from the petition that the claim likely exceeds \$75,000.00 or (2) ‘by setting forth *the facts* in controversy – preferably in the removal petition, but sometimes by affidavit – that support a finding of the requisite amount.’” *Grant v. Chevron Phillips Chemical Co.*, 309 F.3d 864, 868 (5th Cir. 2002) (emphasis in original) (quoting *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995)).

11.

In Plaintiff’s original Petition for Damages, she offered a binding stipulation that her damages did not exceed \$75,000.⁶

⁶ Ex. A, Petition for Damages

12.

On May 15, 2025, more than seven years after filing suit, Plaintiff filed a Motion for Leave to File First Supplemental and Amended Petition which was granted on September 2, 2025.⁷ As discussed, in her Amended Petition, Plaintiff now alleges that her damages exceed \$75,000.⁸

13.

Although the original Petition did not provide sufficient grounds to justify removal due to the binding stipulation, Plaintiff's Amended Petition shows that the amount in controversy exceeds the jurisdictional threshold for removal.

14.

While GPS admits no liability, nor any element of damages, GPS has met the burden of showing that the amount in controversy now exceeds SEVENTY-FIVE THOUSAND AND NO/100 (\$75,000.00) DOLLARS, exclusive of interest and costs.

b. The Parties Are Completely Diverse

15.

Plaintiff Christy Dauzat is a resident and domiciliary of Avoyelles Parish, Louisiana.

16.

Defendant GPS Hospitality Partners IV, LLC, is a foreign limited liability company organized under the laws of Delaware with all members being domiciled in Georgia. GPS Hospitality Partners, IV, LLC, hereby consents to the removal of this action from the Tunica Biloxi Tribal Court to the United States District Court for the Western District of Louisiana.

⁷ Ex. C, Order Granting Motion for Leave to File First Supplemental and Amended Petition.

⁸ Ex. D, Plaintiff's Motion for Leave to File First Supplemental and Amended Petition.

17.

Defendant Travelers Indemnity Company is a foreign insurance company organized under the laws of Connecticut with its principal place of business in Connecticut. Undersigned has contacted counsel for Travelers Indemnity Company who has consented to the removal of this action.

18.

Defendant Tunica-Biloxi Indians of Louisiana, Inc. (the “Tribe”), is a citizen of Louisiana. Upon information and belief, Tunica-Biloxi Indians of Louisiana, Inc. has not been served with Plaintiff’s Amended Petition; however, their consent is not required under 28 USC 1446(2)(A) as they have been improperly joined.

c. Improper Joinder of Tunica-Biloxi Indians of Louisiana, Inc.

19.

A defendant may seek removal by showing that the non-diverse defendant was improperly joined. *Smallwood v. Il. Central R.R. Co.*, 352 F.3d 220, 222 (5th Cir. 2003). Improper joinder may be established by showing the inability of the plaintiff to establish a cause of action against a non-diverse defendant. *Ross v. Citifinancial, Inc.*, 344 F.3d 458, 461 (5th Cir. 2003). There must be a reasonable possibility of recovery against a non-diverse defendant, not just a theoretical one. *Id.* at 462.

20.

Defendant Tunica-Biloxi Indians of Louisiana, Inc. (the “Tribe”), is a citizen of Louisiana. However, the Tribe is improperly joined as a party to this suit as Plaintiff has no arguable claim against this party. This Court has held that “it is well established that federal courts will not allow parties to defeat removal jurisdiction by fraudulently joining non-diverse defendants.” *Hardy v.*

Ducote, 246 F.Supp.2d 509 (W.D. La. 2003). Accordingly, while a plaintiff's petition might allege a state law claim against a non-diverse defendant on its face, this alone does not bar removal if the court determines that as a matter of law, there is no reasonable basis for predicting that the plaintiff could establish liability against the non-diverse defendant. *Id.* at 507 (citing *Badon v. RJR Nabisco, Inc.*, 224 F.3d 382 (5th Cir. 2000)).

In the instant case, the Tribe was the owner of the property at issue, but the Tribe had been leasing the property to tenants since 2009. Specifically, in 2009, the Tribe leased the property to Strategic Restaurants Acquisition Company, LLC ("Strategic"), and in 2016, Strategic assigned the lease to GPS.⁹ The property, therefore, was under the custody and control of GPS at the time of Plaintiff's alleged incident, and Plaintiff has no plausible recovery against the Tribe. *See* La. Rev. Stat. § 9:3221 ("[T]he owner of premises leased under a contract whereby the lessee assumes responsibility for their condition is not liable for injury caused by any defect therein to the lessee or anyone on the premises who derives his right to be thereon from the lessee, unless the owner knew or should have known of the defect or had received notice thereof and failed to remedy it within a reasonable time."); *Guillory v. Foster*, 634 So.2d 1372, 1373 (La. App. 3 Cir. 1994) (granting summary judgment in favor of building owner where property was being leased by tenant, noting that an owner and lessee cannot both have custody of a thing at the same time).

Specifically, the subject lease provides: "Tenant, during the term of this Lease, shall have exclusive use and control of the Leased Premises, and Landlord shall take no action pertaining to the Leased Premises without prior written consent of the Tenant..."¹⁰ Moreover, the lease states that "Tenant assumes complete and sole responsibility for the condition of the leased premises."¹¹

⁹ Exhibit. E, Lease Between Tunica-Biloxi Indian Tribe of Louisiana and Strategic Restaurants Acquisition Company, LLC; Exhibit. F, Assignment and Assumption of Lease.

¹⁰ Ex. E, Par. 2.

¹¹ Ex. E, Par. 10.

Further, “Tenant shall, at its own expense, maintain the entire Leased Premises (including, without limitation, any and all structural elements of the Building, including the roof, foundation, exterior walls, and load bearing column and supports, the exterior parking and drive lane areas, all landscaping and any irrigation systems, the HVAC System and other utility systems exclusively service the Leased Premises) in good condition and repair (including replacements when necessary)...”¹² Further, “Tenant acknowledges and agrees that Landlord shall have no obligation to maintain, repair and/or replace the Leased Premises or any portion thereof or any component or mechanical feature thereof.”¹³

To this end, on June 16, 2022, GPS filed an Exception of Lack of Subject Matter Jurisdiction setting out in no uncertain terms that it was the assigned lessee under a lease executed by the Tunica-Biloxi Indians and another party.¹⁴ In its post-hearing memorandum supporting the exception, GPS even produced a lease agreement plainly identifying the Tunica-Biloxi Indians as the landlord of the property at issue.¹⁵ Yet Plaintiff made no effort to name the Tunica-Biloxi Indians in this suit until three years (or more) after learning this fact.

Additionally, to the extent that Plaintiff would argue that the Tribe “knew or should have known of the defect or had received notice thereof and failed to remedy it within a reasonable time” in order to make them potentially liable under La. Rev. Stat. § 9:3221, the Plaintiff’s own deposition testimony defeats this argument. In her deposition, Plaintiff testified that, before the incident, she had gone to the subject Burger King location about ten times a month for the prior five years, had parked in the same spot she parked in on the day of this accident many times before,

¹² Ex. E., Par. 17.

¹³ *Id.*

¹⁴ Exhibit G, Defendant’s Exception of Lack of Subject Matter Jurisdiction, p. 3.

¹⁵ Exhibit H, Post-Hearing Memorandum in Support of Exception of Lack of Jurisdiction, p. 8 (Exhibit A of Memorandum).

and had never noticed the alleged condition before.¹⁶ Plaintiff further testified that she has no information as to how the deviation was created, no information to suggest that Burger King was aware of the deviation, and no information to confirm how long the deviation was present before this incident.¹⁷

Based on the totality of evidence in this matter and the significant delays in attempting to amend Plaintiff's Petition, there is no issue of fact as to whether Plaintiff could establish liability against the Tribe as a non-diverse defendant. Plaintiff has no reasonable cause of action against the Tribe, and their joinder is therefore improper.

21.

Because Plaintiff has no arguable or reasonable basis on which to state a cause of action against the Tribe, the joining of this defendant and the alleged lack of diversity caused by its presence does not bar removal to this court.

22.

Accordingly, there is complete diversity of citizenship between the Plaintiff and all proper Defendants.

23.

This is a civil action over which the United States District Court for the Western District of Louisiana has concurrent original jurisdiction under the provisions of 28 U.S.C. § 1332, *et seq.*, as the amount in controversy, evidenced by the Amended Petition, exceeds SEVENTY-FIVE THOUSAND AND NO/100 (\$75,000.00) DOLLARS, exclusive of interest and costs, and complete diversity exists between all adverse parties.

¹⁶ Exhibit I, Deposition of Plaintiff, Christy Dauzat, at p. 100-101,105-108, 112, 119.

¹⁷ *Id.* at p. 131-132.

II. Plaintiff's Actions Justify an Exception to the One-Year Deadline for Removal

24.

The doctrine of equitable estoppel allows a defendant to file for removal beyond the one-year deadline imposed by 28 U.S.C. § 1446(b). While Congress may have intended to limit diversity jurisdiction, it did not intend to allow plaintiffs to circumvent it altogether. *Tedford v. Warner-Lambert Co.*, 327 F.4d 423, 425–26 (5th Cir. 2003). As the Fifth Circuit has recognized, rigid application of the one-year limit would encourage plaintiffs to engage in gamesmanship. *Id.* Thus, in certain cases, equitable estoppel is appropriate.

25.

This lawsuit was filed in state court on February 12, 2018, with a binding stipulation that Plaintiff's damages did not exceed the amount sufficient to confer jurisdiction on this Court. Then, on September 2, 2025, years after the one-year period had run, Plaintiff successfully removed the binding stipulation by filing her Amended Petition into the record.

26.

In *Brower v. Staley, Inc.*, 306 Fed. App'x 36, 38 (5th Cir. 2008), the Fifth Circuit held that the district court did not err in denying the plaintiff's motion to remand. *Id.* In that case, plaintiff's counsel was aware of and agreed to an intensive spinal surgery before the expiration of the one-year deadline but failed to tell the defendant about the surgery until after the deadline passed. *Id.* The court acknowledged the district court's opinion that the defendant would have removed the case before the deadline had they known about the additional surgery. *Id.* A district court's denial of a plaintiff's motion to remand a case is reviewed *de novo*. *Id.* (citing *Sherrod v. Am. Airlines Inc.*, 132 F.3d 1112, 1117 (5th Cir. 1998)).

27.

In *Jones v. Roberto Real Chavez, et al.*, 11-2039, 2012 WL 441251 (E.D. La. 2/10/2012), the Court relied on *Brower* in denying a plaintiff's motion to remand. The Court held that the plaintiff only partially revealed the scope of his alleged injury and that it was reasonable that the defendant would conclude that the jurisdictional amount was lacking.

28.

As in *Brower* and *Jones*, this Court should apply the doctrine of equitable estoppel in this case and permit removal. Defendants were unable to file this removal within the one-year period solely because of the misleading actions of Plaintiff. If plaintiffs are allowed to stipulate to their damages and then remove the stipulation after one year, removal would effectively be eliminated in the State of Louisiana. As such, Plaintiff Christy Dausat should not be able to defeat removal on the grounds of the one-year timeline established in 28 U.S.C. § 1446(b). *See Akhtar v. Allstate Ins. Co.*, No. 07-8272, 2007 WL 4557754, at *2 (E.D. La. Dec. 21, 2007) (where plaintiff stipulated in petition that damages would not exceed \$75,000 but refused to sign defendant's document waiving the right to amend his petition after one year, the court remanded but noted that defendant could seek equitable estoppel of removal statute's one-year limitation if plaintiff later amended petition to remove stipulation).

III. Defendants Have Satisfied the Procedural Requirements for Removal

29.

Jurisdiction is founded in the existence of diversity jurisdiction under 28 U.S.C. § 1332, which grants federal courts concurrent original jurisdiction over claims where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different States.

30.

On September 2, 2025, Plaintiff filed her Amended Petition and removed the stipulation that her damages did not exceed \$75,000. Under 28 U.S.C. § 1446(b)(3), a notice of removal must be filed within thirty days after receipt of an amended pleading revealing that the case has become removable. This action has been filed within thirty days of receipt of the Amended Petition.¹⁸

31.

The Tunica-Biloxi Tribal Court for the Tunica-Biloxi Tribal Nation, State of Louisiana, is located within the Western District of Louisiana pursuant to 28 U.S.C. § 98(a). Therefore, venue is proper in accordance with 28 U.S.C. § 1441(a) because it is the “district and division embracing the place where such action is pending.”

32.

No previous application has been made by Defendants in this case for the relief requested herein.

33.

Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon counsel for Christy Dautat, and a copy is being filed with the Clerk of Court for the Tunica-Biloxi Tribal Court for the Tunica-Biloxi Tribal Nation, State of Louisiana.

34.

GPS desires and is entitled to a trial by jury of all issues herein.

WHEREFORE, Defendant, GPS Hospitality Partners IV, LLC, hereby removes this action from the Tunica-Biloxi Tribal Court for the Tunica-Biloxi Tribal Nation, State of Louisiana, to the docket of the United States District Court for the Western District of Louisiana.

¹⁸ See Ex. B, Order Granting Motion for Leave to File First Supplemental and Amended Petition.

Respectfully submitted,

/s/ Seth M. Pohlmann

PETER J. WANЕК (No. 23353)

SETH M. POHLMANN (No. 40912)

WANЕК KIRSCH LLC

1340 Poydras Street, Suite 2000

New Orleans, Louisiana 70112

Telephone: (504) 324-6493

Facsimile: (504) 324-6626

pwanek@wanekirsch.com

spohlmann@wanekirsch.com

Attorneys for GPS Hospitality Partners IV, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all counsel of record by electronic mail and/or placing same in the U.S. Mail, postage prepaid and properly addressed this 26th day of September, 2025.

/s/ Seth M. Pohlmann

SETH M. POHLMANN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

CHRISTY DAUZAT
Plaintiff

* CIVIL ACTION NO.

*
* SECTION

VERSUS

* JUDGE

GPS HOSPITALITY PARTNERS IV, LLC
AND TRAVELERS INDEMNITY COMPANY
Defendants

* MAGISTRATE

*
*
*

CERTIFICATE OF COMPLIANCE WITH 28 U.S.C. § 1446(d)

I hereby certify that a copy of the above and foregoing Notice of Removal has been placed in the United States Mail, with proper and sufficient postage, and affixed addressed to Benjamin James, attorney for Plaintiff, 107 N. Washington St., Marksville, LA 71351. I hereby further certify that a copy of the foregoing Notice of Removal has also been personally served on the Honorable Robert Johnson, Tunica-Biloxi Tribal Court for the Tunica-Biloxi Tribal Nation, State of Louisiana, 150 Melacon Road, Marksville, LA 71351, for filing in the record in the state court action entitled *Christy Dauzat v. GPS Hospitality Partners IV, LLC and Travelers Indemnity Company*, bearing case number 2018-002.

New Orleans, Louisiana this 26th day of September, 2025.


