

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION**

CHRISTY DAUZAT

NO. 1:25-CV-01440

VERSUS

JUDGE TERRY A. DOUGHTY

GPS HOSPITALITY PARTNERS IV, LLC
AND TRAVELERS INDEMNITY COMPANY

MAGISTRATE JUDGE JOSEPH H. L.
PEREZ-MONTES

MEMORANDUM IN SUPPORT OF PLAINTIFF’S MOTION TO REMAND

NOW INTO COURT, through undersigned counsel, comes the Plaintiff, CHRISTY DAUZAT, who, pursuant to 28 U.S.C. § 1441 *et seq.*, respectfully moves this Honorable Court to remand this action to the Tunica Biloxi Tribal Court in Marksville, Louisiana from which it was removed on the purported grounds that the amount in controversy exceeds \$75,000.00 exclusive of interest and costs and complete diversity exists between plaintiff and all defendants.

STATEMENT OF THE CASE

On February 12, 2018, the Plaintiff, CHRISTY DAUZAT, initiated a civil action against GPS HOSPITALITY PARTNERS IV, LLC (hereinafter referred to as “GPS”) and TRAVELERS INDEMNITY COMPANY (hereinafter referred to as “TRAVELERS”) in the Tunica Biloxi Tribal Court in Marksville, Louisiana, Suit Number 2018-002 seeking redress for injuries sustained due to a trip and fall in the Burger King parking lot owned by TUNICA-BILOXI INDIANS OF LOUISIANA, INC. and operated by GPS.

In her initial petition for damages, CHRISTY DAUZAT stipulated that “[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” [R. 1-1]. On July 25, 2023, the office of undersigned counsel forwarded to counsel for GPS updated medical records and bills indicating

cervical surgical intervention occurring on April 7, 2022 alleged by plaintiff to be occasioned by the accident at issue raising plaintiff's total medical bills to \$156,369.61.

On May 15, 2025, plaintiff filed an amended petition for damages alleging the liability of TUNICA-BILOXI INDIANS OF LOUISIANA, INC., the owner of the land containing the defective condition. [R. 1-4].

On September 26, 2025, GPS filed the instant Notice of Removal [R. 1].

LAW AND ARGUMENT

I. UNTIMELINESS

Although CHRISTY DAUZAT believed her stipulation to be true at the time of the filing of the original petition, the same stipulation was not “binding” and “irrevocable”; as such, the same stipulation does not prevent removal assuming the conditions of diversity jurisdiction otherwise exist. *Lang v. State Farm Fire and Cas. Co.*, 23 F.Supp.3d 661, 663 (E.D. La. 2014). (“Plaintiffs wishing to remain in state court and comply with state rules of civil procedure may prevent removal [by] fil[ing] a binding stipulation or affidavit with their complaints so long as the stipulation establishes to a legal certainty that the federal amount in controversy is not present.

. . . The stipulation itself must meet certain requirements to deny the federal court removal jurisdiction. The stipulation must be irrevocable on plaintiff's part, and not represent an attempt to manipulate their state pleadings to avoid federal court while retaining the possibility of recovering greater damages in state court following remand.” (Internal quotations and citations omitted)).

To consummate a binding and irrevocable stipulation, plaintiff must affirmatively relinquish the right to collect a judgment exceeding the threshold. “In *In re 1994 Exxon Chem. Fire*, [558 F.3d 378, 387 (5th Cir. 2009)], the Fifth Circuit distinguished between the plaintiffs’

allegations that “the amount in controversy did not exceed the jurisdictional amount” and that ‘the plaintiffs would not accept more than the jurisdictional amount.’ The Fifth Circuit found that under Louisiana law, the plaintiff must affirmatively waive the right to accept a judgment in excess of the jurisdictional amount for the stipulation to be effective. ‘Because the plaintiff did not stipulate that he would not accept more than the jurisdictional amount, the state court would not be bound by [the \$75,000] limit,’ and the stipulation was ineffective to prevent removal.” *List v. PlazAmericas Mall Texas, LLC*, 2019 WL 480130, p. 3 (S.D. Tex. Feb. 7, 2019) (citing and quoting *In re 1994 Exxon Chem. Fire*, 558 F.3d at 387).

As stated, and for the reasons stated hereinabove, the stipulation contained in plaintiff’s original petition is ineffective in avoiding removal. Therefore, at no point has GPS been unable to initiate removal assuming the damage threshold is met. Additionally, in early 2019, GPS submitted in the state court proceeding an Answer wherein it denied without exception paragraph 2 of the initial petition containing the stipulation that damages do not exceed \$50,000.00. Exhibit 1.

On July 25, 2023, the office of undersigned counsel forwarded to counsel for GPS updated medical records and bills indicating cervical surgical intervention occurring on April 7, 2022 alleged by plaintiff to be occasioned by the accident at issue raising plaintiff’s total medical bills to \$156,369.61. Exhibit 2.

Pursuant to 28 U.S. Code § 1446(b)(3), “if the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or *other paper* from which it may first be ascertained that the case is one which is or has become removable.” (Emphasis added).

Relevant jurisprudence has determined that such correspondence as set forth hereinabove concerning the scope of plaintiff's damages propounded by plaintiff to opposing counsel constitutes "other paper" wherein a new thirty (30) day clock commences for removal. *See Rahwar v. Nootz*, 863 F.Supp. 191, 191-92 (D. N.J. 1994) (plaintiff's attorney wrote letter to counsel for the defendants stating: "The plaintiff claims \$500,000 in damages," which the Honorable District Court determined as "other paper" pursuant to 28 U.S. Code § 1446(b)(3)).

GPS asserts in its Notice of Removal [R. 1] that plaintiff is equitably estopped from asserting the one-year bar to removal set forth in 28 U.S. Code § 1446(c)(1). Assuming for argument sake the same statement to be correct, the current Notice of Removal [R. 1] is untimely for the following two reasons: (1) plaintiff's stipulation of damages set forth in its original petition for damages was neither binding nor irrevocable and therefore ineffective to prevent removal, and (2) on July 25, 2023, GPS received "other paper" evidencing that the amount in controversy exceeded \$75,000.00 triggering a thirty (30) day window to initiate removal, which it failed to do. As such, the instant Notice of Removal [R. 1] is untimely.

II. NO COMPLETE DIVERSITY

Next, removal is improper as complete diversity of citizenship exists as plaintiff has stated a viable cause of action against the TUNICA-BILOXI INDIANS OF LOUISIANA, INC. Plaintiff's amended petition [R. 1-4] alleges the liability of TUNICA-BILOXI INDIANS OF LOUISIANA, INC. as the landowner of the defective property giving rise to the accident. Specifically, plaintiff was injured due to a defect in the parking lot that existed for approximately two years prior to the incident at issue. Exhibit 3-Deposition of CHRISTY DAUZAT; Exhibit 4-Affidavit of Professional Engineer Rene J. Borrel. As such, TUNICA-BILOXI INDIANS OF

LOUISIANA, INC. knew or should of known of the defect at issue due to its presence in the *parking lot* of the owned premises *for a period of two years prior to the accident*.

Louisiana Revised Statute section 9:3221 provides in part as follows: “the 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.*” (Emphasis added).

The instant scenario is precisely the one contemplated by the exception clause of section 9:3221 in that the landowner cannot simply rest on the lease when an open defect existing for years on the leased premises in present. Plaintiff has alleged and provided affidavit evidence in support of the proposition that TUNICA-BILOXI INDIANS OF LOUISIANA, INC. knew or should have known of the defective condition; therefore, the allegations set forth in the amended petition [R. 1-4] against TUNICA-BILOXI INDIANS OF LOUISIANA, INC. do not fraudulently join the same defendant, which GPS acknowledges is a citizen of Louisiana. As such, complete diversity does not exist, and the Notice of Removal is improper [R. 1].

CONCLUSION

The Plaintiff requests this Honorable Court order remand of this action to the Tunica Biloxi Tribal Court in Marksville, Louisiana for the reasons stated hereinabove.

RESPECTFULLY SUBMITTED:

Date: October 27, 2025

ROY, SCOTT & JAMES, ATTORNEYS AT LAW

BY: /s/ Benjamin D. James
CORY P. ROY (Bar Roll #27066)
BRANDON J. SCOTT (Bar Roll #33362)
BENJAMIN D. JAMES (Bar Roll #34402)
107 North Washington Street
Post Office Box 544
Marksville, Louisiana 71351
(318) 240-7800 - Telephone
(318) 240-7815 – Facsimile
COUNSEL FOR PLAINTIFF

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of October, 2025, a copy of the foregoing was filed with the Clerk of Court using the CM/ECF system and served upon all counsel of record accepting e-noticing and by electronic mail to those not accepting e-noticing through the CM/ECF system.

/s/ BENJAMIN D. JAMES

BENJAMIN D. JAMES