

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

NOTICE OF REQUIREMENTS FOR DIVERSITY JURISDICTION, 28 U.S.C. § 1332

I. General Legal Standards

“Federal courts are courts of limited jurisdiction...It is to be presumed that a cause lies outside this limited jurisdiction....”¹ As explained by the United States Fifth Circuit Court of Appeals in *Menendez v. Wal-Mart Stores, Inc.*:

The federal diversity statute, 28 U.S.C. § 1332(a)(2), states that federal courts have jurisdiction over all civil actions between citizens of a state and citizens or subjects of a foreign state where the amount in controversy exceeds \$75,000.

The party seeking to invoke federal jurisdiction has the burden to prove by a preponderance of the evidence that federal jurisdiction exists. The basis for diversity jurisdiction must be “*distinctly and affirmatively* alleged.” This court has stated that a failure to adequately allege the basis for diversity jurisdiction “mandates dismissal.” Any “doubts regarding whether removal jurisdiction is proper should be resolved against federal jurisdiction.”²

This Court has the independent obligation to ensure its own subject matter jurisdiction and routinely screens all new filings for jurisdiction. 28 U.S.C. § 1653 permits amendment of technically defective jurisdictional allegations.³ Accordingly, the following Notice of Requirements for Diversity Jurisdiction applies to all initiating complaints and notices of removal (the citizenship provisions also apply to Fed. R. Civ. P. 7.1(a)(2) diversity jurisdiction statements)⁴ filed in civil cases assigned to Magistrate Judge Wilder-Doomes for which the Court’s jurisdiction is alleged to exist pursuant to 28 U.S.C. § 1332.

II. Citizenship

“[28 U.S.C. § 1332] requires complete diversity, meaning that a federal court may not exercise diversity jurisdiction if any one of the plaintiffs is a citizen of the same state as any one of the defendants. The federal removal statute, 28 U.S.C. § 1441, allows defendants to remove an action to federal court if the federal

¹ *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

² 364 Fed.Appx. 62, 65 (5th Cir. 2010) (internal citations omitted).

³ 28 U.S.C. § 1653 provides: “Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.” See *Menendez*, 364 Fed.Appx. at 66 (finding that the district court did not abuse its discretion in permitting amendment of the notice of removal to allege facts supporting diversity jurisdiction and holding: “In granting the defendants leave to amend their removal notice, the district court relied on 28 U.S.C. § 1653, which grants courts the authority and discretion to allow parties to cure defective allegations of jurisdiction. The district court correctly observed that § 1653 should be liberally construed to allow a party to cure technical defects, including the failure to specifically allege the citizenship of the parties.”). See also, *Blakeley v. United Cable Sys.*, 105 F.Supp.2d 574, 578–79 (S.D. Miss. 2000) (string cite).

⁴ Federal Rule of Civil Procedure 7.1(a)(2) requires a party or intervenor in an action in which jurisdiction is based on diversity under 28 U.S.C. § 1332(a) to file a disclosure statement that names—and identifies the citizenship of—every individual or entity whose citizenship is attributed to that party or intervenor. The disclosure statement must be filed with a party or intervenor’s first appearance after the action is filed in or removed to federal court. In removed cases, all parties who have made an appearance in the originating court, including the plaintiffs, must file a diversity jurisdiction statement.

district court would have original jurisdiction based on diversity of citizenship and no defendant “is a citizen of the State in which such action is brought.”⁵

For the Court to determine if there is complete diversity of citizenship, the citizenship of all parties shall be adequately pleaded as follows:

- A. The citizenship of an individual is determined by the individual’s domicile.⁶ “[A]n allegation of residency alone ‘does not satisfy the requirement of an allegation of citizenship.’”⁷ An example of an adequate allegation of citizenship for an individual is: “John Smith, an individual, is domiciled in the state of ___ and is a citizen of that state for diversity purposes.”
- B. The citizenship of a corporation is determined by place of incorporation AND principal place of business, and both must be affirmatively alleged.⁸ Merely alleging that a corporation “is a citizen of ___,” is insufficient. An example of an adequate allegation of citizenship for a corporation is: “ABC, Inc. is a corporation incorporated in the state of ___, with its principal place of business in the state of ___.”
- C. The citizenship of an unincorporated association, including a limited liability company, a general partnership, and a limited partnership, is determined by the citizenship of all its members.⁹ Each member of a limited liability company or partnership must be specifically identified and citizenship alleged as to each.¹⁰ This may require going through several layers of entities to identify citizenship, such as if a party is an LLC that has members that are also LLCs. General allegations that do not specifically identify each member are insufficient. An example of an adequate allegation of citizenship for an LLC is: “XYZ, LLC is a limited liability company. Its members are [name every member and allege each member’s citizenship with specificity].”
- D. Negative or ambiguous allegations of citizenship, *i.e.*, John Smith or ABC, Inc. is “not a citizen of Louisiana” or “is a citizen of a state other than Louisiana,” are insufficient.¹¹
- E. The citizenship of parties seeking to intervene or parties to be joined must be adequately alleged when leave is sought.
- F. If a case is removed solely by a party who is not a defendant that was named by the plaintiff in the state court petition, but which claims to be the correct defendant, then the citizenship of both the removing party and the named defendant must be adequately alleged.¹² Alternatively, if the plaintiff

⁵ *Menendez*, 364 Fed.Appx. at 65 (internal citations omitted).

⁶ *Mas v. Perry*, 489 F.2d 1396, 1399 (5th Cir. 1974).

⁷ *MidCap Media Fin., L.L.C. v. Pathway Data, Inc.*, 929 F.3d 310, 313-14 (5th Cir. 2019) (citations omitted). While the Fifth Circuit has noted that “the place of residence is prima facie the domicile,” *id.*, it has clearly held that “[c]itizenship requires not only ‘[r]esidence in fact’ but also ‘the purpose to make the place of residence one’s home,’” and therefore residency allegations, standing alone, do not satisfy the requirement of an allegation of citizenship. *Id.*

⁸ *See Getty Oil, Div. of Texaco v. Ins. Co. of North America*, 841 F.2d 1254, 1259 (5th Cir. 1988).

⁹ *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008).

¹⁰ *Nunez v. ACE Am. Ins. Co.*, No. 17-1593, 2017 WL 6997341, at *4 (M.D. La. Dec. 28, 2017), *report and recommendation adopted*, No. 17-1593, 2018 WL 493398 (M.D. La. Jan. 16, 2018).

¹¹ *Truxillo v. American Zurich Ins. Co.*, No. 16-369, 2016 WL 6987127, at *6 (M.D. La. Oct. 24, 2016).

¹² *De Jongh v. State Farm Lloyds*, 555 Fed. Appx. 435, 437 (5th Cir. 2014).

agrees that the wrong defendant was named, the plaintiff may file an amended complaint that substitutes the correct defendant. The court has issued many briefing orders explaining this issue.¹³

- G. The case must be remanded if the party who invokes this Court’s diversity jurisdiction fails to adequately establish the citizenship of all parties.

III. Amount in Controversy (“AIC”)

“A plaintiff’s allegation that the matter in controversy exceeds the jurisdictional amount requirement is sufficient to meet the amount in controversy test unless challenged.”¹⁴ That said, “[p]laintiffs in Louisiana state courts, by law, may not specify the numerical value of the damage claim...In such a situation, the removing defendant must prove by a preponderance of the evidence that the amount in controversy exceeds \$75,000...The defendant may make this showing in either of two ways: (1) by demonstrating that it is ‘facially apparent’ that the claims are likely above \$75,000, 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.”¹⁵

For the Court to determine whether subject matter jurisdiction exists under 28 U.S.C. § 1332, an AIC that is likely to exceed \$75,000, exclusive of interest and costs must be adequately alleged.

- A. In complaints, the following are examples of statements that adequately allege the AIC: “The amount in controversy in this case exceeds \$75,000, exclusive of interest and costs,” or, “The Plaintiff seeks recovery of/ has damages of \$[an amount in excess of \$75,000] in this case.”
- B. Notices of removal **that have the following evidence attached** have generally been found to adequately allege AIC:
1. A state court petition that contains a statement by the plaintiff pursuant to La. Code Civ. P. art. 893 that his/her damages exceed the amount required for federal jurisdiction, or that affirmatively alleges that the plaintiff’s damages exceed \$75,000, exclusive of interest and costs;¹⁶ or that seeks wrongful death and/or survival damages; and/or,
 2. A pre-removal settlement demand *made in good faith* by the plaintiff for an amount more than \$75,000, exclusive of interest and costs (**Note:** if the demand is one for “policy limits,” there must be evidence that the plaintiff was aware of the limits at the time of the demand); and/or,
 3. A plaintiff’s response to a pre-removal request for admission or interrogatory in which the plaintiff *unequivocally* admits/affirmatively responds that the amount in controversy exceeds \$75,000 exclusive of interests and costs; and/or,

¹³ See *Breeding v. Hudson Ins. Co.*, No. 23-372, 2023 WL 4191408, at *1 (M.D. La. June 26, 2023); *Still v. USAA Cas. Ins. Co.*, No. 23-210, 2023 WL 3047370, at *1-2 (M.D. La. Apr. 21, 2023); and *Boeker v. United Prop. & Cas. Ins. Co.*, No. 22-822, 2022 WL 17330461, at *1-2 (M.D. La. Nov. 29, 2022). See also

¹⁴ *Express Air, Inc. v. Gen. Aviation Servs., Inc.*, 806 F. Supp. 619, 622 (S.D. Miss. 1992) citing *Gibbs v. Buck*, 307 U.S. 66, 72 (1939); *Dassinger v. South Central Bell Telephone Company*, 505 F.2d 672 (5th Cir.1974) (dictum); and *Hupp v. Port Brownsville Shipyard, Inc.*, 515 F.Supp. 546, 548 (S.D. Tex. 1981).

¹⁵ *Lockett v. Delta Airlines, Inc.*, 171 F.3d 295, 298 (5th Cir. 1999) citing La. C.C.P. art. 893 (other citations omitted) (emphasis in original). While “summary judgment-type evidence” can be considered in support of removal (see, *Manguno v. Prudential Prop. and Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002) (citations omitted)), counsel’s arguments or statements in briefs are not “summary judgment-type evidence.”

¹⁶ The existence of these two statements in a state court petition renders the AIC “facially apparent.”

4. Documents produced in discovery, or obtained from the plaintiff or third parties, including but not limited to medical records (which may be redacted or filed under seal, as applicable and necessary to protect the privacy of the subject of the records), that show plaintiff's past/future damages are/were/likely will be greater than \$75,000, exclusive of interest and costs.

C. For notices of removal that allege AIC is met based on the plaintiff's personal injuries, **which do not attach one or more of the types of evidence described in section B above**, the following are examples of statements that have been held insufficient to establish AIC, *whether asserted individually or in combination*:

1. A conclusory statement by the removing defendant that the AIC is met, *e.g.*, "The amount in controversy in this case exceeds "\$75,000, exclusive of interest and costs"; and/or,
2. Reliance on a plaintiff's boilerplate recitation of damages in the state court petition/correspondence from counsel, *e.g.*, "Plaintiff seeks damages for past, present, and future: medical expenses, mental anguish, permanent disability, lost wages," *etc.*;¹⁷ and/or,
3. General allegations of the plaintiff's alleged injuries, regardless of the type or nature of the injuries, *e.g.*, "Plaintiff has sustained severe and painful injuries to his [head/shoulder/neck/back/elbow]," (except wrongful death/survival damages, *see above*);¹⁸ and/or,
4. Allegations of diagnoses of herniated and/or bulging discs, and associated spinal diagnoses, and/or treatment consisting of, or recommendations for, MRIs, X-rays, physical therapy, steroid injections, medial branch blocks, and radio frequency ablations, without evidence of sufficient past and/or future medical expenses (*i.e.*, documented medical expenses do not exceed \$25,000),¹⁹ and/or

¹⁷ "Courts have routinely held that pleading general categories of damages, such as 'pain and suffering, disability, lost wages, loss of earning capacity, medical expenses, etc.,' without any indication of the amount of the damages sought, does not provide sufficient information for the removing defendant to meet his burden of proving that the amount in controversy is satisfied under the 'facially apparent' test." *Davis v. JK & T Wings, Inc.*, No. 11-501, 2012 WL 278728, at *3 (M.D. La. Jan. 6, 2012) and cited cases.

¹⁸ General allegations in the petition of "severe and painful personal injuries" and "permanent and/or partial disability," and demands for general categories of damages (*e.g.*, past and future physical and mental pain, medical expenses, and lost wages) are insufficient to establish the amount in controversy. Allegations of permanent disability, standing alone with no specification as to the affected body part(s), do not establish that a plaintiff's claims are likely to satisfy the amount in controversy requirement. *See Heaverlo v. Victoria's Secret Stores, LLC*, No. 07-7303, 2008 WL 425575, at *3 (E.D. La. Feb. 8, 2008) ("Although Mrs. Heaverlo alleges permanent disability, that allegation is not sufficient for the Court to retain this case. *In Palmer v. Wal-Mart Stores, Inc.*, No. Civ. 95-1723, 1996 WL 20862, at *1 (E.D. La. Jan. 17, 1996), the court granted plaintiff's motion to remand even when plaintiff alleged that she sustained severe and possibly permanent injuries, because her allegations were 'fairly 'vanilla' and did not reveal the extent of her injuries. Mrs. Heaverlo's allegations are similarly commonplace. Given the accident described in the petition and the lack of evidence as to plaintiffs' likely damages, the Court finds that defendants have not satisfied their burden of showing by a preponderance of the evidence that more than \$75,000 was in controversy at the time of removal.")

¹⁹ *See Autin v. Cherokee Ins. Co.*, No. 20-528, 2020 WL 7974292, at *4 (M.D. La. Dec. 7, 2020), *report and recommendation adopted*, No. 20-528, 2021 WL 41073 (M.D. La. Jan. 5, 2021) (case remanded *sua sponte* for failure to adequately establish amount in controversy); *McFarland v. Nat'l Interstate Ins. Co.*, No. 21-314, 2021 WL 5629263, at *5 (M.D. La. Nov. 15, 2021), *report and recommendation adopted*, No. 21-314, 2021 WL 5629229 (M.D. La. Nov. 30, 2021) (case remanded *sua sponte* for failure to adequately establish amount in controversy); *Taylor v. Old Republic Ins. Co.*, No. 21-369, 2022 WL 264887, at *4 (M.D. La. Jan. 6, 2022), *report and recommendation adopted*, No. 21-369, 2022 WL 264540 (M.D. La. Jan. 27, 2022) (case remanded *sua sponte* for failure to adequately

5. The plaintiff's failure to include in the petition a La. Code Civ. P. art. 893 allegation that federal court jurisdiction is lacking due to insufficient damages, *e.g.*, "The amount in controversy is established in this case due to the Plaintiff's failure to include a statement in her Petition that her damages do not exceed [the federal jurisdictional amount/\$75,000] as required by La. C.C.P. art. 893";²⁰ and/or
6. The plaintiff's failure to stipulate that his/her damages do not exceed \$75,000, either with or without the proffered stipulation attached, *e.g.*, "Defendant presented to Plaintiff a damage stipulation that Plaintiff's alleged damages are less than \$75,000.00, exclusive of interest and court costs, which Plaintiff refused to sign. Plaintiff's refusal to sign demonstrates that the amount in controversy exceeds \$75,000";²¹ and/or,
7. Citations to state or federal court damage awards involving trials, *e.g.*, "In *Plaintiff versus Defendant XYZ Company*, (19th JDC), the plaintiff was injured in a motor vehicle accident and was awarded \$120,000 for injuries and treatment consisting of two bulging discs, a concussion, chiropractic care over ten months, and three steroid injections."²²

establish amount in controversy); *Allen v. Manufacturers Allegiance Ins. Co.*, No. 20-778, 2021 WL 2374319, at *5 (M.D. La. Apr. 23, 2021), *report and recommendation adopted sub nom. Allen v. Manufacturers' All. Ins. Co.*, No. 20-778, 2021 WL 2371507 (M.D. La. June 9, 2021) (case remanded *sua sponte* for failure to adequately establish amount in controversy); *Hill v. DG Louisiana, LLC*, No. 21-325, 2022 WL 3146554, at *5 (M.D. La. July 1, 2022), *report and recommendation adopted*, No. 21-325, 2022 WL 3142339 (M.D. La. Aug. 5, 2022) (case remanded *sua sponte* for failure to adequately establish amount in controversy); and *Jaral v. Amica Mut. Ins. Co.*, No. CV 22-237-SDD-EWD, 2023 WL 2639287, at *4-6 (M.D. La. Feb. 27, 2023), *report and recommendation adopted*, No. CV 22-237-SDD-EWD, 2023 WL 2639271 (M.D. La. Mar. 24, 2023) (case remanded for failure to adequately establish amount in controversy).

²⁰ See *Ford v. State Farm Mut. Auto. Ins. Co.*, No. 08-403, 2009 WL 790150, at *4 (M.D. La. Mar. 25, 2009) (noting: "...all three U.S. District Courts in the State of Louisiana have recognized that the failure to include an Article 893 stipulation alone is insufficient to establish that the jurisdictional minimum is in controversy. See, *Weber v. Stevenson*, No. 07-595, 2007 WL 4441261 (M.D. La. Dec. 14, 2007) ("While the failure to include an allegation in the state court petition that one's damages are less than the federal jurisdictional minimum in accordance with La. C.C.P. art. 893 is entitled to 'some consideration, it is not, in and of itself, determinative of the amount in controversy. A finding that the failure to include the '893' allegation resulted in the satisfaction of the jurisdictional minimum would be tantamount to finding that subject matter jurisdiction may obtain from a procedural omission, which is unsupportable).").

²¹ See *Rodney v. Waffle House, Inc.*, No. 18-481, 2018 WL 6829041, at *8 (M.D. La. Oct. 22, 2018), *report and recommendation adopted*, No. 18-481, 2018 WL 10809995 (M.D. La. Dec. 18, 2018) ("As an initial matter, there is no indication that Defendant ever requested that Plaintiff execute a stipulation regarding the amount in controversy prior to removal. Even assuming, *arguendo*, that Plaintiff actually refused to stipulate that the amount in controversy was less than \$75,000 prior to removal, this Court has explained that a plaintiff is under no legal obligation to sign such a stipulation, and that the failure to stipulate is but one factor that the court may consider when analyzing whether the amount in controversy is present.") (citations omitted). See also *Lowe v. State Farm Fire & Cas. Co.*, No. 07-7454, 2008 WL 906311, at * 2 (E.D. La. April 2, 2008) ("State Farm emphasizes both in the notice of removal and in its opposition that Plaintiffs did not file a pre-removal binding stipulation regarding the amount in controversy. However, Plaintiffs' failure to do so does not relieve the removing party of its burden to establish that the jurisdictional minimum is satisfied.").

²² See *Silva v. Hartford Ins. Co. of the Midwest*, No. CV 15-5844, 2016 WL 4501288, at *5 (E.D. La. Aug. 29, 2016) ("Overall, Defendant's argument that the amount in controversy is satisfied by citing two Louisiana state court cases with highly individualized facts different from the facts at issue here is unconvincing. Because the fact finder has discretion in determining an appropriate amount of damages based upon the facts of each individual case, monetary awards in previous cases are not sufficient to meet Defendant's burden of establishing that the amount of controversy

- D. In notices of removal that allege that the AIC is met based upon a claim for breach of an insurance contract, the AIC will generally NOT be adequately pleaded if the removing defendant only alleges the amount of the policy limits at issue (with or without providing a copy of the policy) and/or relies on the plaintiff's *unquantified* allegations of damages in the petition, e.g., "excessive wind/hail damage, major damage to the roof," etc.²³ Information that has been found to adequately allege AIC in breach of insurance contract cases include:
1. A state court petition that demands damages in an amount that exceeds \$75,000, exclusive of interest and costs; and/or,
 2. A pre-removal settlement demand for an amount exceeding \$75,000, exclusive of interest and costs. **Note:** A pre-removal demand for "policy limits" that does not specify the amount of the limits in the demand, standing alone, does not adequately allege AIC UNLESS there is evidence that the plaintiff knew the policy limits exceeded \$75,000 at the time of the demand and the demand is a good faith estimate of the plaintiff's damages; and/or,
 3. A repair or appraisal estimate that documents repair costs that would exceed \$75,000, exclusive of interest and costs with or without including applicable penalties and fees; **AND** a statement of all amounts previously paid under the policy to the plaintiff, if any.
- E. Requests for jurisdictional discovery regarding the amount in controversy are generally denied as a matter of course.²⁴ As one court noted, "[i]f the removing defendant does not have facts sufficient to support removal when the original petition is received, it is the removing defendant's responsibility to discover those facts *before* effecting removal. That is precisely why the 'other paper' removal rule exists, to ensure that removals will not be filed 'before their factual basis can be proven [by the removing defendant] by a preponderance of the evidence.'"²⁵
- F. The case must be remanded if the party who invokes this Court's diversity jurisdiction fails to adequately establish the amount in controversy.

here is greater than \$75,000. The Defendant must point to facts in this case that establish that the actual amount in controversy exceeded \$75,000. Moreover, the damages awards cited by Defendant are based on the entire record after trial, whereas subject matter jurisdiction determinations must only be based on the jurisdictional facts that exist at the time of removal. This point is especially salient when the Plaintiff's particular alleged injury cannot be broadly generalized and compared across different plaintiffs with 'similar' injuries, and when such an injury can result in widely ranging damages awards that do not always satisfy the amount in controversy requirement."

²³ See *Ford v. State Farm Mut. Auto. Ins. Co.*, No. 08-403, 2009 WL 790150, at *3 (M.D. La. Mar. 25, 2009) ("It is the actual value of [the plaintiff's] claimed damages that is relevant to the amount in controversy determination, not his 'potential recovery' based upon the alleged value of the underlying insurance policy.") (citation omitted); *Chapman v. Essex Ins. Co.*, No.:12-520, 2013 WL 12137884, at *5 (E.D. Tex. Apr. 4, 2013) ("The policy itself is unhelpful in this instance because the value of the underlying claim, not the policy limit, determines the amount in controversy.") (citations omitted); and *Jiminez v. Allstate Vehicle & Prop. Ins. Co.*, No. 20-6, 2020 WL 6123136, at *2 (W.D. Tex. Feb. 24, 2020) (denying remand and holding that a demand for covered property damage, plus statutory penalties and attorney's fees was sufficient to establish AIC).

²⁴ See, e.g., *Hopkins v. Crown Assocs., LLC*, No. 18-595, 2018 WL 8496020, at *8 (M.D. La. Oct. 25, 2018), *report and recommendation adopted sub nom.*, *Hopkins v. Crown Associated, LLC*, No. 18-595, 2019 WL 1199470 (M.D. La. Mar. 14, 2019).

²⁵ *Bonvillian v. National Liability & Fire Ins. Co.*, No. 16-1708, 2017 WL 892311, at *3 (W.D. La. Feb. 1, 2017), quoting *Bosky v. Kroger Texas, LP*, 288 F.3d 208, 211 (5th Cir. 2002)). The Fifth Circuit has repeatedly cautioned against protective removals and has established timing rules that allow a defendant to engage in discovery regarding the amount in controversy before filing a notice of removal. *Chapman v. Powermatic, Inc.*, 969 F.2d 160, 162 (5th Cir. 1992); *Mumfrey v. CVS Pharmacy, Inc.*, 719 F.3d 392, 400 (5th Cir. 2013); *Bosky*, 288 F.3d at 211.