

ONE MAN'S CEILING IS ANOTHER MAN'S FLOOR:* THE EFFECT OF POST-REMOVAL DAMAGE STIPULATIONS ON THE AMOUNT IN CONTROVERSY REQUIREMENT OF A DIVERSITY CASE

I. INTRODUCTION

Consider the following hypothetical. On one particular Wednesday at 3 a.m., Rene Magritte experienced abdominal pains and rushed to St. Cecilia Hospital, a small branch of the Graceland Care System. During his visit, Mr. Magritte received treatment from Dr. Garfunkel, the only physician on-duty in the emergency room. Dr. Garfunkel diagnosed Mr. Magritte with appendicitis. Because the appendix had not ruptured, Dr. Garfunkel wanted to take the time to prepare Mr. Magritte and his wife Georgette, as well as soothe their worries. Before the operation began, Mr. Magritte's appendix burst causing increased medical costs and complications. Mr. Magritte survived the operation and continued with short-term hospitalization without permanent injury.

Rene and Georgette Magritte filed a complaint in State *A*'s state court for medical expenses, pain and suffering, and loss of consortium, alleging malpractice on the part of Dr. Garfunkel and negligence on the part of the Graceland Care System. They alleged the fact that damages were "in excess of \$10,000," in accordance with State *A*'s rules of procedure. The Graceland Care System is incorporated in State *B* and also has its principal place of business in State *B*. Similarly, Dr. Garfunkel is a citizen of State *C*, a neighboring state. The defendants filed a notice of removal under diversity jurisdiction. In response, the Magrittes filed a binding damage stipulation stating that the amount in controversy was less than \$75,000. They then filed a motion for remand, arguing that the amount in controversy did not exceed the amount in controversy requirement. The parties must now contend with the fact that there is no established rule on whether a post-removal damage stipulation destroys diversity jurisdiction by reducing the amount in controversy.

The previous hypothetical demonstrates the competing interests involved in a state case removed to federal court. The plaintiff, as master of the

* Paul, Simon, *One Man's Ceiling Is Another Man's Floor*, on THERE GOES RHYMIN SIMON (Warner Records 1973).

complaint, should have control over the venue of his action. In contrast, the defendant should have access to federal courts and a trial free from the bias of the plaintiff's home state. The parties' interests in forum control oppose the principle that courts disapprove of forum manipulation and forum shopping. At the same time, in the context of federalism, there is a strong preference that state courts settle state claims.

The recent Sixth Circuit case, *Rogers v. Wal-Mart Stores, Inc.*,¹ took the position that damage stipulations such as the one in the introductory hypothetical cannot prevent removal through diversity jurisdiction.² By doing so, the Sixth Circuit followed the approach of the other circuit courts of appeal that have addressed the issue. This Recent Development examines those cases and the issues surrounding damage stipulations in removal proceedings. Because neither Congress nor the Supreme Court has settled the issue, this Recent Development also proposes a solution that balances the different interests.

To understand the different issues involved, one should first examine the process of removal. When a plaintiff brings suit in a state court, the case does not necessarily remain in state court. Title 28 of the United States Code creates the process of removal by which a defendant can move a state case to a federal court if the parties have "original jurisdiction."³ If there is no "federal question" to establish "original jurisdiction," the parties must establish the following requirements: (1) complete diversity of citizenship, meaning that all of the plaintiffs are citizens of different states than all of the defendants; and (2) an amount in controversy for the case that *exceeds* the statutory requirement set forth in § 1332 of Title 28, which has increased most recently to \$75,000.⁴

Neither Title 28 nor the Federal Rules of Civil Procedure, however, state the manner in which the parties must establish the amount in controversy requirement. All courts examine the plaintiff's pleadings for an allegation of an amount in excess of the minimum jurisdictional requirement, but the plaintiff's complaint in state court is often ambiguous and does not allege a specific amount.⁵ Without an established method of proof, the courts must

1. *Rogers v. Wal-Mart Stores, Inc.*, 230 F.3d 868 (6th Cir. 2000), *cert. denied*, 532 U.S. 953 (2001).

2. *Id.* at 871.

3. 28 U.S.C. § 1441 (2000).

4. The amount in controversy requirement began at the amount of \$500 and has progressively increased to \$2,000, \$3,000, \$10,000, and \$50,000. For more discussion of the increases in the amount in controversy requirement, see *infra* notes 15-16 and accompanying text.

5. Most states prohibit the plaintiff from alleging damages of a specific amount by state statute or local rules. For more discussion on non-specific complaints, see *infra* notes 23-25 and

apply their discretion. The courts follow different approaches to prove the amount in controversy, and several circuits use completely different standards to establish the amount.⁶ Some circuits look at evidence after the defendant has filed the petition for removal.⁷ Other circuits do not look beyond the defendant's notice for facts establishing the amount in controversy.⁸ Although some district courts have allowed a post-removal damage stipulation by the plaintiff to destroy federal diversity jurisdiction, the circuits that have ruled on the issue have generally prohibited those stipulations from destroying diversity jurisdiction.

Part II of this Recent Development discusses the background of removal in diversity cases, the topic of damage stipulations, and court rulings on the issue of diversity jurisdiction amid damage stipulations. First, this Recent Development will explain the statutory background that creates removal. Sections 1332,⁹ 1446,¹⁰ and 1447¹¹ of Title 28 of the United States Code explicitly permit the removal of state cases and detail its requirements. Second, this Recent Development will provide a brief foundation on the topic of damage stipulations. Third, this Recent Development will examine the most important cases that have ruled on jurisdiction following post-removal damage stipulations. Although the Supreme Court has established some rules on removal guidelines, modern courts disagree on the ability of post-removal damage stipulations to destroy federal diversity jurisdiction.

Part III analyzes the different approaches that courts have taken, and the opposing interests of the parties and the court system.

Part IV proposes an approach to post-removal damage stipulations that brings about a compromise of the different interests as well as common law principles applied by the courts in diversity jurisdiction cases.

accompanying text.

6. This Recent Development does not address the proper burden of proof for removal through diversity jurisdiction. For a discussion of the different approaches that the circuits have taken, see C. Kinnier Lastimoso, Note, *Automatic for Removal?: The Use of Post-Petition Evidence to Establish the Amount in Controversy for Diversity Jurisdiction*, 80 WASH. U. L.Q. 299 (2002).

7. See *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326 (5th Cir. 1995); *Shaw v. Dow Brands, Inc.*, 994 F.2d 364 (7th Cir. 1993); *Harmon v. OKI Sys.*, 115 F.3d 477 (7th Cir. 1997); *Sierminski v. Transouth Fin. Corp.*, 216 F.3d 945 (11th Cir. 2000).

8. See *Gaus v. Miles, Inc.*, 980 F.2d 564 (9th Cir. 1992); *Laughlin v. Kmart Corp.*, 50 F.3d 871 (10th Cir. 1995) *cert. denied* 516 U.S. 863 (1995).

9. 28 U.S.C. § 1332 (2000).

10. 28 U.S.C. § 1446 (2000).

11. 28 U.S.C. § 1447 (2000).

II. HISTORY

A. Diversity Jurisdiction and Removal

Congress detailed the basis of federal jurisdiction in Title 28 § 1332 and § 1441 of the United States Code. Section 1332 enumerates the requirements for federal jurisdiction.¹² Thus, if a plaintiff brings an action in state court, the defendant may still have access to the federal court system by the process of removal. Section 1441(a) provides that a defendant can remove an action from state court to federal court when the federal court has “original jurisdiction.”¹³ Original jurisdiction requires that there exists: (1) either a federal question issue,¹⁴ or (2) complete diversity between the plaintiffs and defendants and an amount in controversy in excess of a statutory amount, which is now \$75,000.¹⁵

When Congress first created diversity jurisdiction,¹⁶ an allegation could establish federal jurisdiction when the amount in controversy for the claim exceeded \$500.¹⁷ Since then, Congress has amended the minimum dollar amount required for the amount in controversy. Congress increased the requisite amount to \$2,000 in 1887, to \$3,000 in 1911, to \$10,000 in 1958, and to \$50,000 in 1988.¹⁸ In 1996, Congress made the most recent increase to the current statutory requirement of \$75,000.¹⁹

Under § 1446 of Title 28 of the United States Code, removal must follow a specific process. To remove a case from a state court to the federal court, which must embrace the original court, the defendant must file a “notice” of removal pursuant to Rule 11 of the Federal Rules of Civil Procedure.²⁰ The

12. 28 U.S.C. § 1332 (2000).

13. 28 U.S.C. § 1441 (2000).

14. 28 U.S.C. § 1331 (2000).

15. 28 U.S.C. § 1332 (2000).

16. The Judiciary Act of 1789 established diversity jurisdiction. Judiciary Act of 1789, Act of Sept. 24, 1789, § 29, 1 Stat. 73, 79-80.

17. *Id.* § 11, 1 Stat. 73, 78.

18. *See id.* (creating the \$500 requirement in the amount of controversy); Act of March 3, 1887, 24 Stat. 552 (increasing the amount in controversy to \$2,000); Act of March 3, 1911, 36 Stat. 1091 (increasing the amount in controversy to \$3,000); Act of July 25, 1958, Pub. L. No. 85-554, § 1, 72 Stat. 415. (amending 28 U.S.C. § 1332 and increasing the amount in controversy requirement to \$10,000); The Judicial Improvements and Access to Justice Act, Act of November 19, 1988, Pub. L. No. 100-7002, § 201, 102 Stat. 4642 (increasing the amount in controversy to \$50,000).

19. Federal Courts Improvement Act of 1996, Pub. L. No. 104-317, § 205, 110 Stat. 3847. (amending 28 U.S.C. § 1332(a)). The latest increase lacks substantial legislative history. Taking into account the legislative history of the prior increase, one might infer that Congress wanted to reduce the number of diversity cases in federal court and factor inflation into the amount. 14B CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3701, at 3-4 (3d ed. 1998).

20. 28 U.S.C. § 1446(a) (2000).

notice must contain a “short and plain statement of the grounds for removal.”²¹ Furthermore, the defendant must do so within thirty days²² of the defendant’s service or “otherwise,” whichever is shorter.²³ If the action is not initially removable, the defendant may remove within thirty days after the amendment, but never more than one year after the action commences. In some cases, the plaintiff may have the case put back in state court, because subsection (4) provides that “[i]f it clearly appears on the face of the notice . . . that removal should not be permitted, the court shall make an order for summary remand.”²⁴

A plaintiff’s complaint usually does not allege damages that satisfy the amount in controversy requirement. One reason for this circumstance is that most states prohibit an allegation of damages in a specific amount.²⁵ Instead, in these states, the plaintiff may only allege damages in an amount, for example, “in excess of \$10,000,” to allow for a determination of the proper state court.²⁶ Most plaintiffs usually do not allege damages large enough to meet the federal jurisdictional requirement of \$75,000, because state courts

21. FED. R. CIV. P. 11(b).

22. Courts begin counting the thirty days at different times. Some courts begin counting after formal service. *See, e.g.,* Love v. State Farm Mut. Auto Ins. Co., 542 F. Supp. 65 (N.D. Ga. 1982). Other courts begin counting after defendant “otherwise” receives service. *See, e.g.,* Reece v. Wal-Mart Stores, Inc., 98 F.3d 839 (5th Cir. 1996).

23. 28 U.S.C. § 1446(b) (2000).

24. 28 U.S.C. § 1446(c)(4) (2000).

25. Florida courts, for example, require that the complaint allege damages “in excess of \$15,000” to satisfy their circuit court jurisdictional amount. Charles A. Carlson, *Removal to Federal Court on the Basis of Diversity Jurisdiction: The “Amount in Controversy” Controversy*, 69 FLA. B. J. 77 (Oct. 1995).

Some states’ rules on civil procedure do not allow a plaintiff to allege any amount in the complaint whatsoever. *See, e.g.,* COLO. R. CIV. P. 8(a) (providing that in Colorado “[n]o dollar amount shall be stated in the prayer or demand for relief”). In Colorado, some courts allow evidence, such as the evidence used in summary judgment motions. Michael J. Hofmann, *A Practitioner’s Guide to Removal*, 29 COLO. LAW., 49, 52 (2000). *See also* IOWA R. CIV. P. 70(a) (“[A] pleading shall not state the specific amount of money damages sought but shall state whether the amount of damages meets applicable jurisdictional requirements for amount in controversy. The specific amount and elements of monetary damages sought may be obtained through discovery.”). Moreover, the Iowa Code provides that “[i]n an action for personal injury or wrongful death, the amount of money damages demanded shall not be stated in the petition, original notice, or any counterclaim or cross-petition.” IOWA CODE § 619.18 (1998).

26. Most states prohibit pleadings for specific damages because states want to prevent complaints from generating adverse publicity and embarrassment, for example, in cases against physicians when a plaintiff seeks damages for more than a million dollars. 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, 689 n.14 (1997).

sometimes penalize specific pleadings²⁷ or sympathize with plaintiffs more than federal courts do.²⁸

B. Court Treatment of Damage Stipulations after Removal

1. The Supreme Court

In *St. Paul Mercury Indemnity Co. v. Red Cab Co.*,²⁹ the Supreme Court held that a reduction of the damages claimed below the amount in controversy requirement does not destroy diversity jurisdiction in the federal courts.³⁰ The plaintiff filed a complaint in state court for damages in the sum of \$4,000 at which time the jurisdictional minimum was an amount in controversy in excess of \$3,000.³¹ The defendants successfully petitioned for removal of the case to federal court.³² The plaintiff filed a second complaint that repeated the first complaint's allegations as well as damages in the sum of \$4,000.³³ The plaintiff attached an exhibit to the second complaint, however, that alleged injuries in the sum of \$1,380.89.³⁴ The court granted relief to the plaintiff in the sum of \$1,162.98.³⁵

On appeal, the Supreme Court held that the reduction in the amount claimed did not destroy diversity jurisdiction.³⁶ The Court stated that when a plaintiff brings a case in state court and the court removes the case to federal court, "[t]here is a strong presumption that the plaintiff has not claimed a large amount in order to confer jurisdiction on a federal court[.]"³⁷ The Court reasoned that the plaintiff's complaint controls the venue, because the defendant files the petition for removal before the defendant benefits from

27. In some state courts, a plaintiff risks dismissal for pleading a specific amount in excess of the state requirement. Jack E. Karns, *Removal to Federal Court and the Jurisdictional Amount in Controversy Pursuant to State Statutory Limitations on Pleading Damage Claims*, 29 CREIGHTON L. REV. 1091, 1092-93 (1996). For some examples of states that prohibit specific pleadings, see *supra* note 22.

28. Plaintiffs also try to defeat federal jurisdiction, either by alleging an amount of damages less than the jurisdictional minimum or by filing joinder of a defendant who is a citizen in the state in which the plaintiff brought action. EDWARD A. PURCELL, JR., *LITIGATION AND INEQUALITY: FEDERAL DIVERSITY JURISDICTION IN INDUSTRIAL AMERICA, 1870-1958*, 107 (1992).

29. 303 U.S. 283 (1938).

30. *Id.* at 295.

31. *Id.* at 285.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at 292. The Court stated that the district court retains jurisdiction if "the plaintiff after removal, by stipulation, by affidavit, or by amendment of his pleadings, reduces the claim below the requisite amount[.]" *Id.*

37. *Id.* at 290.

discovery tools.³⁸ The Court also reasoned that the plaintiff should not be able to manipulate the court system to exercise complete control over the venue and to defeat the defendant's right to the federal forum once that right exists.³⁹ The Court further stated that events that occur subsequent to removal to reduce the amount in controversy, such as an amendment to the pleading that reduces the alleged damages, whether in the control of the plaintiff or not, do not destroy the federal jurisdiction.⁴⁰

2. *The Circuits*

In *Angus v. Shiley*,⁴¹ the Third Circuit held that a post-removal damage stipulation could not destroy federal jurisdiction.⁴² After the defendant filed a notice of removal, the plaintiff filed an answer to the notice that stipulated that "her damages d[id] not exceed the sum of \$50,000.00[.]" at a time when the amount in controversy was \$50,000.⁴³ The Third Circuit reasoned that the plaintiff's damage stipulation had "no legal significance," because simply amending a complaint cannot destroy federal jurisdiction.⁴⁴ The Third Circuit stated that the allegation in the complaint determines the amount in controversy.⁴⁵ The plaintiff argued that the total claim was for damages of \$40,000; below the \$50,000 jurisdictional requirement at the time. The Third Circuit stated that a court should not use the "low-end of an open-ended claim" to satisfy the amount in controversy requirement; instead, a court should make "a reasonable reading of the value of the rights being litigated" to satisfy the amount in controversy requirement.⁴⁶ The Third Circuit further stated that the district court properly found the amount in controversy in an independent appraisal, because the complaint did not "limit its request for damages to a precise monetary amount."⁴⁷

In *Asociacion Nacional De Pescadores A Pequena Escala O Artesanales De Colombia (ANPAC) v. Dow Quimica De Columbia S.A.*,⁴⁸ the Fifth Circuit allowed an affidavit by the plaintiff's attorney to destroy diversity

38. *Id.* at 291.

39. *Id.* at 294.

40. *Id.* at 293.

41. 989 F.2d 142 (3d Cir. 1993).

42. *Id.* at 145.

43. *Id.* at 144.

44. *Id.* at 145.

45. *Id.*

46. *Id.* at 146.

47. *Id.*

48. 988 F.2d 559 (5th Cir. 1993), *abrogated on other grounds by* *Marathon Oil Co. v. A.G. Ruhrgas*, 145 F.3d 211 (5th Cir. 1998).

jurisdiction and trigger remand.⁴⁹ The plaintiffs filed their original complaint in state court and did not allege a specific amount of damages in accordance with state law.⁵⁰ The defendant filed a notice of removal that alleged “the matter in controversy exceed[ed] \$50,000 exclusive of interests and costs.”⁵¹ In the notice, the defendant failed to elaborate on the damages or allege any specific facts.⁵² In turn, the plaintiff submitted a sworn affidavit that the damages for each defendant amounted to less than \$50,000.⁵³ The court stated that an affidavit may “clarify a petition that previously left the jurisdictional question ambiguous.”⁵⁴ The court further reasoned that the plaintiffs’ complaint did not allege a specific amount of damages and the defendant neither based its notice on direct knowledge of the amount in controversy nor rebutted the affidavit of the plaintiffs’ attorney.⁵⁵ The Fifth Circuit restricted its holding to situations when those conditions exist, and it stated as dictum that a plaintiff may not defeat removal, however, by amending his damage request.⁵⁶

In *De Aguilar v. Boeing Co.*,⁵⁷ the Fifth Circuit further narrowed the principle it stated earlier that year in *ANPAC*. The plaintiffs filed a complaint in state court without seeking a specific amount of damages.⁵⁸ Following the defendant’s notice, the district court removed the case to federal court.⁵⁹ The plaintiffs made a motion to remand, arguing that the action did not meet the amount in controversy requirement for each plaintiff.⁶⁰ To support the contention, the plaintiffs filed an affidavit by their attorney that stated “the damages did not exceed \$49,000 per plaintiff.”⁶¹ The district court denied the motion to remand.⁶²

The Fifth Circuit affirmed the district court’s decision⁶³ because an affidavit stipulating damages below the amount in controversy requirement

49. *Id.* at 566.

50. *Id.* at 562.

51. *Id.* at 565.

52. *Id.* at 566.

53. *Id.* at 562.

54. *Id.* at 565.

55. *Id.* at 566.

56. *Id.* at 565. See *St. Paul Mercury Indem. Co.*, 303 U.S. at 292 (1938).

57. 11 F.3d 55 (5th Cir. 1993).

58. *Id.* at 56. The plaintiffs filed the complaint in Texas state court, and Texas Rule of Civil Procedure 47(b) prohibits a specific damage pleading. See TEX. R. CIV. P. 47 (“An original pleading . . . shall contain . . . only the statement that the damages sought are within the jurisdictional limits of the court[.]”).

59. *Id.*

60. *Id.*

61. *Id.* at 57.

62. *Id.* at 59.

63. *Id.*

only created a rebuttal presumption.⁶⁴ The court expressed the preference that parties, in this case the plaintiffs, not manipulate the system to forum shop.⁶⁵ The Fifth Circuit then ruled that the claims exceeded the jurisdictional minimum because the claims met the “facially apparent” standard and the “legal certainty” standard.⁶⁶ To establish the jurisdictional minimum, the Fifth Circuit used the defendant’s evidence that the plaintiffs sought damages as high as \$5,000,000 in other courts for the injuries of the same transaction.⁶⁷

In *Chase v. Shop ‘N Save Warehouse Foods Inc.*,⁶⁸ the Seventh Circuit held that a court may not consider any damage stipulation by the plaintiff that follows removal. In accordance with state statute, the plaintiff filed a complaint for non-specific damages “in excess of \$15,000.”⁶⁹ The defendant filed a notice for removal under diversity jurisdiction and succeeded.⁷⁰ The plaintiff’s motion for remand failed, and following the defendant’s motion for summary judgment, the plaintiff voluntarily dismissed the claim without prejudice.⁷¹ Two years later, the plaintiff brought the same action to state court again.⁷² The defendant removed the case after notice.⁷³ That same day, the plaintiff attempted to defeat jurisdiction by stipulating that she would not seek damages in excess of the amount in controversy requirement.⁷⁴ The Seventh Circuit stated that the federal courts still possess jurisdiction if “the plaintiff after removal, by stipulation, by affidavit, or by amendment of his pleadings, reduces the claim below the requisite amount[.]”⁷⁵ The Seventh Circuit distinguished the Fifth Circuit case, *ANPAC*,⁷⁶ by stating that the record in the case at bar presented facts that established the amount in controversy.⁷⁷

In *Rogers v. Wal-Mart Stores, Inc.*,⁷⁸ the Sixth Circuit held that a post-

64. *Id.* at 57.

65. *Id.*

66. *Id.* at 57-58.

67. *Id.* at 58. There was no implication of collateral estoppel or res judicata because there was no “final judgment” from the prior proceedings.

68. 110 F.3d 424 (7th Cir. 1997).

69. *Id.* at 426. Illinois civil procedure law prohibits requests for relief in specific amounts and provides that “no ad damnum may be pleaded except to the minimum extent necessary to comply with the circuit rules of assignment where the claim is filed.” 735 ILL. COMP. STAT. 5/2-604 (1996).

70. 110 F.3d at 426.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.* at 427.

75. *Id.* at 429 citing *St. Paul Mercury Indem. Co.*, 303 U.S. at 288.

76. 988 F.2d 559.

77. 110 F.3d at 430.

78. 230 F.3d 868 (6th Cir. 2000).

removal damage stipulation below the amount in controversy does not mandate remand.⁷⁹ The plaintiff filed a complaint in a state that allowed specific damage pleadings,⁸⁰ seeking \$950,000 in damages.⁸¹ After the defendant's notice, the court removed the case to federal court.⁸² The parties agreed to dismissal and the district court dismissed the case without prejudice.⁸³ During the following year, the plaintiff filed a new complaint in state court, alleging damages "not exceeding \$75,000."⁸⁴ The defendant again filed a notice of removal and established the amount in controversy requirement with answers to interrogatories from the prior action.⁸⁵ The plaintiff filed a motion to remand and claimed the action did not meet the jurisdictional amount.⁸⁶ Along with the motion, the plaintiff presented an affidavit stating that she "had no intention of seeking additional damages" and attached a stipulation that her damages did not exceed \$75,000.⁸⁷

The district court denied the plaintiff's motion to remand,⁸⁸ and the Sixth Circuit affirmed the district court's interpretation of *St. Paul Mercury Indemnity Co.*⁸⁹ The Sixth Circuit reasoned that a court determines jurisdiction from the time of removal.⁹⁰ The Sixth Circuit further justified its holding by stating the policy that discourages the plaintiff's manipulation of the court system to shop for a different forum.⁹¹ The Sixth Circuit explicitly stated that even a binding stipulation would not destroy diversity jurisdiction in the federal courts.⁹²

3. District Courts

Despite the prohibitive holdings by many circuits, many district courts have allowed a post-removal damage stipulation to destroy federal jurisdiction. Those courts have examined specific factors and restricted their

79. *Id.* at 871.

80. The plaintiff filed the case in Tennessee state court. *Id.* at 870.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. A federal court may recognize all state court discovery. See *Salveson v. Western States Bankcard Ass'n*, 526 F. Supp. 566 (N.D. Cal. 1981) *rev'd in part on other grounds* 731 F.2d 1423 (9th Cir. 1984).

86. *Id.*

87. *Id.*

88. *Id.* at 871.

89. 303 U.S. 283.

90. 230 F.3d at 871.

91. *Id.* at 873.

92. *Id.*

holdings to specific situations. In *Oder v. Buckeye State Mutual Insurance*,⁹³ the District Court for the Southern District of Indiana allowed a damage stipulation to limit the amount in controversy to an amount below the jurisdictional requirement. The district court stated that the binding “certification” limited what the plaintiff could both seek and receive.⁹⁴ The court distinguished the case from *St. Paul Mercury Indemnity Co.*⁹⁵ by stating that the plaintiff in the case at bar had detailed the complaint for the first time,⁹⁶ as opposed to the plaintiff in *St. Paul Mercury Indemnity Co.* who reduced the amount sought from the prior complaint.

In *Adkins v. Gibson*,⁹⁷ the District Court for the Southern District of West Virginia remanded a case to state court after the plaintiff filed a non-binding damage stipulation. The court reasoned that the stipulation bound the plaintiff with penalty of Rule 11 of the Federal Rules of Civil Procedure,⁹⁸ the Local Rules of the court, and the Rules of Professional Conduct.⁹⁹ The district court also cited the following principles: (1) the plaintiff’s complaint controls, and (2) courts should construe removal statutes strictly with doubts favoring remand.¹⁰⁰ The district court stated that binding stipulations could assist the court when the amount in controversy is uncertain.¹⁰¹

In *Bailey v. Wal-Mart Stores, Inc.*,¹⁰² the District Court for the Northern District of Alabama remanded a case after the plaintiff filed a damage stipulation to destroy diversity jurisdiction. The district court asserted that the 1988 amendments to § 1447 (c) and (e) “clearly overruled” the Supreme Court’s holding in *St. Paul Mercury Indemnity Co.* and advocated the “primacy of state courts.”¹⁰³ The court reasoned that the specific changes in

93. 817 F. Supp. 1413 (S.D. Ind. 1992).

94. *Id.*

95. 303 U.S. 283.

96. 817 F. Supp. at 1413-14.

97. 906 F. Supp. 345 (S.D. W. Va. 1995), *abrogated on other grounds by* McCoy v. Erie Ins. Co., 147 F. Supp. 2d 481 (S.D. W. Va. 2001).

98. FED. R. CIV. P. 11. A party must make every representation to the court “to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances[.]” FED. R. CIV. P. 11(b). If the court determines that there is a violation of Rule 11(b), “the court may . . . impose an appropriate sanction upon the attorneys, law firms, or parties . . . responsible for the violation.” FED. R. CIV. P. 11(c).

99. 906 F. Supp. at 348. This threat of punishment contrasts with the lack of punishment for the typical complaint that underestimates damages. *See* FED. R. CIV. P. 54(c) (“[E]very final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party’s pleadings.”).

100. 906 F. Supp. at 346.

101. *Id.*

102. 981 F. Supp. 1415 (N.D. Ala. 1997).

103. *Id.* at 1416.

the statute's language demonstrate that a court should remand the case whenever the parties can show a lack of subject matter jurisdiction.¹⁰⁴

III. ANALYSIS

The question at the core of the debate is whether a post-removal damage stipulation may reduce the value of a claim below the amount in controversy requirement. One must consider the following three competing interests when evaluating the weight of damage stipulations: (1) the principle that the plaintiff should be the master of the complaint; (2) the principle that a defendant should have equal access to the federal court system and to justice; (3) public policy concerns that include the desire for standardized rules, the preference that federal courts preside over large actions, and the aversion to forum shopping.

The principle that the plaintiff should be master of the complaint is well established.¹⁰⁵ The argument follows that a plaintiff should have the freedom to choose a state court even if the claim qualifies for the federal courts.¹⁰⁶ Plaintiffs often choose to litigate their claims in state court, because the fees are less costly¹⁰⁷ and the juries more readily sympathize.¹⁰⁸ In addition, if a plaintiff is willing to reduce the potential damages of a claim, the courts should give effect to stipulations to preserve the integrity of stipulations themselves.¹⁰⁹

The principle that the plaintiff should generally serve as master of the complaint meets opposition from the principle that the defendant should have access to the federal court system. Access to federal courts is particularly

104. *Id.* at 1417. Prior to the 1998 amendment subsection (c) provided that “[i]f at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case, and may order the payment of just costs.” 28 U.S.C. § 1447(c) (1986 Supp.). The amended subsection (c) provides that “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c) (1988). The prior subsection (c) focuses the determination of jurisdiction at the time of removal whereas the amended subsection (c) focuses on the present existence of jurisdiction regardless of the time of removal. 981 F. Supp. at 1416-17.

105. *See supra* note 17, at 46 (“[T]he plaintiff is the master of his or her claim.”).

106. *See* LARRY W. YACKLE, RECLAIMING THE FEDERAL COURT 104 (1994) (posing the argument for deference to the plaintiff). *See also* Allen v. R & H Oil & Gas Co., 63 F.3d at 1335 (“[I]n the typical diversity case, the plaintiff remains the master of his complaint.”).

107. PURCELL, *supra* note 28, at 87.

108. *Id.* at 24.

109. *See* Bloome v. Wiseman, Shaikewitz, McGivern, Wahl, Flavin & Hesi, P.C., 664 N.E.2d 1125, 1136 (Ill. App. Ct. 1996) (“If stipulations are not enforced by the courts, . . . the litigation process will suffer. In short, if counsel cannot rely on the sanctity of a stipulation given in open court, there will be no stipulations.”).

important because state juries often discriminate against out-of-state defendants, especially when the defendant is a corporation.¹¹⁰ A large amount in controversy, in the millions of dollars for example, might bring either bias against a large out-of-state corporation or sympathy for an in-state plaintiff such that the trial does not reach a just verdict or award amount.¹¹¹

In addition, another important reason for the resolution of actions in federal court is that federal courts have standard rules of evidence and civil procedure that do not result in disparate results in various jurisdictions.¹¹² There are additional benefits when federal judges preside over a matter. Federal judges, unlike state judges, have life tenure and need not worry about political motives or the scrutiny of unpopular decisions from constituents.¹¹³ In cases that have national repercussions, such as a class action,¹¹⁴ federal courts should preside when the amount in controversy is ambiguous and the case affects many people.¹¹⁵

In addition, the interests of the plaintiff and defendant in forum control often oppose the principle that the parties in a dispute should not manipulate the court system by forum shopping.¹¹⁶ Parties often choose a specific forum so that they can benefit from that forum's rules and judges.¹¹⁷ The plaintiff's

110. See John P. Frank, *The Case for Diversity Jurisdiction*, 16 HARV. J. ON LEGIS. 403, 406 (1979) (stating that Congress created diversity jurisdiction because of the fear of prejudice against out-of-state businesses).

111. The Senate stated the principle "[t]o deny the right to resort to the federal courts means that . . . one must seek justice in the courts of the state of his adversary where he will find, in many of the states, that trial has been denied the common-law powers necessary to the proper administration of justice." S. REP. NO. 85-1830, at 18 (1958). See S. REP. NO. 106-420, at 11 (2000).

112. Jonathan Turley, *Essay, A Crisis of Faith: Tobacco and the Madisonian Democracy*, 37 HARV. J. ON LEGIS 433, 467 (2000). Some states may even go as far as to produce procedures that benefit their residents in litigation. *Id.* at 471-72.

113. See Georgene M. Vairo, *Problems in Federal Forum Selection and Concurrent Federal and State Jurisdiction: Supplemental Jurisdiction; Diversity Jurisdiction; Removal; Preemption; Venue; Transfer of Venue; Personal Jurisdiction; Abstention and the All Writs Act*, SE99 ALI-ABA 613, 634 (2000).

114. Class actions have the capability of crippling entire agencies. Turley, *supra* note 112, at 467.

115. See *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333 (1977) (giving an expansive reading of the amount in controversy because the dispute involved injuries to innumerable persons who were not parties to the dispute). In *Hunt*, North Carolina enacted a statute that prohibited all containers of apples shipped into the state from bearing any grade other than the U.S. grade, thus prohibiting the Washington State grading system, which was generally acknowledged to be superior to the U.S. grading system. *Id.* The Washington State Apple Advertising Commission brought suit, claiming that the statute discriminated against interstate commerce. *Id.* at 335. At the time of trial, Washington State was the largest producer of apples in the U.S., accounting for 30% of all domestically grown apples. *Id.* at 336. Washington apple growers ship 40 million closed containers of apples annually; nearly 500,000 of these containers reach North Carolina. *Id.* at 337.

116. See John Hart Ely, *The Irrespressible Myth of Erie*, 87 HARV. L. REV. 693, 717 n.130 (1974) (stating the desire to minimize forum shopping).

117. See generally Antony L. Ryan, *Principles of Forum Selection*, 103 W. VA. L. REV. 167 (2000). See *Hanna v. Plumer*, 380 U.S. 460, 475 (1965) (Harlan, J., concurring) (stating reasons that

use of a damage stipulation to destroy federal jurisdiction has forum control as its primary motive.¹¹⁸ As stated above, defendants often prefer federal courts,¹¹⁹ but removal of a case to federal court can actually counteract the effects of a plaintiff's forum shopping because of the standardized rules of civil procedure and evidence.¹²⁰ The aversion to forum shopping carries significant weight in determining policy, and the resolution of cases in federal court helps prevent the disparate results that forum shopping causes.

Damage stipulations are merely collusive attempts to destroy diversity jurisdiction and should not have effect. Federal statute already prohibits giving effect to certain actions that attempt to manipulate jurisdiction.¹²¹ In *St. Paul Mercury Indemnity Co.*,¹²² the Supreme Court clearly stated that "events occurring subsequent to removal which reduce the amount [in controversy] . . . do not oust the district court's jurisdiction once it has attached."¹²³ In *St. Paul Mercury Indemnity Co.*, the plaintiff's complaint originally demanded specific damages in excess of the amount in controversy requirement.¹²⁴ The Supreme Court stated that a stipulation may not destroy jurisdiction if the plaintiff "reduces the claim below the requisite amount[.]"¹²⁵ When a plaintiff files a damage stipulation, the plaintiff attempts to alter the amount in controversy and single-handedly control the forum.

Some district courts have considered damage stipulations and have attempted to address the competing interests involved in removal. In *Adkins v. Gibson*,¹²⁶ the district court remanded a case back to state court after the

parties choose to litigate in federal courts).

118. Courts disfavor "attempts to divest courts of jurisdiction." 123 A.L.R. FED. 323, § 2[a] at 336.

119. Some critics state that corporate defendants often benefit from federal courts because of their resources in comparison to plaintiffs. See PURCELL, *supra* note 28, at 27 (stating that removal allows corporate defendants to "exploit their social and economic power when confronting relatively weak individual litigants").

120. See Brian D. Boyle, *Parallel State and Federal Court Class Actions*, 31 THE BRIEF, Winter 2002 at 33 (discussing the wide variation among the states' procedural rules regarding class actions). The lack of standardized rules lead to disparate treatment and even inconsistent rulings in overlapping cases. *Id.* at 37. See also Ryan, *supra* note 117, at 168 (asserting that forum shopping regularly affects the outcome of a case).

121. See 28 U.S.C. § 1359 (2000) ("A district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court.").

122. 303 U.S. 283.

123. *Id.* at 293.

124. *Id.* at 285. The plaintiff claimed damages in the amount of \$4,000. *Id.* At the time of the case, the amount in controversy requirement was \$3,000.

125. *Id.* at 292.

126. 906 F. Supp. 345 (S.D. W. Va. 1995).

plaintiff made a damage stipulation that the amount in controversy did not exceed the jurisdictional minimum. The district court concluded that the non-binding stipulation¹²⁷ and accountability under Rule 11 shows that “the amount in controversy has been established to a legal certainty to be less than the jurisdictional minimum.”¹²⁸ The court gave deference to the plaintiff’s stipulation, examined the record of the case, and stated that the defendant did not rebut the plaintiff’s claim of lower damages.¹²⁹ The district court’s examination gave undue weight to the plaintiff’s interests as master of the complaint and relied heavily on the court system’s safeguards, specifically Federal Rule of Civil Procedure 11.¹³⁰

In *Oder v. Buckeye State Mutual Insurance*,¹³¹ the district court stated that the “certification” of damages allowed a remand because the stipulation represented the plaintiffs’ initial allegation of the amount of damages.¹³² The court determined that the certification bound the plaintiff by prohibiting the receipt of damages in excess of the stipulation even if the jury awarded such damages.¹³³ The court improperly allowed a post-removal event to affect jurisdiction and permitted the plaintiff to manipulate the system and control the forum.

In *Bailey v. Wal-Mart Stores, Inc.*,¹³⁴ the district court allowed a damage stipulation to destroy diversity jurisdiction despite the fact that the plaintiff initially sought \$500,000 in damages in a state that allowed pleadings for specific damages.¹³⁵ The district court addressed the issue of removal by studying at length the statutory construction of §1447(c) and (e). To further fortify its holding, the court, considering the plaintiff’s stipulation, stated that “[the plaintiff’s] self-imposed limitation [was] worth something[,]” because the plaintiff could never receive more than the stipulated amount.¹³⁶ The court’s examination focused on statutory interpretation rather than the damage stipulation itself.¹³⁷ A clearer rule on the effect of damage

127. The court stated that the stipulation was a “binding” representation. *Id.* at 348. The stipulation was not binding because the plaintiff could still receive proceeds from a verdict in excess of the stipulated amount.

128. *Id.*

129. *Id.* at 347. The court asserted that monetary losses were minimal. *Id.* The plaintiff stated sustained medical expenses were in the amount of \$3,215.75. *Id.* The amount in controversy requirement at the time of trial was \$50,000.

130. FED. R. CIV. P. 11.

131. 817 F. Supp. 1413.

132. *Id.* at 1414.

133. *Id.* at 1413.

134. 981 F. Supp. 1415.

135. *Id.* at 1415.

136. *Id.* at 1417.

137. *See id.*

stipulations would remove this type of hesitance in the courts and would not allow the plaintiff to define the amount in controversy on his own accord.

In their decisions, many of the circuit courts properly weighed the competing interests involved in removal, and their opinions demonstrate the importance of a standard approach toward post-removal damage stipulations. In *Angus v. Shiley*,¹³⁸ the Third Circuit did not allow a post-removal damage stipulation to defeat diversity jurisdiction. The plaintiff alleged that damages were in the amount of \$40,000, much less than the \$50,000 amount in controversy requirement at the time of removal. The Third Circuit cited *Hunt v. Washington State Apple Advertising Commission*¹³⁹ for the proposition that a court should measure the amount in controversy from a “reasonable reading” rather than the “low end” of a claim.¹⁴⁰ In *Angus*, the court only litigated the plaintiff’s injury, which was calculated below the requisite amount, and the damage stipulation further attested to that limited amount.¹⁴¹ In its opinion, the Third Circuit acted in fairness and allowed removal.

In *Chase v. Shop ‘N Save Warehouse Foods*,¹⁴² the Seventh Circuit prohibited the consideration of a post-removal damage stipulation. The Seventh Circuit made its rule, however, after ruling on the amount in controversy requirement on the merits. The Seventh Circuit’s primary rationale for the rule relied on strong evidence that established to a “reasonable probability” that the dispute met the amount in controversy requirement.¹⁴³ The court avoided the plaintiff’s attempt to manipulate the court system and permitted removal despite the uncertainty.

In *Rogers v. Wal-Mart Stores, Inc.*,¹⁴⁴ the Sixth Circuit held that a post-removal damage stipulation does not require remand.¹⁴⁵ The Sixth Circuit stated that the court should treat a post-removal stipulation “like any other post-removal event.”¹⁴⁶ The court gave the most weight to the policy against forum shopping and manipulation of the court system.¹⁴⁷ In the case, the plaintiffs disclosed the fact that the damages amounted to approximately

138. 989 F.2d 142 (3d Cir. 1993).

139. 432 U.S. at 337.

140. 989 F.2d at 146.

141. *Id.* at 142.

142. 110 F.3d 424.

143. The Seventh Circuit relied on the several facts. (1) Chase made one settlement offer of \$120,000. *Id.* at 428. (2) In addition, at the beginning of litigation, Chase refused to admit that the case was worth an amount below the jurisdictional requirement. *Id.* (3) Chase alleged “serious, disabling physical and mental injuries that would result in loss of future earning potential[.]” *Id.* (4) The district court refused to remand when Chase brought the action the first time. *Id.*

144. 230 F.3d 868.

145. *Id.* at 872.

146. *Id.*

147. *Id.* at 873.

\$500,000.¹⁴⁸ Because the stipulation failed to bind the plaintiff and because damages could have amounted to \$500,000, the Sixth Circuit correctly prohibited remand.

Underlying the approach by the circuit courts of appeal are the procedural traps for the defendant. Although some cases are prohibited from proceeding in state court,¹⁴⁹ there are significant reasons that the use of diversity jurisdiction should be used in doubt. First, a defendant must contend with the thirty-day window of removability and the one-year deadline for removal.¹⁵⁰ In contrast, a plaintiff may file for remand at any time if the case does not meet the amount in controversy requirement.¹⁵¹ Second, a defendant may not appeal an order to remand the case.¹⁵²

IV. PROPOSAL

Rarely does a plaintiff forgo the right to receive an award of proceeds in excess of a damage stipulation, regardless of how great the amount.¹⁵³ Courts should not give excessive weight to a plaintiff's damage stipulation, because an event occurring after removal should not destroy diversity jurisdiction.¹⁵⁴ If a plaintiff files a damage stipulation, the court should not give it any more weight than an affidavit. In states where a plaintiff has to make a non-specific damage pleading, a damage stipulation is a weapon that a plaintiff can use to manipulate the court system.

For these reasons, this Recent Development proposes a standardized approach toward post-removal damage stipulations. A damage stipulation¹⁵⁵ should be admitted as evidence, just as affidavits. If a damage stipulation is the plaintiff's only evidence, the defendant will easily prove that the claim

148. *Id.* at 872.

149. Congress has shown a preference for the resolution of certain actions in state courts. Defendants may not remove certain state actions to federal court. 28 U.S.C. § 1445 (2000). These actions include actions against a railroad company, actions that arise under worker's compensation, and actions that derive from the Violence Against Women Act of 1994. *Id.* See YACKLE, *supra* note 114, at 47 (stating that the most serious reform groups agree that courts should reduce the federal caseload by leaving state law claims in state courts).

150. See 28 U.S.C. § 1446 (2000).

151. 28 U.S.C. § 1447(c) (2000).

152. See 28 U.S.C. § 1447(d) (2000).

153. *But see* Renault, Inc. v. City of Houston, 415 S.W.2d 948 (Tex. Civ. App. 1967) (remitting a jury verdict from \$900,00 to \$862,500 because of a stipulation that the judgment should not exceed \$862,500), *overruled on other grounds by* City of Houston v. Renault, Inc., 431 S.W.2d 322 (Tex. 1968).

154. See St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 293 (1938).

155. For a discussion of courts' handling of non-binding damage stipulations, see *supra* 127-135, 147-50 and accompanying text.

exceeds the jurisdictional requirement and rebut the presumption that the damage stipulation creates. When there is doubt, the federal court should retain the case because there is no deadline for remand as there is for removal. In cases of smaller magnitude, the weight of evidence will trigger remand. Because the damage stipulation serves as evidence, the plaintiff still serves as master of the claim without manipulating the system.

Principles of *res judicata* support the use of damage stipulations as evidence. When the amount in controversy is large and exceeds \$75,000, the dispute could affect many persons.¹⁵⁶ In these large disputes, a court should allow the defendant the chance to argue on behalf of federal jurisdiction despite the damage stipulation. A favorable approach would allow a district court to remand the cases with small amounts in controversy and to retain the cases with large amounts in controversy. In addition, federal courts should resolve some disputes of great magnitude when the amount in controversy is high. The case could affect the interests of third persons who are not parties to the case, and thus federal courts, which are less subject to political or community bias, and not the state courts, should settle the claim. For the interests of the parties and the court system, in some cases a post-removal damage stipulation for less than the amount in controversy requirement should simply serve as evidence, much like an affidavit, that diversity jurisdiction does not exist.

The use of a damage stipulation as evidence fulfills the policies that the plaintiff should be master of the complaint and that the plaintiff should not manipulate the system by forum shopping. Moreover, in cases where the defendant does not present any evidence to establish federal jurisdiction, the use of a damage stipulation as evidence creates a good standard for post-removal damage stipulations, because a party should not have the unbridled

156. In the case of a large class action suit, persons who have not elected for exclusion may be bound by the judgment of a case to which they were not a party. 48 A.L.R. FED. 675, § 2[a] 677-78. The *res judicata* effects are similar in most circuits. *See, e.g.,* *Berr Petroleum Co. v. Adams & Peck*, 518 F.2d 402 (2d Cir. 1975); *Bolden v. Pennsylvania State Police*, 578 F.2d 912 (3d Cir. 1978); *Wren v. Smith* 410 F.2d 390 (5th Cir. 1969); *Gregory v. Tarr*, 436 F.2d 513 (6th Cir. 1971) *cert. denied*, 403 U.S. 922 (1971); *Shrader v. Selective Serv. Sys. Local Bd.*, 470 F.2d 73 (9th Cir. 1972) *cert. denied*, 409 U.S. 1085 (1972); *Cotton v. Hutto*, 577 F.2d 453 (8th Cir. 1978).

After the court has reached a valid final judgment, a person, not party to the case, could gain an unfair advantage against the losing party of the prior case. RICHARD H. FALLON, JR. ET AL., *THE FEDERAL COURTS AND THE FEDERAL SYSTEM* 1468 (4th ed. 1996). *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 330-31 (1972) (posing the problem with offensive collateral estoppel against defendants). There is no clear rule how to handle collateral estoppel; instead, the Supreme Court granted trial courts "broad discretion" to determine when collateral estoppel should apply. *Id.* at 331.

power to destroy jurisdiction.¹⁵⁷ However, the proposed standard does not prevent the defendant from accessing the federal courts when the controversy warrants. The defendant may prove that removal is proper by presenting evidence to demonstrate jurisdiction. This standard best effectuates the competing interests involved in removal.

In the initially posed hypothetical, one sees that the proposed standard effectuates the best result for the competing interests in removal. If the Magrittes' claim is truly for less than the jurisdictional amount, a damage stipulation serves as evidence and prevents the defendants from unduly manipulating the system. If the Magrittes' claim is worth more than the jurisdictional amount, the defendants can still access the federal courts by using evidence. If none of the parties can present any additional evidence, an unlikely situation, the evidence of the non-binding damage stipulation can bring about a remand of the case.

V. CONCLUSION

The current federal courts handle post-removal damage stipulations in ways that are irreconcilable with each other. Although the approaches by the circuit courts of appeal, most recently the Sixth Circuit, are similar, some district courts have taken a conflicting view despite the presence of those circuits' opinions. These disparate approaches leave little certainty to those parties with complete diversity who are trying to determine whether the federal courts possess diversity jurisdiction. Not all circuits have addressed the issue and the Supreme Court has denied certiorari more than once. The courts should establish a standard rule for post-removal damage stipulations and clarify stipulations' legal effects. For these reasons, this Recent Development proposes a rule to bring uniformity to the federal courts. A federal court should consider the damage stipulation as evidence only and not allow a damage stipulation destroy the amount in controversy requirement. Thus, when there is doubt as to the actual amount in controversy, the federal courts should retain the case regardless of the damage stipulation. Because

157. *See* *Ins. Co. v. Morse*, 87 U.S. (20 Wall.) 445 (1874) (holding that a state lacked the power to impede on the laws of the United States); *Terral v. Burke Const. Co.*, 257 U.S. 529, 532 (1922) (holding that a state lacked the power to impose conditions that limit a foreign corporation's rights to a federal forum). The Supreme Court also stated that a foreign corporation could not waive its rights to the federal forum. *Id.* *See also* 32 AM. JUR. 2D *Federal Practice and Procedure* § 5, at 606 (1982) ("State legislation may neither confer jurisdiction on federal courts nor abridge or impair federal court jurisdiction.").

the court may always remand the case if it later finds that the amount in controversy has not been met, this standard fulfills a compromise of the competing interests involved in removal without unduly favoring either party.

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