Tips From The Trenches:
Prior Dissimilar Verdicts and Settlements Are Not Competent Proof of the Jurisdictional Amount-in-Controversy to Sustain Improper Diversity Based Removals

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Removal Law, Generally

A federal district court "shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between . . . citizens of different States." 28 U.S.C. § 1332(a). "A defendant may remove a case from state to federal court if the case could have been brought in federal court in the first instance. *See* 28 U.S.C. § 1441(a). This includes actions where the federal court has jurisdiction under 28 U.S.C. § 1332(a), which requires complete diversity of citizenship between the plaintiff and defendant and an amount in controversy that exceeds $75,000.00, exclusive of interest and costs." *Moore v. ContainerPort Group, Inc.*, 2024 WL 4469208, ___ F.Supp.3d ___, Ms. *2 (S.D. Ala. Sept. 16, 2024) (Report and Recommendation, Sonja F. Bivins, Magistrate Judge) adopted as opinion of the court, 2024 WL 4468502 (S.D. Ala. Oct,. 10, 2024) (Terry F. Moorer, District Judge).

There are two paths to removal in diversity cases:

> "The removal procedure statute contemplates two ways that a case may be removed based on diversity jurisdiction." *Jones v. Novartis Pharms. Co.*, 952 F. Supp. 2d 1277, 1281 (N.D. Ala. 2013). "The first way (formerly referred to as 'first paragraph removals') involves civil cases where the jurisdictional grounds for removal are apparent on the face of the initial pleadings." (*Id.* at 1281-82 (citing 28 U.S.C. § 1446(b)(1)). "The second way (formerly referred to as 'second paragraph removals') contemplates removal where the jurisdictional grounds later become apparent through the defendant's receipt 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.'" *Novartis Pharms. Co.*, at 1282 (quoting 28 U.S.C. § 1446(b)(3)). The removal procedure statute expressly provides that discovery responses "can constitute 'other paper' from which diversity jurisdiction can be established." *Griffith v. Wal-Mart Stores E., L.P.*, 884 F. Supp. 2d 1218, 1223-24 (N.D. Ala. 2012) (citing 28 U.S.C. § 1446(c)(3)(A)).

Nolen v. Ameritrucks Center, LLC, 2024 WL _____, Ms. **4-5 (S.D. Ala. Oct. 31, 2024) (Report and Recommendation, Sonja F. Bivins, Magistrate Judge); *accord*, *Donohoo v. Unlimited Deliveries, LLC*, 2024 WL 1919229, __F. Supp. 3d __, Ms. *2. (S.D. Ala. Apr. 12, 2024) (Report and Recommendation, Sonja F. Bivins, Magistrate Judge) adopted as opinion of the court, 2024 WL 1913184 (S.D. Ala. May 1, 2024) (Kristi K. DuBose, District Judge).

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Diversity Removal – Standard of Review

"On a motion to remand, the removing party bears the burden of showing the existence of federal subject matter jurisdiction." *Nolen v. Ameritrucks Center, LLC*, 2024 WL _____ at Ms. *4, quoting *Conn., State Dental Ass'n v. Anthem Health Plans, Inc.*, 591 F.3d 1337, 1343 (11th Cir. 2009). What is the standard by which the removing defendant's proof of the amount in controversy is measured? "The 'jurisdictional amount' must be 'stated clearly on the face of the documents before the court, or readily deducible from them.'" *Allen v. Thomas*, 2011 WL 197964, at *4 (M.D. Ala. Jan. 20, 2011) (W. Keith Watkins, District Judge) (quoting *Lowery v. Alabama Power Co.*, 483 F.3d 1184, 1211 (11th Cir. 2007)); *see also Thornton v. United Am. Ins. Co.*, 2019 WL 2321188, at *2 (M.D. Ala. May 29, 2019) (Emily C. Marks, Chief U.S. District Judge) ("To [unambiguously establish federal jurisdiction] in cases removed based on diversity jurisdiction, the 'jurisdictional amount' must be 'stated clearly on the face of the documents before the court, or readily deducible from them.'") (W. Keith Watkins, District Judge) (quoting *Lowery*, 483 F.3d at 1211). For first paragraph removals, "[w]here the amount in controversy is not evident from the face of the complaint, the removing party must demonstrate by a preponderance of the evidence that the amount in controversy exceeds the $75,000 jurisdictional minimum set by § 1332." *Bryant v, Octapharma Plasma, Inc.*, 2024 WL 3682213, Ms. *2 (M.D. Ala. Aug. 5, 2024) (Emily C. Marks, Chief U. S. District Judge), quoting *Pretka v. Kolter City Plaza II, Inc.*, 608 F.,3d 744, 754 (11th Cir. 2010) (emphasis added); *accord, Street v. Drury Inns, Inc.*, 2008 WL 11387127, Ms. *1 (S.D. Ala. Mar. 14, 2008) (Kristi K, DuBose, District Judge) (quoting *Tapscott v. MS Dealer Service Corp.*, 77 F.3d 1353, 1357 (11th Cir. 1996), overruled on other grounds *Cohen v. Office Depot, Inc.*, 204 F.3d 1069 (11th Cir. 2000) ("[w]here a plaintiff has made an unspecified demand for damages in state court, a removing defendant must prove by a preponderance of the evidence that the amount in controversy more likely than not exceeds the…jurisdictional amount.")

When assessing removal based on a later received paper under § 1446(b)(3), a court must "evaluate 'the . . . later received paper and the notice of removal to determine whether the amount in controversy is unambiguously established." *Sullins v. Moreland*, 511 F. Supp. 3d 1220, 1224 (M.D. Ala. 2021) (Emily C. Marks, Chief U. S. District Judge) (quoting *Lowery v. Ala. Power Co.*, *supra*, 483 F.3d at 1213.).

For removals premised upon diversity jurisdiction, evaluation of the removing defendant's jurisdictional proof of the amount in controversy is governed by the Federal Court's Jurisdiction and Venue Clarification Act of 2011 which amended 28 U.S.C. § 1446(c)(2) so that the statute now reads as follows:

> (2) If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed the amount in controversy, except that –
>
> > (A) the notice of removal may assert the amount in controversy if the initial pleadings seeks –

> (i) nonmonetary relief; or
>
> (ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and
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> (B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).

28 U.S.C. § 1446(c)(2). See*, Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 88 (2014) (28 U.S.C. § 1446(c)(2)(B) "clarifies the procedure in order when a defendant's assertion of the amount in controversy is challenged. In such a case, both sides submit proof and the court decides, by a preponderance of the evidence, whether the amount-in-controversy requirement has been satisfied.").

"The amount in controversy 'is less a prediction of how much the plaintiffs are ultimately likely to recover, than it is an estimate of how much will be put at issue during the litigation; in other words, the amount is not discounted by the chance that the plaintiffs will lose on the merits.'" *Nolen v. Ameritrucks Center, LLC*, 2024 WL _____, Ms. *6; *accord, Moore v. ContainerPort Group, Inc.*, 2024 WL 4469208, at Ms. *2. quoting *S. Fla. Wellness, Inc. v. Allstate Ins. Co.*, 745 F.3d 1312, 1315 (11th Cir. 2014). "When assessing the amount in controversy, courts may rely on their 'judicial experience and common sense' in determining whether a claim exceeds $75,000.00." *Id*., quoting *Roe v. Michelin N. Am.*, *Inc.*, 613 F.3d 1058, 1064 (11th Cir. 2010). "Courts 'may use "deduction, inference, or other extrapolation" to determine whether the relevant evidence submitted by the removing party supports the existence of the required amount in controversy.'" *Nolen v. Ameritrucks Center, LLC*, 2024 WL _____, Ms. *6, quoting *Sullins v. Moreland*, *supra*, 511 F. Supp. 3d at 1224. However, courts "may not speculate or divine 'by looking at the stars' the amount in controversy." *Id*. "Though the defendant in a diversity case, unlike the plaintiff, may have no actual knowledge of the value of the claims, the defendant is not excused from the duty to show by fact, and not mere conclusory allegation, that federal jurisdiction exists." *Street v. Drury Inns*, *supra*, 2008 WL 11387127 at Ms. *1 quoting *Lowery*, 483 F.3d at 1217.

"'Because removal jurisdiction raises significant federalism concerns, federal courts are directed to construe removal statutes strictly.'" *Moore v. ContainerPort Group, Inc.*, 2024 WL 4469208, Ms. *2, quoting *Univ. of S. Ala. v. American Tobacco Co.*, 168 F.3d 405, 411 (11th Cir. 1999); *Donohoo*, 2024 WL 1919229, Ms. *2. "Indeed, all doubts about jurisdiction should be resolved in favor of remand to state court." *Moore*, 2024 WL 4469208 at Ms. *2; *Donohoo*, 2024 WL 1919229 at Ms. * 2.

Diversity Removal – Sufficiency of Removing Defendant's Proof

In *Lowery v. Alabama Power Co*., *supra*, the Eleventh Circuit held that when a district court is presented with a timely motion to remand, it may review the propriety of removal by looking only to the removing documents. "If the jurisdictional amount is either stated clearly on the face of the documents before the Court, or readily deducible from them, then the Court has jurisdiction. If not, the Court must remand." *Id*., 483 F.3d at 1211. "[U]nder [28 U.S.C] § 1446, in assessing the propriety of removal, the court considers the document received by the defendant from the plaintiff – be it the initial complaint or a later received paper – and determines whether that document and notice of removal unambiguously establish federal jurisdiction." *Id*. at 1213. "To reach its decision, 'the district court has before it only the limited universe of evidence available when the motion to remand is filed – i.e., the notice of removal and accompanying documents. If that evidence is insufficient to establish that removal was proper or that jurisdiction was present, neither the defendant nor the court may speculate in an attempt to make up for the notice's failings.'" *Street*, 2008 WL 11387127, at Ms. *1, quoting *Lowery*, 483 F.3d at 1214-1215.

However, when a complaint does not make a specific demand for damages, courts can consider the complaint *and other evidence concerning the amount in controversy presented by the removing defendant*. In *Pretka v. Kolter City Plaza II, Inc.*, *supra*, the Eleventh Circuit held that "additional evidence beyond the initial complaint can be considered to determine the amount in controversy," but the court made sure to note that reliance on "speculation" is "impermissible." *Id*., 608 F.3d at 771. Oftentimes, to get around the plain language of a complaint (where plaintiff's claimed injuries and damages may be vague or indeterminate) and to bolster their arguments that the amount in controversy has been met, removing defendants rely on *Pretka II* to submit additional evidence such as reported jury verdicts or settlements to argue that a plaintiff's injuries and claimed damages meet the amount in controversy requirement.

So how does an Alabama plaintiff's attorney contest a removing defendant's contention that the amount in controversy "exceeds the sum or value of $75,000.00, exclusive of interest and costs" when the defendant relies upon prior verdicts and settlements to prove the value of a claim? Fortunately, numerous reported and unreported opinions from the Eleventh Circuit Court of Appeals and Alabama's federal district courts provide clear guidance in this area.

First, speculation about the *potential* value of plaintiff's injuries and claimed damages is <u>not</u> a showing by a preponderance of evidence that the jurisdictional amount in controversy requirements are met. See *Nolen v. Ameritrucks Center, LLC*, 2024 WL _____, Ms. *9 ("…generalized allegations in [a] complaint 'carry little weight[,]' because "'severe' injuries to one person could easily be only minor injuries to all others."); *Cf. Donohoo*, *supra*, 2024 WL 1919229, at Ms. *2, listing cases and holding "the 'jurisdictional amount' must be 'stated clearly on the face of the documents before the court, or readily deducible from them.'" See also *Moore v. ContainerPort Group, Inc.*, *supra*, 2024 WL 4469208, at Ms. *2 ("Plaintiffs' allegations that they suffered 'significant personal injuries' as a result of the accident does not render it facially apparent that the amount in controversy exceeds $75,000.00. The complaint does not address the physical injuries sustained, how severe or serious those injuries may be, or provide any facts from which the Court can infer a substantial amount of monetary damages have incurred… Without information detailing Plaintiffs' injuries, the generalized allegations in the complaint

'carry little weight[,]' because ' 'severe' injuries to one person could easily be only minor injuries to all others.'"); *Kilpatrick v. Testani*, 2023 WL 7287243, Ms. *4 (N.D. Ala. Nov. 3, 2023) (Nicholas S. Danella, Magistrate Judge) ("generalized allegations" regarding "the accident," "injuries", "pain and suffering" and "loss of consortium" "do not provide a basis for 'reasonable deductions, reasonable inferences or other reasonable extrapolations'"); *Burgess v. Am. Lumber, Inc.*, 2022 WL 2292981, at *4 (N.D. Ala. June 24, 2022) (John H. England, Magistrate Judge) (although the complaint described an industrial accident and listed general categories of claimed damages, there was no reason to conclude that either the nature of plaintiff's injury or the claimed categories of "physical injury," "pain and suffering," "mental anguish," and "loss of quality of life" satisfied the jurisdictional amount); *Fox v. Winn-Dixie Montgomery, LLC*, 2021 WL 4484564, at *5 (S.D. Ala. Sept. 13, 2021) (Sonja F. Bivins, Magistrate Judge), Report and Recommendation adopted sub nom. *Leo Fox v. Winn-Dixie Montgomery, LLC, et al.*, 2021 WL 4477070 (S.D. Ala. Sept. 28, 2021) (Callie V.S. Granade, Senior District Judge) ("'merely listing categories of damages does not satisfy' a removing defendant's burden of establishing the requisite amount in controversy."); *Street v. Drury Inns, Inc*., *supra* 2008 WL 11387127, at *2 (representative information regarding damage awards in other purportedly similar cases is insufficient for the removing defendant to establish the amount in controversy); *Channell v. Nutrition Distribution, LLC*, 2008 WL 220934 at Ms. *1 (M.D. Ala. Jan., 25, 2008) (Myron H. Thompson, District Judge) (conclusory allegations in the notice of removal concerning "serious," "life-threatening injuries," "from which [plaintiff] will continue to suffer in the future" are insufficient. "It is highly questionable whether a defendant could ever file a notice of removal on diversity grounds in a case…where the defendant, the party with the burden of proof, has only bare pleadings containing unspecified damages on which to base its notice.").

Johnson v. Ansell Protective Products, is illustrative. In *Johnson*, Defendant Ansell's removal described the plaintiff's injuries and described the damages listed in the complaint. *Id*. The *Johnson* Court noted:

> Nothing about plaintiff's allegations that he sustained "severe burns to his face, neck, shoulders, hands and buttocks" and "permanent scarring" or his claims for medical expenses, pain and suffering, emotional distress, and mental anguish makes it "easy" for the undersigned to deduce that the amount in controversy requirements have been satisfied. Instead, such "evidence" lends itself only to speculative musings regarding the value of such claims based upon the injuries alleged, a journey which *Lowery* does not allow.

Johnson v. Ansell Protective Products, 2008 WL 4493588, Ms. *5 (S.D. Ala. Oct. 2, 2008) (Callie V. S. Granade, Senior District Judge).

The lengthy analysis contained within *Andrews v. Camping World, Inc.*, 2015 WL 7770681 (S.D. Ala. Nov. 16, 2015) (Report and Recommendation, Katherine P. Nelson, Magistrate Judge), adopted as the opinion of the court, *Andrews v. Camping World, Inc.*, 2015 WL 7776590 (S.D. Ala. Dec. 02, 2015) (Callie V.S. Granade, District Judge) contains a wealth of helpful principles. There, Magistrate Nelson observes that 28 U.S.C. § 1446(c)(2), as amended, requires a removing defendant to prove the amount in controversy by the preponderance of evidence standard (2015 WL 7770681, Ms. *2); that under Ala. R. Civ. P.

54(c), “Alabama…permits recovery of damages exceeding the amount claimed in [a complaint’s] *ad damnum* clause” (*Id*., Ms. *3); a district court reviewing a motion to remand “may rely on evidence put forward by the removing defendant, as well as reasonable inferences and deductions drawn from that evidence,” as “the pertinent question is what is in controversy in the case, not how much the plaintiffs are ultimately likely to recover” (*Id*.); that “Eleventh Circuit precedent permits district courts to make reasonable deductions, reasonable inferences, or other reasonable extrapolations from the pleadings to determine whether it is facially apparent that a case is removable” and “need not suspend reality or shelve common sense in determining whether the face of a complaint establishes the jurisdictional amount” and “courts may use their judicial experience and common sense in determining whether the case stated in a complaint meets federal jurisdictional requirements” (*Ibid*.); and while “jurisdictional facts are evaluated as they stand at the time of removal” so that “events occurring after removal which may reduce the damages recoverable below the amount in controversy requirement do not oust the district court’s jurisdiction,” nevertheless, “post-removal developments are properly weighed where they shed light on the amount in controversy at the time of removal.” *Id*., Ms. *4 (internal citations omitted).

A Removing Defendant’s Use of Prior Reported Verdicts and/or Settlements in Unrelated Cases is Speculative and Insufficient.

It follows that a removing defendant’s reliance on jury verdicts or settlements from prior cases is also generally inadequate to meet its burden of proving that the amount in controversy is greater than $75,000. Eleventh Circuit case law clearly establishes that comparisons with past reported results cannot alone meet the jurisdictional amount in controversy requirement. *See, e.g., Federated Mut. Ins. Co. v. McKinnon Motors, LLC*, 329 F.3d 805, 809 (11th Cir. 2003) (“Federated does point to a number of Alabama cases where courts have awarded punitive damages well in excess of $75,000 for bad faith failure to pay, *Intercontinental Life Insurance Co. v. Lindblom*, 598 So.2d 886 (Ala.1992); *United Services Automobile Ass'n v. Wade*, 544 So.2d 906 (Ala.1989); *Nationwide Mutual Insurance Co. v. Clay*, 525 So.2d 1339 (Ala.1987), <u>but mere citation to what has happened in the past does nothing to overcome the indeterminate and speculative nature of Federated's assertion in this case</u>.”) (emphasis added).

Indeed, Alabama’s federal district courts *consistently* hold it impermissible to speculate about the value of present claims based on comparisons with prior unrelated cases. *See, e.g.,* Senior District Judge Callie Granade’s analysis in *Johnson v. Ansell Protective Products*, *supra*:

> “[w]e question whether such general evidence is ever of much use in establishing the value of claims in any one particular suit. Looking only to this evidence and the complaint, <u>the facts regarding other cases tell us nothing about the value of the claims in this lawsuit</u>. Even were we to look to evidence beyond that contained within the notice of removal, in the present dispute-with a record bereft of detail-we cannot possibly ascertain how similar the current action is to those the defendants cite.”

Id. at Ms. *7, quoting *Lowery v. Alabama Power Co*., 483 F. 3d at 1220-21 (emphasis added).

In *Curry v. Shaull,* No. 3:23-CV-654-KFP, 2024 WL 407486 (M.D. Ala. Feb. 2, 2024), Judge Kelly F. Pate made a similar finding:

> "With respect to Shaull's collected jury verdicts, it is unclear that they constitute evidence of the value of Curry's claims to any degree, much less sufficiently enough to carry the burden of establishing that jurisdiction exists over Curry's claims as described in the Complaint. *See Kumi v. Costco Wholesale Corp.*, No. 2:19-CV-442-MHT, 2019 WL 6359151, at *2 (M.D. Ala. Nov. 27, 2019) (stating that, "[a]ssuming such [jury verdict] references constitute evidence, the court lacks sufficient information about the cited cases—and the current case—to draw any reasonable conclusions about the case before the court") (citing *Lowery v. Alabama Power Co.*, 483 F.3d 1184, 1221 (11th Cir. 2007)) (finding defendant's references to recent jury verdicts in support of removal "in no way clarifies" the value of claims before the court because, "with a record bereft of detail," the court could not "possibly ascertain how similar the current action is to those the defendants cite.").

Id., Ms. 4 (emphasis added). Likewise, in *Blount v. Coe Mfg. Co.*, 2020 WL 1866190, Ms. *4 (S.D. Ala. Apr. 14, 2020), Chief U. S. District Judge William H. Steele reasoned:

> The defendant identifies four Alabama digital amputation cases in which a plaintiff was awarded more than $75,000. (Doc. 12-11). Two of them involved substantially more significant injury than is indicated here – amputation of the dominant thumb and index finger in one case, and two partial amputations plus a crushed hand in the other. A third involved a newborn child, as to whom the defendant admitted its liability. The final case involved partial amputation of an index finger by a meat saw, combined with evidence that the defendant had been sued 25 times previously for the same problem. (*Id.*). The most these cases show is that, if the amputation is sufficiently extensive, or if the injured party is a helpless infant, or if the defendant ignored dozens of previous amputations, then more than $75,000 may be in controversy. Because none of these circumstances are presented here, the defendant's comparative cases are not meaningfully comparable.

(Emphasis added).

Numerous other Alabama federal district court opinions are in accord. *See, e.g., Carswell v. Sears, Roebuck And Co*., 2007 WL 1697003, Ms. *1, fn.2 (M.D. Ala. June 12, 2007) (W. Keith Watkins, District Judge) ("The *Lowery* court explains why outside evidence of jury verdicts from other tort cases is insufficient: .... [W]e question whether such general evidence is ever of much use in establishing the value of claims in any one particular suit.... [T]he facts regarding other cases tell us nothing about the value of the claims in this lawsuit.... [W]e cannot possibly ascertain how similar the current action is to those the defendants cite.") (emphasis added); *Le v. Arciterra Grp., LLC*, 2008 WL 2020436, Ms.*3 (M.D. Ala. May 9, 2008) (W. Keith Watkins, District Judge) ([t]he facts regarding other cases tells us nothing about the value of the claims in this case."); *Snellgrove v. Goodyear Tire & Rubber Co.*, 2014 WL 235367 (N.D. Ala. Jan. 22, 2014) (Virginia Emerson Hopkins, District Judge) (finding jurisdictional amount in controversy

requirement not met through citations to verdicts in prior Alabama cases dealing with outrage claims in the context of a wrongful denial of medical treatment under the Alabama Workers Compensation Act); *Ruffin v. Clark*, 2018 WL 6037552 (S.D. Ala. Oct. 25, 2018) (Report and Recommendation, Sonja F. Bivins, U. S. Magistrate Judge) (adopted as opinion of the court, 2018 WL 60313549 (Nov. 16, 2018)) (Kristi K. DuBose, Chief U. S. District Judge) (Magistrate Bivins holds proof of prior Choctaw County jury verdicts is insufficient evidence); *Scottsdale Ins. Co. v. Calhoun Hunting Club & Lounge*, 360 F. Supp. 3d 1262, 1268 (M.D. Ala. 2018) (Myron Thompson, District Judge) (holding that without any evidence as to the severity of Miller's emotional distress, the court declines the invitation to divine what a state-court jury might award her for such) (emphasis added); *Stewart v. State Auto. Mut. Ins. Co.*, 2020 WL 58449, at *3 (N.D. Ala. Jan. 6, 2020) (Corey Maze, District Judge) (a comparison of past awards rendered in cases involving bad faith claims over a nearly thirty-year period is insufficient to establish an amount in controversy, especially when said cases contain distinguishable facts); *Blount v. Coe Manufacturing Co.*, 2020 WL 1866190, Ms. *1 (Apr. 14, 2020) (William H. Steele, District Judge) ("the defendant next cites four trial court opinions to suggest that an allegation of hand or foot injury necessarily makes it facially apparent that the amount in controversy exceeds $75,000.00 even when no punitive damages are sought. …None of the cited cases make such a sweeping pronouncement, and at least three of them – including the only one arising within the Eleventh Circuit – involve injuries patently more severe than that of this plaintiff, while the fourth involved more extensive and permanent categories of damages.").

Hill v. Toys "R" Us, Inc., 2010 WL 3834532 (S.D. Ala. Sept. 24, 2010) is important. *Hill* involved a personal injury suit arising from a box falling on the plaintiff while inside of the defendant's toy store. Plaintiff sued Toys "R" Us demanding compensatory and punitive damages in an amount unstated other than as exceeding the state court's $10,000 jurisdictional threshold. *Id*. Toys "R" Us removed the action, asserting that a nationwide search revealed sixteen jury verdicts exceeding $75,000 in cases involving maintenance of a defendant's premises and resulting in personal injuries as a basis for removal. *Id*. Judge Steele held that although the plaintiff did not file a motion to remand, the court had an independent obligation to determine whether subject-matter jurisdiction exists. The court found that Toys "R" Us did not meet its burden of showing that the amount in controversy exceeded $75,000:

> At bottom, all the defendant can say is that, on occasion, shoppers injured in stores have been awarded over $75,000. This is as unobjectionable a proposition as it is unsurprising, but it says nothing about whether *this* complaint, alleging that *this* plaintiff, injured on *this* occasion in *this* (largely unknown) fashion, receiving *these* (largely unknown) injuries and experiencing *these* (largely unknown) damages, places more than $75,000 in controversy in *this* case. Given the opaque complaint in this case and the superficial description of other cases, the defendant offers not "reasonable extrapolation" but only "speculation," and the amount in controversy cannot be shown by the latter. *Pretka,* 807 F.3d at 753–54.

Id. at *3 (emphasis added).

Without detailed comparisons of the specific facts and injuries involved in both the removed case under scrutiny and the prior reported verdict or settlement, no court can reasonably infer

the amount actually in controversy. *See Abner v. United States Pipe & Foundry Co., LLC*, 2017 WL 553135, Ms. *7 (N.D. Ala. Feb. 10, 2017) (Karon O. Bowdre, District Judge) ("without a detailed analysis of causation in each of the past cases and comparisons to the causation alleged in current cases, the court cannot assess whether those awards suggest an amount in controversy in excess of $75,000.") (emphasis added); *Parks v. Countrywide Home Loans, Inc.*, No. 2:11CV852-WHA, 2011 WL 6223049, Ms. *3 (M.D. Ala. Dec. 14, 2011) (W. Harold Albritton, III, District Judge) (holding that there being no evidence of a monetary amount of any damages, the court cannot conclude that reliance on verdicts in previous state cases, not shown to be similar to the claims in this case, meets the Defendants' burden of establishing that in excess of $75,000 is at issue); *SUA Ins. Co. v. Classic Home Builders, LLC*, 751 F. Supp. 2d 1245, 1252 (S.D. Ala. 2010) (William H. Steele, Chief Judge) (same) (declaratory judgment action).

In *Beasley v. Fred's Inc.*, 2008 WL 899249, at *2 (S.D. Ala. Mar. 31, 2008), Judge Steele summarizes why Alabama federal district courts correctly refuse to permit defendants to use prior reported opinions to meet their burden of proving the requisite amount in controversy in diversity-based removals:

> At least some of the reasons for this judicial skepticism are readily apparent. First, many factors influence the award of damages, and these factors are ordinarily heavily fact-intensive and thus not reliable indicators of results in other cases-especially those, such as the present case, in which almost no facts are known. Second, reliance on published appellate opinions predictably skews the results because appeals are more likely after a large award than a smaller one. This slant becomes more pronounced when the defendant selectively reports only those published awards favoring its position.

Id., Ms. *2, fn. 3.

CONCLUSION

When the amount in controversy in a diversity-based removal is premised upon prior verdicts and settlements, Plaintiff's counsel can effectively challenge such removals because such "evidence" is inadequate to meet the removing defendant's burden of proof.