

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

**CEAREY JAMES, natural tutor of the minor  
child ADALEIGH MARIE JAMES,  
individually and on behalf of the decedent,  
BRETT T. LASYONE**

**CIVIL ACTION NO.**

**JUDGE**

**MAG. JUDGE**

**VERSUS**

**AMERICAN HONDA MOTOR CO., INC.,  
HONDA MOTOR COMPANY, LTD.,  
HONDA R&D CO., LTD, and ESTATE OF  
EMILY DAUZART**

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**NOTICE OF REMOVAL**

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TO: United States District Court  
Western District of Louisiana

Pursuant to 28 U.S.C. §§ 1332 and 1441, Defendant American Honda Motor Co., Inc. (“AHM”) hereby gives notice of the removal of this civil action from the 9th Judicial District Court for the Parish of Rapides, State of Louisiana, Civil Action No. 262,339, Section “A”, to the United States District Court for the Western District of Louisiana., Alexandria Division. As grounds for this removal, AHM states as follows:

## INTRODUCTION

### 1.

In support of this Notice of Removal, AHM asserts diversity jurisdiction under 29 U.S.C. § 1332(a) as the basis for the United States District Court's original jurisdiction over this action:

- (a) The Plaintiff, Cearey James, natural tutor of the minor child Adaleigh Marie James, individually and on behalf of the decedent, Brett T. Lasyone ("Plaintiff" and/or "James"), is a citizen of the State of Louisiana;
- (b) Defendant, AHM (f/k/a Honda Motor Co., Ltd.) is incorporated under the laws of the State of California with its principal place of business in California;
- (c) Defendant, Honda R&D Co., LTD, is incorporated under the laws of the sovereign nation of Japan with its principal place of business in Japan;
- (d) Defendant, Estate of Emily Dauzart, is a fictitious party with no appointed legal representative;
- (e) Intervenor, Donna Kay Robinson, tutor of the minor children, Natalie Dauzart and Carter Dauzart, is a citizen of the State of Louisiana; and
- (f) There are no other real parties in interest in this litigation.

### 2.

Removal of this action to this Court is proper under 28 U.S.C. § 1446(a) because this Court is the United States District Court for the district and division within which the removed state-court action was pending.

3.

As required by 28 U.S.C. § 1446(a), attached as Exhibit A are copies of all processes, pleadings, and orders served upon AHM. The attached constitutes a complete copy of the state court record.

### **BACKGROUND**

4.

This products liability lawsuit arises out of a single vehicle automobile crash allegedly involving a 2008 Honda Accord that occurred on or about July 23, 2017 in Rapides Parish, Louisiana. Plaintiff commenced this civil action on or about July 3, 2018, by filing a *Petition for Wrongful Death and Survival Action* in the 9th Judicial District Court for the Parish of Rapides, State of Louisiana, Civil Action No. 262,339 “A”, (the “Petition”) against AHM, (f/k/a Honda Motor Company, Ltd.), Honda R&D Co., Ltd., and Estate of Emily Dazart. A copy of the Petition is attached as Exhibit “A.4” - “A.24”.

5.

According to the Petition, Brett T. Lasyone was a passenger in the Honda Accord driven by Emily Dazart. The Petition further alleges that Mr. Lasyone and Ms. Dazert died as a result of injuries sustained in the accident.

6.

Plaintiff avers that the death of Brett T. Lasyone, father of the minor child Adaleigh Marie James, was caused by: (a) the negligence of Emily Dazart; and (b) an unreasonably dangerous characteristic of the 2008 Honda Accord.

## **DIVERSITY OF CITIZENSHIP/CONSENT TO REMOVAL**

7.

The Petition asserts that Plaintiff is domiciled in Rapides Parish, Louisiana. AHM, therefore, asserts that Plaintiff is a citizen of the State of Louisiana.

8.

AHM (f/k/a as Honda Motor Company, Ltd.), is considered to be a citizen of the State of California because it is incorporated under the laws of the State of California and its principal place of business is in California.

9.

Honda R&D Co., LTD is a considered to be a citizen of the sovereign nation of Japan because it is incorporated under the laws of Japan and its principal place of business is in Japan.

10.

According to Paragraph 1.1(c) of the Petition, Plaintiff has requested service upon Honda Motor, Ltd. pursuant to Article 5 of the Hague Convention on Service Abroad of Judicial Extrajudicial Documents in Civil or Commercial Matters. Service upon Honda R&D Co., Ltd. has not been effectuated. As a result, the consent of Honda R&D Co., Ltd. for removal of this matter to federal court is not required.

11.

The citizenship of the Estate of Emily Dauzart, a fictitious party, is disregarded for the purpose of determining complete diversity. 28 U.S.C. § 1441(b)(1); *Studley v. Head*,

2016 WL 6304508, \*1, fn. 1 (M.D. La. October, 3, 2016). The citizenship of the Estate of Emily Dauzart is also disregarded as no legal representative of the Estate of Emily Dauzart has been served. Consent for removal of this matter to federal court from a fictitious entity is not required or even possible.

**REMOVAL IS TIMELY UNDER 28 U.S.C. § 1446(b)**

12.

Plaintiff's Petition identified the Estate of Emily Dauzart as the alleged legal representative of the decedent Emily Dauzart, who, prior to death, was an individual of full age majority and domiciled in Rapides Parish, Louisiana. (Petition, ¶ 1.1(d), Ex. "A.5"). The Petition included service instructions to the Clerk of Court to serve the Citation and the Petition upon the Estate of Emily Dauzart, by and through its representative: Kay Robinson, 945 St. Claire Rd., Boyce, Louisiana 71409. (Petition, Service Instructions, p. 20, Ex. "A.24").

13.

On the face of the Petition, the addition of the Estate of Emily Dauzart as a defendant and Donna Kay Robinson as the representative of the Estate of Emily Dauzart, precluded removal of this action due to the absence of complete diversity between Plaintiff and the named defendants. Accordingly, AHM filed its Answer, Affirmative Defenses and Demand for Jury Trial in the 9th Judicial District Court for Rapides Parish, Louisiana on or about August 24, 2018.

14.

The statutory 30-day time period for removal starts to run from a defendant's receipt of an initial pleading only when that pleading affirmatively reveals on its face the facts necessary for federal court jurisdiction; otherwise, the 30-day clock begins when it becomes apparent that the case has become removable by an amended pleading, motion, order or other paper. 28 U.S.C. § 1446(B)(3), *Rea v. Michaels Stores, Inc.*, 742 F.3d 1234 (9th Cir. 2014); *Ackerberg v. City Corp. USA, Inc.*, 887 F.Supp.2d 934 (N.D. Cal. 2012); *Great N. Ry. Co. v. Alexander*, 246 U.S. 276, 281 (1918) (whether a case is removable when commenced is determined by the allegations in the complaint); *Lovern v. Gen. Motors Corp.*, 121 F.3d 160, 162 (4th Cir. 1997); *Darcangelo v. Verizon Commc'ns Inc.*, 292 F.3d 181, 186 (4th Cir. 2002); 14B Charles Alan Wright & Arthur R. Miller, *Fed. Practice & Procedure* § 3721 (4th ed. 2009)).

15.

On or about July 19, 2018, Donna Kay Robinson, as tutor of Emily Dazart's minor children (Natalie Dazart and Carter Dazart), filed a Petition of Intervention in the suit brought by Plaintiff seeking recovery of wrongful death and survival action damages against AHM and Honda R&D Co., Ltd. (Petition of Intervention, Ex. "A.27" – "A.48").

16.

On or about September 18, 2018, AHM filed Exceptions of No Right of Action and Improper Cumulation of Actions as to the Petition of Intervention filed by Donna

Kay Robinson. (Ex. “A.71” – “A.80”). In its exceptions, AHM contended that the wrongful death and survival action claims asserted by Donna Kay Robinson in the Petition in Intervention should have been filed in a separate and independent lawsuit against AHM.

17.

Intervenor provided a copy of her memorandum in opposition to AHM’s exceptions of no right of action and improper cumulation of actions to AHM on October 4, 2018. (Ex. “A.83” – “A.85”). In connection with the opposition to AHM’s exceptions, Donna Kay Robinson submitted an Affidavit executed prior to October 4, 2018 (but erroneously dated October 10, 2018) that states: (a) intervenor is the mother of Emily Dauzart; (b) to the best of intervenor’s knowledge, no succession of Emily Dauzart has been opened; and (c) intervenor “has not been named or qualified as the Successor (sic) Representative for the Estate of Emily Dauzart.” (Ex. “A.86”).

18.

AHM’s first notice that the Estate of Emily Dauzart has not been opened and that Donna Kay Robinson has not been appointed as the representative of Emily Dauzart’s Estate occurred on October 4, 2018, when AHM first received Intervenor’s memorandum in opposition to AHM’s exceptions and the Affidavit of Donna Kay Robinson. AHM’s removal is within 30 days of AHM’s first notice that the Estate of Emily Dauzart had been improperly joined as a defendant and that diversity jurisdiction existed. Accordingly, AHM’s removal is timely in accordance with 28 U.S.C § 1446(b)(3).

*Ostrowski v. American Tire Distributors, Inc.*, 2017 WL 2115984 (M.D. Fla. May 16, 2017) (defendant's notice of removal was timely filed within 30 days of receipt of an affidavit establishing co-defendant had been fraudulently joined and that diversity jurisdiction existed); *Gefen by Gefen v. Upjohn Co.*, 885 F.Supp. 123 (E.D. Pa. 1995) (30-day period in which Delaware defendant was required to remove negligence and products liability action brought by plaintiff who had dual citizenship and lived in Israel began when defendant learned from plaintiff's answer to motion to dismiss that plaintiff was asserting citizenship in Pennsylvania, rather than at the time of plaintiff's initial complaint).

#### **AMOUNT IN CONTROVERSY**

##### **19.**

The Fifth Circuit has established a clear analytical framework for resolving disputes concerning the amount in controversy for actions removed from Louisiana state courts. *See, e.g., Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 883 (5<sup>th</sup> Cir. 2000). The moving defendant must prove by a preponderance of the evidence that the amount in controversy exceeds \$75,000, either by demonstrating that it is "facially apparent" that the claims are likely to exceed \$75,000, or by setting forth facts in controversy that support finding the requisite amount. *See Id.; Lockett v. Delta Airlines, Inc.*, 171 F.3d 295, 298 (5<sup>th</sup> Cir. 1999).



20.

For purposes of § 1332(a), the alleged amount in controversy exceeds \$75,000. Plaintiff alleges that Brett Lasyone “survived the initial accident” but was consumed by a post-accident vehicle fire. (Petition, ¶ 4.5, Ex. “A.6”). In addition, Plaintiff seeks wrongful death damages for Brett Lasyone’s minor children, including loss of love and affection and loss of financial support. The amount in controversy in Plaintiff’s survival action and the separate wrongful death claim is facially apparent from the Petition.

21.

Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is properly being filed with the 9th Judicial District Court for the Parish of Rapides, State of Louisiana, Civil Action No. 262,339, Section “A”, and served on counsel for Plaintiff.

**WHEREFORE**, Defendant American Honda Motor Co., Inc. provides notice that the above captioned action pending against it in the 9th Judicial District Court for the Parish of Rapides, State of Louisiana, Civil Action No. 262,339, Section “A”, has been removed to this Court for further proceedings.

Respectfully submitted this 9th day of October, 2018.

/s/ Francis H. Brown, III  
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***COUNSEL FOR DEFENDANT,  
AMERICAN HONDA MOTOR CO., INC.***

**CERTIFICATE OF SERVICE**

I certify that on October 9th, 2018, I electronically filed the foregoing *Notice of Removal* with the Clerk of Court using the CM/ECF System.

/s/ Francis H. Brown, III  
FRANCIS H. BROWN, III