

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

**BRITTANY HILL and KAYLON
JACKSON INDIVIDUALLY and on
behalf of their minor child, JAYLON
HILL/JACKSON**

CIVIL ACTION

NUMBER 08-570-FJP-DLD

VERSUS

**WINN-DIXIE MONTGOMERY, INC.,
ET AL**

MAGISTRATE JUDGE'S REPORT

Before the Court is plaintiffs' motion for leave to file amended complaint (rec. doc. 4) to which there is no opposition. This action involves a suit for damages arising out of an incident where plaintiff Brittany Hill, who was pregnant, slipped and fell on a wet substance on the floor while shopping in the Winn Dixie store in New Roads, Louisiana on or about June 23, 2008. This matter was filed in the 18th Judicial District Court, Parish of Pointe Coupee, and then removed on September 10, 2008, by defendant, Winn-Dixie Montgomery, Inc. (incorrectly referred to in the original petition as Winn-Dixie Louisiana, Inc.) based on diversity jurisdiction, pursuant to 28 U.S.C. §1332.

The jurisdiction of the parties as alleged in the notice of removal is as follows: plaintiffs are citizens of Louisiana; Winn-Dixie Montgomery, Inc. is a citizen of Florida, and is incorporated in and maintains its principal place of business in Florida.

The plaintiffs state in their motion for leave to file amended complaint that as part of the initial disclosure made by defendant, Winn-Dixie Montgomery, Inc. and received by plaintiffs on December 16, 2008, plaintiffs obtained a copy of an incident report that indicates that employees of a beer wholesaler stocking Winn-Dixie's store spilled beer in the area where plaintiff Brittany Hill slipped and fell. The plaintiffs have identified the beer

wholesaler and have now filed the unopposed motion for leave to file amended complaint, which adds non-diverse defendant, B. Olinde & Sons, Company, L.L.C. d/b/a Baton Rouge Beer Agency. The amended complaint alleges that defendant, B. Olinde & Sons Company, L.L.C. is a domestic corporation domiciled in the Parish of East Baton Rouge, State of Louisiana, and doing business as Baton Rouge Beery Agency. The joinder of the non-diverse defendant B. Olinde & Sons, Company, L.L.C. d/b/a Baton Rouge Beer Agency destroys diversity. Under Fifth Circuit precedent, the post-removal joinder of a non-diverse defendant clearly destroys diversity jurisdiction, even if the new defendant is not indispensable. See, e.g., *Cobb v. Delta Exports, Inc.*, 186 F.3d 675, 677 (5th Cir. 1999). The court in *Cobb* recognized that plain language of 28 U.S.C. §1447(e) does not allow the district court to permit joinder of a non-diverse defendant but then decline to remand the case to state court. *Cobb*, 186 F.3d 677. Thus, the Court recommends that this matter be remanded to the 18th Judicial District Court, Parish of Pointe Coupee, for further proceedings. Accordingly,

IT IS RECOMMENDED that plaintiffs' motion for leave to file amended complaint (rec. doc. 4) should be **GRANTED**;

IT IS FURTHER RECOMMENDED that this matter should be **REMANDED** to the 18th Judicial District Court, Parish of Pointe Coupee, for lack of subject matter jurisdiction.

Signed in Baton Rouge, Louisiana, on January 9, 2009.



MAGISTRATE JUDGE DOCIA L. DALBY

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NOTICE

Please take notice that the attached Magistrate Judge's Report has been filed with the Clerk of the U.S. District Court.

In accordance with 28 U.S.C. §636(b)(1), you have ten days from date of receipt of this notice to file written objections to the proposed findings of fact and conclusions of law set forth in the Magistrate Judge's Report. A failure to object will constitute a waiver of your right to attack the factual findings on appeal.

**ABSOLUTELY NO EXTENSION OF TIME SHALL BE GRANTED TO FILE
WRITTEN OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT.**

Signed in Baton Rouge, Louisiana, on January 9, 2009.



MAGISTRATE JUDGE DOCIA L. DALBY