

Western District Case Notes

■ Kevin M. Hogan and Sean C. McPhee [SPECIAL TO THE DAILY RECORD](#)

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REMOVAL AND ADMIRALTY JURISDICTION

In *Arnone v. Knab*, 21-cv-72-LJV-MJR, 21-cv-703-LJV-MJR (Aug. 4, 2023), plaintiff in the first action



Kevin M. Hogan

brought a negligence claim in state court arising out of a boating accident on Lake Erie, after which defendant removed the lawsuit based on admiralty jurisdiction and filed a second action under the Limitation of Liability Act of 1851, resulting in a stay of the negligence case while the limitation proceeding moved



Sean C. McPhee

forward. More than a year after removal, plaintiff moved to remand the negligence case back to state court and to stay the limitation proceeding. The Court noted that, in admiralty cases in which the defendant is a person, the so-called “saving to suitors” clause under 28 U.S.C. §

1333(1) gives the plaintiff the choice to sue in federal or state court. When the plaintiff chooses state court, removal is improper unless a separate basis of federal jurisdiction exists. Here, though, the Court concluded the removal, although improper, constituted a procedural defect rather than a jurisdictional defect, and that procedural defect was waived by plaintiff when she failed to timely move for remand. Under the two-part test for federal admiralty jurisdiction, the Court determined it had subject matter jurisdiction over the negligence case because the tort allegedly occurred on a navigable water and involved conduct that was substantially related to traditional maritime activity. As a result, the Court denied the motion to remand.

VACATING ENTRY OF DEFAULT

In *Neary v. Tischler*, 22-cv-00728-JJM (July 17, 2023), an action resulting from a two-car motor vehicle accident, plaintiff filed and served a Complaint, but no responsive pleading was filed. Thereafter, plaintiff requested that the Clerk of the Court enter a default against defendants pursuant to Fed. R. Civ. P. 55(a), which the Clerk did based on defendants’ failure to timely appear. Less than one month later, defendants moved

to vacate the entry of default, and included a proposed Answer to plaintiff’s Complaint. Plaintiff opposed the motion and also moved for entry of a default judgment against defendants. Noting first the three criteria that must be assessed in order to decide whether to relieve a party from default—whether the default was willful; whether setting aside the default would prejudice the adversary; and whether a meritorious defense is presented—the Court observed that it may also consider whether the failure to follow a rule of procedure was a mistake made in good faith and whether the entry of default would bring about a harsh or unfair result. Applying the relevant criteria, the Court determined that defendants’ default was not willful, but instead was merely negligent or careless, because defendants promptly forwarded the Summons and Complaint to their insurance company and the insurer did not timely process the pleadings and retain counsel. Next, the Court found that plaintiff was not prejudiced by the brief delay because plaintiff was aware that defendants intended to respond to the action—given the fact that their insurer engaged in settlement negotiations almost immediately after the Complaint was filed—and because plaintiff herself waited almost three years

from the date of the accident to commence her action. Finally, the Court found that defendants' affirmative defenses alleging that plaintiff did not suffer a serious injury and did not sustain economic loss in excess of the threshold set forth in New York's No-Fault Law may serve either as a complete defense to the action or require dismissal based on lack of subject matter jurisdiction (i.e. in the event plaintiff's damages are less than the \$75,000 required to give rise to diversity jurisdiction). As a result, and consistent with "the Second Circuit's strong preference for resolving disputes on the merits," the Court granted defendants' motion, vacated their default in appearing, and denied as moot plaintiff's motion for entry of a default judgment.

PRODUCT LIABILITY AND FEDERAL PREEMPTION

In *Tillet v. Coopersurgical, Inc. et al.*, 23-cv-6031-FPG (July 24, 2023), plaintiff brought a diversity action against defendants seeking compensation for injuries allegedly caused by a defective medical device. Defendants moved to dismiss the Complaint, arguing that plaintiff's state law claims—sounding in negligence and strict liability for design defect, manufacturing defect, and failure to warn—were preempted and fail to state a claim upon which relief could be granted. The Court granted the motion and dismissed the Complaint. Turning first to the design defect claim, the Court determined it was expressly preempted by the Medical Device Amendments ("MDA") to the Food, Drug, and Cosmetic Act, 21 U.S.C. § 360(k)(a),

because the claim otherwise would seek to impose on defendants additional safety requirements when the Food and Drug Administration ("FDA") already had concluded the device was reasonably safe and effective to use. The failure to warn claim also was preempted because plaintiff sought to require defendants to provide more warnings than they were required to provide under the MDA. Although the manufacturing defect claim was not preempted by the MDA, the Court concluded plaintiff had not plausibly alleged a manufacturing defect in the device that violated FDA requirements. The negligence claim was subject to dismissal because strict product liability and negligence claims are essentially the same under New York law. The Court also dismissed plaintiff's New York's General Business Law §§ 349 and 350 claims on the basis of preemption by the MDA because the allegedly deceptive or misleading representations were made in promotional materials explicitly approved as part of FDA's process.

CLEAN WATER ACT

In *Seneca Lake Guardian et al. v. Greenidge Generation LLC*, 23-cv-6063-EAW (Aug. 21, 2023) plaintiffs brought a citizen suit under the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1376 (the "Clean Water Act") alleging that defendant, who once had a valid discharge permit to Seneca Lake that since expired, failed to take the steps required by federal regulations to extend that permit while its renewal application was pending. The Court determined that federal jurisdiction was present, not-

withstanding that it might disagree with the merits of Plaintiffs' claim based on the applicability of state law standards. The Court also determined that neither the so-called Collateral Attack Doctrine nor *Buford* Abstention warranted dismissal of the claim because it was not apparent plaintiffs could have brought their claim in state court or that resolution of the claim in this Court would "substantially interfere with state decision-making." On the other hand, the Court determined certain of the alleged failures by defendant to comply with federal regulations in applying for the permit renewal were not sufficiently set forth in the notice letter plaintiff was required to serve in advance of filing its Clean Water Act citizen suit, resulting in partial dismissal of those grounds of the lawsuit. Moreover, the entire complaint also was subject to dismissal because the sufficiency of defendant's renewal application for its state-issued permit was governed by the New York's Environmental Conservation Law and associated regulations and did not turn on the federal regulations that were exclusively cited in plaintiff's complaint and pertain only to EPA-issued permits.

DENIAL OF BANKRUPTCY DISCHARGE

In *Legenza v. Del Rosario*, 22-cv-00835-JLS (July 26, 2023), an appeal arising from an adversary proceeding attendant to a Chapter 7 bankruptcy case, a creditor who loaned money to the debtor sought denial of the debtor's discharge on the ground that he failed to preserve business records pertaining to the loan. The Bankrupt-

cy Court granted summary judgment in favor of the creditor and denied the debtor a discharge. The debtor then appealed to the District Court, arguing that summary judgment was improper, and that he was entitled to a trial. After reviewing the “record keeping requirement” found in 11 U.S.C. § 727(a)(3)—the purpose of which is to give a creditor and the Bankruptcy Court complete and accurate information concerning the status of the debtor’s affairs and to test the completeness of the disclosure requisite to a discharge—the Court noted that the initial burden lies with the creditor to show that the debtor failed to preserve book or records from which the debtor’s financial condition or business transactions might be ascertained. If the creditor shows the absence of records, the burden then falls upon the debtor to satisfy the Court that his failure to produce them was justified. The Court found that the creditor met her burden because the undisputed facts established that the debtor failed to keep or preserve records of his business transactions, rejecting as insufficient the debtor’s contention that the records were lost when he moved from Las Vegas to Western New York, and finding that any such loss was attributable to the debtor’s imprudent decision to entrust the records to a moving company. In addition, the Court found that the debtor’s education, experience and sophistication indicated that his conduct was unreasonable. Thus, because the debtor failed to meet his burden to establish a justification for failing to preserve relevant business records, the Court af-

firmed the Bankruptcy Court’s denial of the debtor’s discharge, holding that a bankruptcy discharge is a privilege, not a right, and complete disclosure is a condition precedent to the granting of a discharge.

CONFIRMATION OF ARBITRATION AWARD

In *Paychex, Inc. v. Caytrans BBC LLC*, 22-cv-06411-EAW (July 31, 2023), plaintiff entered into an agreement to provide a company with payroll-related services. The agreement contained an arbitration clause requiring any dispute arising out of, or in connection with, the agreement to be resolved in accordance with the rules of the American Arbitration Association. Notwithstanding that clause, the counter-party to the agreement sued plaintiff in Louisiana state court, and plaintiff moved to compel arbitration, which was granted. Thereafter, the counter-party to the agreement filed a demand for arbitration, and its affiliate moved to intervene in the arbitration in order to assert its own claims against plaintiff. The intervention was granted and plaintiff moved to dismiss all claims against it. The arbitration panel then issued a decision and order dismissing all of the affiliate’s claims against plaintiff, and all but one of the counter-party’s claims against plaintiff. Plaintiff then commenced this proceeding against the affiliate and sought confirmation of the arbitration panel’s decision and order. After mentioning that confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitra-

tion award a judgment, the Court recognized that the Federal Arbitration Act does not independently confer subject matter jurisdiction on federal courts, but found that subject matter jurisdiction existed here because there was diversity of citizenship and the amount in controversy exceeded \$75,000. The Court also found that venue was proper because the rules of the American Arbitration Association—which were incorporated into the agreement’s arbitration clause—provide for confirmation of an award in any federal or state court having jurisdiction. Moreover, the arbitration was venued, and the agreement was made, in this judicial district. Finally, the fact that the arbitration panel’s decision and order did not dispose of all of the claims at issue in the arbitration was not a barrier to confirmation, because Second Circuit precedent provides “that an award that finally and conclusively disposes of separate independent claims may be confirmed even if it does not dispose of all of the claims that were submitted to arbitration.” As a result, the Court confirmed the arbitration panel’s decision and order.

Kevin M. Hogan is the Managing Partner at Phillips Lytle LLP. He concentrates his practice in litigation, intellectual property and environmental law. He can be reached at khogan@phillipslytle.com or (716) 847-8331. Sean C. McPhee is a partner with Phillips Lytle LLP where he focuses his practice on civil litigation, primarily in the area of commercial litigation. He can be reached at smcphee@phillipslytle.com or (716) 504-5749.