WESTERN NEW YORK
THE DAILY RECORD
Part of the BRIDGETOWER MEDIA network
APRIL 2, 2025

Western District Case Notes

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DIVERSITY JURISDICTION

In *Al Ghrairi v. Federal-Mogul Motor Parts LLC, et al.*, 22-cv-651-LJV (Jan. 24, 2025) and *Wolff v. Medtronic, Inc., et al*, 23-cv-828-LJV (Feb. 13, 2025), both of which were cases where plaintiffs did not contest removal based on diversity of citizenship under 28 U.S.C.§1332(a), the Court noted its "independent obligation" to confirm it has subject matter jurisdiction, including whether the amount in controversy exceeds $75,000.00 as required by the statute. In both cases, defendants argued that the requirement was satisfied based on their review of the medical records and/or the allegations in the complaint that sought damages for "permanent and serious injuries" or "severe, debilitating, and permanent injuries." The absence of anything specifying the amount of damages sought, however, left the Court to "guess at the amount in controversy." Unable to determine that the amount in controversy exceeded the threshold requirement, the Court ordered defendants in both cases to show cause why the lawsuit should not be remanded.


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CHANGE OF VENUE

In *Rue, et al. v. VMD Systems Integrators Inc.*, 24-CV-476-JLS-MGR (Jan. 14, 2025), a putative class action lawsuit for wage-related damages under New York's Labor Law, defendants moved to change venue from one division to another division within the Western District of New York. 28 U.S.C. §1404(a) provides that a district court may transfer any civil action to any other district or division if the action could have initially been brought in the new venue, and if a balancing a non-exhaustive list of factors leads the court to conclude that the transfer is in the interest of justice and will serve the convenience of the parties and witnesses. The Court noted that certain of the factors might weigh more heavily when analyzing a transfer of district then when considering a change in division, and that a plaintiff's choice of forum is given less deference when the lawsuit involves a putative class action with little or no connection to the initially selected-venue. And the Court observed, "absent any clear and convincing showing that the balance of convenience strongly favors the alternative forum, discretionary transfers are not favored." Here, the Court concluded that the locus of operative facts weighed slightly in favor of the transfer, but both the relative means of the parties and the plaintiff's initial choice of forum weighed against the transfer. With the remaining factors being neutral, on balance the Court held that the factors did not favor transfer. Because defendant failed to make a clear cut showing that transfer was in the best interest of the litigation, its motion was denied.

WITNESS COMPENSATION

In *Power Authority of the State of New York ex rel. Solar Liberty Energy Systems, Inc. v Advanced Energy Ind. Inc.*, 19-cv-1542-LJV-JJM (Feb. 21, 2025), defendant moved for sanctions, arguing that plaintiff had improperly compensated a witness in connection with his testimony. The alleged inducements included a $300 payment for the witness to retain an attorney. The Court observed that sanctions under its inherent power "are appropriate only if there is clear evidence that the conduct at issue is entirely without color and motivated by improper purposes." The Court continued, "conduct is entirely without color when it lacks any legal or factual basis; it is colorable when it has some legal and factual support, considered in light of the reasonable beliefs of the attorney whose conduct is at issue." In addition, both findings required to impose sanctions must be supported by a high degree of specificity. The Court denied the motion, finding that it was not clearly and convincingly persuaded that plaintiff's arrangement with the witness was motivated by an improper purpose or that plaintiff had acted with subjective bad faith. The evidence was not clear enough to support a finding of bad faith, in part because the witness was already sympathetic to plaintiff before the alleged payment, thus making this not a case where the payment might have "bought" false testimony or testimony that otherwise would not have been given. The Court further noted that defendant could

still present the alleged inducements to the jury in an effort to undermine the witness's credibility.

MOTION TO DISQUALIFY DEFENDANTS' ATTORNEYS

In *Melton v. Urban League Institute of Rochester, N.Y., Inc.*, 24-cv-6248-EAW-MJP (Feb. 26, 2025), plaintiff commenced an action alleging that his employment was terminated based on retaliation for whistleblowing. Thereafter, plaintiff moved to disqualify defendants' attorneys because one of the attorneys in the firm was involved in a pre-suit investigation of the concerns underlying plaintiff's alleged whistleblowing. In response to plaintiff's motion, defendants argued that such attorney was not consulted nor involved in making the decision to terminate plaintiff's employment. Rather, she was hired by defendant's board of directors to investigate the allegations in the report that plaintiff provided to the board, which served as the basis of his whistleblowing. In evaluating the motion, the Court first noted that motions to disqualify are generally viewed with disfavor and committed to the discretion of the Court. Next, the Court observed that a party moving for disqualification carries a heavy burden and must satisfy a high standard of proof because disqualification has an immediate adverse effect on the client by separating him from counsel of his choice, and because disqualification motions are often interposed for tactical reasons. Ultimately, the Court denied the motion, without prejudice, because plaintiff failed to demonstrate by clear and convincing evidence that the attorney who was hired by defendant's board of directors to investigate the allegations in plaintiff's pre-suit report would offer testimony prejudicial to defendants, so there was no clear and convincing evidence that the integrity of the judicial system would suffer.

DISCLOSURE OF LITIGATION-HOLD COMMUNICATIONS

In *Homeland Ins. Co. of Delaware v. Independent Health Ass'n., Inc.*, 22-cv-462-MAV-HKS (Feb. 7, 2025)—an action seeking a declaratory judgment that plaintiff owes no defense or indemnity obligations arising out of an insurance policy it issued to defendants—plaintiff moved to compel in connection with defendants' privilege logs and the Magistrate Judge ordered defendants to produce redacted copies of litigation-hold communications that defendants alleged were protected by attorney-client privilege. Defendants complied and plaintiff challenged the assertion of the attorney-client privilege. The Magistrate Judge then ordered defendants to provide the Court with unredacted copies and, after reviewing them *in camera*, concluded that the documents merely described document retention policies and instructions for document preservation. Accordingly, the Magistrate Judge ordered defendants to produce the unredacted documents to plaintiff. Defendants objected to the Magistrate Judge's order, contending that the documents are privileged because they contain and memorialize communications between defendants' personnel and outside counsel for the purpose of obtaining and providing legal advice concerning document preservation requirements. Reviewing the Magistrate Judge's order under the deferential "clearly erroneous" standard, the District Judge nonetheless found that the documents constitute privileged material because they involve the application of legal principles relevant to discovery and were intended to guide defendants' future conduct in the litigation. And, although the documents did not include legal research in the form of citations to particular statutes, rules or cases, that was not determinative because they nevertheless concern other professional skills such as the lawyer's judgment and recommended legal strategies. Accordingly, the Magistrate Judge's order was set aside and defendants were relieved of the obligation to disclose unredacted copies of the litigation-hold communications.

MOTION TO COMPEL ENFORCEMENT OF A SETTLEMENT

In *Mitchell v. PEPSICO Bottling Group, LLC*, 24-cv-445-JLS-MJR (Jan. 2, 2025), defendants moved to enforce a settlement that was supposedly reached following mediation. Plaintiff opposed, contending that while the parties agreed on the monetary component of the settlement, they disagreed as it related to plaintiff's continued employment, so no agreement was ever reached and no settlement agreement was ever executed. Noting first that settlement agreements are contracts interpreted according to general principles of contract law, and that the party seeking to enforce the purported agreement bears the burden of proving that the parties entered into a binding agreement, the Court next observed that parties are free to bind themselves orally, and the fact that they contemplate later memorializing their agreement in writing will not prevent them from being bound unless the parties did not intend to be bound until the agreement was set forth in writing and signed. The Court then considered the Second Circuit's four-factor test to determine whether parties intended to be bound by a settlement agreement in the absence of a document executed by both sides, and found that defendants failed to meet their burden to show that the parties entered into a binding agreement. In reaching this conclusion, the Court found that all four factors weighed in plaintiff's favor, and that defendants' reliance on a draft settlement agreement prepared by plaintiff's attorney was misplaced because the parties did not intend to bind themselves until they fully executed a signed settlement agreement. As a result, defendants' motion was denied.

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