

Western District Case Notes

■ Kevin Hogan And Sean McPhee SPECIAL TO THE DAILY RECORD

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FEDERAL QUESTION JURISDICTION

In *McCullough v. Maximus Education, LLC*, 24-cv-6077-EAW (Mar. 11, 2025), plaintiffs filed suit against defendant in state court and defendant removed the action to this Court on the basis of federal



Kevin Hogan

question jurisdiction. In doing so, defendant contended that federal question jurisdiction existed because plaintiffs' claims involved federal loans arising under the federal

Higher Education Act. After removing the action, defendant moved to dismiss, and plaintiffs failed to respond to the motion. In reviewing defendant's motion, the Court *sua sponte* questioned the basis for federal question jurisdiction, noting that federal courts have a duty to inquire into their subject matter jurisdiction, even when the parties do not contest the issue. Accordingly, the Court directed defendant to show cause why the case should not be remanded to state court for lack of jurisdiction. In response, defendant maintained that federal ques-

tion jurisdiction was proper, and for the first time alleged, in the alternative, that diversity jurisdiction was also present. The Court rejected defendant's reliance on federal question jurisdiction, observing that there is no private right of action under the Higher Education Act, so the statute did not support federal question jurisdiction. The Court then held that it was too late for defendant to attempt to amend its notice of removal to assert diversity jurisdiction, because a notice of removal may not be amended to state a new ground for removal after thirty days. Ultimately, because defendant failed to meet its burden of establishing that removal was proper, the Court determined that it lacked subject matter jurisdiction over the case and remanded it to state court.

DIVERSITY JURISDICTION

In *Signature Holdco, LLC v. Riverview Center Opco, LLC, et al.*, 23-cv-1191-LJV (Mar. 7, 2025), plaintiff commenced an action in this Court asserting state law claims of breach of contract, unjust enrichment, and quantum meruit damages, and alleged the Court had subject matter jurisdiction based on diversity of citizenship. When defendant did not contest subject matter jurisdiction in its Motion to Dismiss, the Court noted it had an independent duty to confirm that jurisdiction existed, and concluded



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that plaintiff had failed to allege facts sufficient to prove that diversity of citizenship existed among the parties. Although the complaint affirmatively alleged the states in which

the plaintiff and two defendants were incorporated and transacted business, the Court concluded that those allegations were insufficient to establish the citizenship of the parties. Two of the three corporate defendants were limited liability corporations, whose citizenship derives from its members, not its state of incorporation. Plaintiff had not pleaded facts showing the citizenship of either its own members or the members of one defendant, leaving the Court unable to determine the citizenship of those corporations and, therefore, unable to conclude that the required diversity of citizenship was present. The Court dismissed the complaint without prejudice and granted plaintiff leave to amend it to allege facts sufficient to establish that the Court had jurisdiction over the claims.

MOTION TO DISQUALIFY COUNSEL IN JOINT REPRESENTATION

In *Hall v. Warren*, 21-cv-6296-FPG-MJP (Apr. 8, 2025) — a civil

rights case concerning the City of Rochester Police Department's alleged practice of using disproportionate force against people of color — plaintiffs moved to disqualify the City's corporation counsel from representing the City's former mayor and former police chief, who are named as defendants individually. In support of their motion, plaintiffs argued that there was a conflict of interest among those defendants requiring disqualification of their joint representation in order to ensure the integrity of any final resolution of the matter. Specifically, plaintiffs noted that these three defendants have publicly accused each other of dishonesty, including about issues that are significant to plaintiffs' case, and have openly attempted to shift blame to the others. And, according to plaintiffs, there is an obvious concern that the City's corporation counsel will inevitably prioritize the City's interests over the interests of its former employees. Defendants opposed the motion, contending that they are in agreement that the policies, practices, and procedures at issue in the lawsuit were in accordance with the law, and that the issue of "who told what when" is a credibility issue, not a conflict. In evaluating the motion, the Court first noted that motions to disqualify are generally viewed with disfavor and are 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. To that end, "speculation regarding

the divulging of client confidences will not suffice to grant a motion to disqualify." Ultimately, given defendants' representations concerning their agreement that the policies, practices, and procedures at issue in the lawsuit were in accordance with the law, the Court determined that no conflict exists and held that plaintiffs' speculation did not satisfy their heavy burden. As a result, plaintiffs' motion was denied.

EXPEDITED DISCOVERY

In *Enneagram Personality Types, Inc. v. Kajtezovic, et al.*, 24-cv-6747-EAW-CDH (Mar. 6, 2025), plaintiff sought leave in its trademark infringement case to serve expedited discovery in the form of interrogatories and document requests on defendant and subpoenas on certain non-parties. The stated purpose of the expedited discovery was to enable plaintiff to determine the identities, locations, and contact information of certain John Doe defendants in order to effectuate service of process upon them. Plaintiff alleged that the John Doe defendants were owners of three websites allegedly infringing on plaintiff's trademarks, and that defendant was affiliated with one or more of the websites. Under Rule 26(d)(1), discovery is permitted in advance of a Rule 16(f) conference only if authorized by court order. The Court noted that the Second Circuit has not articulated a specific standard for expedited discovery, and that District Courts in the Circuit apply either a four factor test that tracks the preliminary injunction standard or a more flexible standard of reasonableness and good cause. Here, the Court chose to follow the majority of the District Courts who use the more flexible reasonableness and good cause standard. The Court

next noted that, in cases where the plaintiff seeks expedited discovery to subpoena an internet service provider for purposes of identifying a John Doe defendant, such as here, courts often apply the five factor analysis adopted in *Arista Records LLC v. Doe 3*, 604 F.3d 110 (2d Cir. 2010). When applying those five *Arista* factors here, the Court held that the expedited discovery was warranted. Plaintiff made a prima facie showing of its causes of action, including that defendant could be held personally liable to plaintiff. Plaintiff's discovery requests were sufficiently specific because they were limited to documents and information regarding the potential owners and operators of the four websites. Plaintiff demonstrated that it lacked alternative means to obtain the information sought, and demonstrated that without the expedited discovery it could not ascertain the identities of the John Doe defendants. Finally, the Court did not find any privacy interest that outweighed plaintiff's interest in ascertaining the identities and addresses of the John Doe defendants. In response to defendant's objections, the Court also held that plaintiff did not need to file a preliminary injunction motion in order to establish good cause, or meet and confer with defendant before making its motion.

STATUTE OF LIMITATIONS FOR PRODUCTS LIABILITY

In *Diddy v. Stryker Corp.*, 24-cv-6485-FPG (Apr. 10, 2025), plaintiff brought a products liability action in state court contending that a medical device that was implanted in 2015 was defective and asserting claims against the manufacturer of the device based in negligence, strict products liability, and breach of warranty. Defendants removed

the action to this Court and thereafter moved for summary judgment on the ground that the action was barred by the statute of limitations given that plaintiff's complaint was filed more than nine years after the device was implanted and more than three years after the onset of pain. Noting first that plaintiff's negligence and products-liability claims are governed by New York's three-year statute of limitations, the Court observed that, where a plaintiff alleges malfunction of a medical device implanted into a human body, the statute of limitations runs from the date when the plaintiff first noticed symptoms, not from the date when a physician first diagnosed those symptoms. Here, plaintiff began to suffer from leg pain attributable to the medical device in 2020, so his negligence and products-liability claims were time-barred because they were first asserted more than three years later in 2024. Likewise, plaintiff's breach-of-warranty claims were also untimely because they are subject to a four-year statute of limitations that runs from the time the product is placed in the stream of commerce or at the time of sale by the manufacturer, and here the product was implanted in 2015, more than four years prior to commencement of the action. Finally, the Court rejected plaintiff's argument that his claims should not be deemed to have accrued until he discovered the defect, holding that his subjective ignorance of the cause of his pain — even if attributable to affirmative misdiagnosis — did not prevent his claim from accruing. And, although the analysis might have been different if plaintiff had argued that his initial symptoms were too isolated or inconsequential to trigger the statute of limitations, plaintiff's central al-

legation was that the product began causing his pain in 2020, albeit in a manner that was not immediately detectable to his medical providers. Accordingly, summary judgment was granted in favor of defendants.

STAY PENDING APPEAL

In *Mezu-Ndubuisi v. University of Rochester, et al.*, 24-cv-6387-EAW (Mar. 13, 2025), plaintiff filed suit against defendants alleging she was not reappointed to defendants' clinical staff as a result of discrimination, retaliation, and harassment. In an earlier decision, the Court denied plaintiff's motion for a preliminary injunction — to renew her medical staff appointment and reinstate her clinical duties — as unripe, denied her motion for a restraining order to delay her administrative fair hearing, and stayed defendants' motion to dismiss the complaint pending the conclusion of the fair hearing process and possible state agency review. Plaintiff then filed first a notice of interlocutory appeal and then the instant motion to stay the earlier decision pending that appeal. The Court denied the motion to stay the earlier decision pending appeal, after first observing that Rule 62(d) is narrowly interpreted to allow such relief only as may be necessary to preserve the status quo pending the appeal, but otherwise a stay is not a matter of right even when irreparable injury may result. The Court noted that it was difficult to discern what plaintiff sought to accomplish with her motion to stay, when staying the denial of injunctive relief would still not require the Court to grant the desired injunctive relief. Plaintiff also had not made a sufficiently strong showing that she was likely to succeed on the merits, which is the first of the four factors

required under a Rule 62(d) motion. According to the Court, that the hospital defendant paid the fair hearing presider and had conferred with them on administrative matters did not raise an inference of unfairness or partiality. Moreover, the Court was not obligated to hold a hearing before issuing its decision on the provisional remedies, noting the Second Circuit does not insist that oral testimony be taken on a motion for preliminary injunction nor prevent the Court from disposing of such a motion on the papers. The Court also held that plaintiff had not established that she would suffer irreparable harm absent the stay. The law is clear that a discharge from employment and any injuries that might flow therefrom do not constitute irreparable harm; "losing a job, without more, is not an irreparable injury." Plaintiff also raised several objections to the Court's invocation of the primary jurisdiction doctrine, by which the Court sought to avail itself of the expertise of the state agency that would hold the fair hearing process before it would consider defendants' motion to dismiss. The Court concluded that those arguments did not support a stay pending appeal because, even if those arguments were meritorious, that portion of the earlier decision had been omitted from her notice of appeal and therefore would not be the subject of the appellate review.

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