

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WINS OCCUPATIONAL HEALTH
SERVICES, LLC,

Plaintiff,

MEMORANDUM AND ORDER

v.

07-C-062-S

HENRY SCHEIN, INC.,
MMS - A MEDICAL SUPPLY COMPANY,
and HOWARD S. WEINTRAUB,

Defendants.

On November 9, 2006 plaintiff WINS Occupational Health Services, LLC commenced this breach of contract action against defendants Henry Schein, Inc., MMS - A Medical Supply Company, and Howard S. Weintraub in Eau Claire County Circuit Court seeking monetary relief. On February 1, 2007 defendants removed this action pursuant to 28 U.S.C. § 1441 citing 28 U.S.C. § 1332 as grounds for removal. On March 5, 2007 the Court entered an order remanding this action to the Circuit Court for Eau Claire County. In said order, the Court determined that defendants' removal petition was untimely under 28 U.S.C. § 1446 because it was readily apparent from the face of plaintiff's complaint that more than \$75,000 was in dispute. The matter is presently before the Court on plaintiff's motion for attorney's fees and costs.¹

¹The Court retains jurisdiction to consider plaintiff's motion for attorney's fees even though this action has been remanded and

MEMORANDUM

Plaintiff asserts defendants had no reasonable basis to remove this action after the thirty day period prescribed by 28 U.S.C. § 1446(b). Accordingly, plaintiff argues its motion for attorney's fees and costs in the amount of \$3,130.71 should be granted. Defendants assert they did not remove this action for the purposes of prolonging litigation or imposing additional costs on plaintiff. Accordingly, defendants argue their removal petition was not filed in bad faith and as such plaintiff's motion for attorney's fees should be denied.

28 U.S.C. § 1447(c) provides in relevant part as follows:

An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.

The Supreme Court has determined that the standard for awarding attorney's fees should turn on the reasonableness of the removal. Martin v. Franklin Capital Corp., 546 U.S. 132, 126 S.Ct. 704, 711, 163 L.Ed.2d 547 (2005). As such, absent unusual circumstances, "attorney's fees should not be awarded when the removing party has an objectively reasonable basis for removal." Id. at 708. Conversely, when the removing party lacks an objectively reasonable basis for seeking removal, a court may award attorney's fees under § 1447(c). Id. at 711. In this action, defendants lacked an

the Court's March 5, 2007 Order did not include an award of fees. Wisconsin v. Hotline Indus., Inc., 236 F.3d 363, 365 (7th Cir. 2000).

objectively reasonable basis for seeking removal. Accordingly, an award of attorney's fees under 28 U.S.C. § 1447(c) is appropriate.

It was readily apparent from the face of plaintiff's complaint that more than \$75,000 was in dispute. The complaint sought not only unspecified damages for injury from defendants' failure to timely deliver the flu vaccine at issue, but also sought cancellation of a \$72,000 payment obligation. Accordingly, defendants had no objectively reasonable basis for seeking removal after the thirty day period prescribed by 28 U.S.C. § 1446(b). As such, plaintiff's motion for attorney's fees and costs is granted.

ORDER

IT IS ORDERED that plaintiff's motion for attorney's fees and costs in the amount of \$3,130.71 is GRANTED.

Entered this 16th day of April, 2007.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge