

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

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WINS OCCUPATIONAL HEALTH  
SERVICES, LLC,

Plaintiff,

v.

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

Defendants.

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MEMORANDUM AND  
ORDER  
07-C-062-S

Plaintiff WINS Occupational Health Services, LLC moves to remand the above-entitled matter to state court where it was originally filed on the basis that notice of removal was untimely because it was after the thirty day period prescribed by 28 U.S.C. § 1446(b). Defendants concede that the notice of removal was filed more than 30 days after the last defendant was served. Nonetheless, defendants maintain that the removal was timely because they did not realize from their examination of the complaint that the amount in controversy was in excess of \$75,000, but that they were first so informed by a letter they received from plaintiff on January 15, 2007.

The issue presented is whether defendants should have ascertained from the original complaint that the matter was removable because the amount in dispute exceeds \$75,000. The Court now concludes that it was readily apparent from the complaint that

more than \$75,000 was in dispute. The following is a summary of the relevant allegations of the complaint.

Plaintiff WINS, as a part of its business operation, offered and conducted flu shot clinics primarily in Wisconsin and Minnesota. WINS required flu vaccine to conduct these clinics. Defendant Henry Schein, Inc. operates a medical supply company and serves as a distributor of flu vaccine to entities such as WINS. On December 7, 2004 plaintiff contacted Henry Schein, Inc. and placed an order for its necessary flu vaccine for the following year. WINS ordered 10,000 vials for delivery on September 27, 2005. At the direction of Howard Weintraub, an employee of Henry Schein, Inc., WINS actually issued three purchase orders to three different companies to effect this order. Weintraub informed WINS that he would place the order with three different manufacturers to avoid the supply difficulties the industry had experienced in prior years. Weintraub confirmed receipt of WINS' orders and promised to place them.

On September 19, 2005, Weintraub advised WINS that despite his earlier promises, he had only placed plaintiff's order with one supplier and it was now too late to place another order for the flu vaccine. The one supplier with whom Weintraub had placed an order was unable to supply WINS with its 10,000 vial order on or before September 27, 2005. Only 500 vials were received prior to that date and a large portion of the subsequent shipment was too late to

be of economic value to WINS. Plaintiff alleges that it was damaged by the unavailability of the vaccine. Plaintiff alleges that defendant MMS continues to assert entitlement to payment of the \$72,000 purchase price of the vaccine.

The final paragraph of the complaint demands judgment in "an amount equal to the damages [plaintiff] has suffered as determined at trial. In addition, Plaintiff, demands judgment finding that no amount is due under the MMC invoice..." The complaint seeks not only unspecified damages for injury from the failure to timely deliver the vaccine but also seeks cancellation of a \$72,000 obligation making it apparent from the complaint that the total amount in controversy exceeds \$75,000. Accordingly, the removal petition was untimely and the matter must be remanded to the Circuit Court for Eau Claire County Wisconsin.

ORDER

IT IS ORDERED that plaintiff's motion to remand is GRANTED.

IT IS FURTHER ORDERED that the matter be remanded to the Circuit Court for Eau Claire County Wisconsin.

Entered this 5th day of March, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ  
District Judge