

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

EDWARD GRAHAM,	:	
	:	
Plaintiff,	:	NO. 3:04cv1858 (MRK)
	:	
v.	:	
	:	
BOEHRINGER INGELHEIM	:	
PHARMACEUTICALS, INC. &	:	
DENNIS CADDEN,	:	
	:	
Defendants.	:	

RULING ON MOTION TO REMAND

Currently pending before the Court is Plaintiff's Motion to Remand [doc. #7]. The Motion to Remand asserts that Defendants' removal of this action was untimely under 28 U.S.C. § 1446(b), which provides as follows:

The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

28 U.S.C. § 1446(b) (emphasis added). The Court disagrees.

Defendants received the initial state court complaint in this action on or about April 8,

2004. *See* Defs.' Petition for Removal [doc. # 1], at ¶ 1. Plaintiff would be correct that Defendants' Petition for Removal filed November 3, 2004 was untimely under the thirty-day time limit in the first paragraph of § 1446(b), if Defendants' removal of this action were based on the initial complaint. But it is not. For the initial complaint contained no federal claims and provided no other basis (for example, diversity) for removing this action.

Instead, Defendants' removal was based on Plaintiff's Second Revised Complaint, which Plaintiff filed in state court on October 22, 2004 and which Defendants received on October 26, 2004. Defs.' Petition for Removal [doc. # 1], at ¶¶ 2, 4. The Second Revised Complaint included, for the first time, a cause of action under the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12111, *et seq.* Defs.' Petition for Removal [doc. # 1], at ¶ 3; *see also id.* at Ex. A (Count Two of Second Revised Complaint). With the addition of the federal statutory claim, this action became removable for the first time on October 26, 2004. Defendants' November 3 removal petition was, therefore, timely under the second paragraph of 28 U.S.C. § 1446(b), because it was filed within thirty days of the date on which Defendants were first able to ascertain that this case had become removable.

Plaintiff's Motion to Remand [doc. #7] is DENIED.

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: December 23, 2004.