

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION**

**CIVIL ACTION NO. 3:11CV-147-JHM**

**DEBORAH WHITE**

**PLAINTIFF**

**V.**

**MV TRANSPORTATION**

**DEFENDANT**

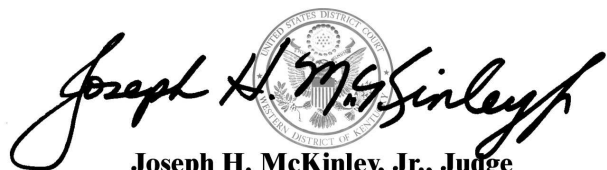
**MEMORANDUM OPINION AND ORDER**

This matter is before the Court on Plaintiff’s Motion to Remand [DN 6]. Plaintiff also moves for a hearing. [DN 7]. Fully briefed, these matters are ripe for decision. For the following reasons, the Court **GRANTS** Plaintiff’s Motion to Remand and **DENIES** her motion for a hearing

Plaintiff filed suit in Jefferson Circuit Court on February 5, 2009. Defendant removed the suit to this court on March 9, 2011. Plaintiff asserts in her motion to remand that 28 U.S.C. § 1446(b) prohibits the removal of a diversity case more than one year after it was commenced in state court. In response, Defendant correctly argues that the one-year prohibition only applies to cases which were not initially removable. Defendant argues that the case was initially removable.

If the case was indeed initially removable, it should have been removed within thirty days of receipt of the initial pleading. If not initially removable, at the very least, it should have been removed within thirty days of December 9, 2009, the date interrogatories were answered claiming damages in excess of \$75,000. Thus, in either event, the removal was untimely. Remand to state court is appropriate.

cc: counsel of record  
Jefferson Circuit Court

  
**Joseph H. McKinley, Jr., Judge  
United States District Court**

April 29, 2011