

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: DIET DRUGS (Phentermine/ Fenfluramine/Dexfenfluramine) PRODUCTS LIABILITY LITIGATION	:	MDL DOCKET NO. 1203
THIS DOCUMENT RELATES TO:	:	
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BARBARA GOODLETTE v. WYETH, et al.	:	CIVIL ACTION NO. 04-23789
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THERESA HERRING v. WYETH, et al.	:	CIVIL ACTION NO. 04-23794
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BONNIE MARGOLIES v. WYETH, et al.	:	CIVIL ACTION NO. 04-23786
-----	:	
BECKY PENT v. WYETH, et al.	:	CIVIL ACTION NO. 04-23795
-----	:	
SUSAN PEREZ v. WYETH, et al.	:	CIVIL ACTION NO. 04-23792
-----	:	

MEMORANDUM AND PRETRIAL ORDER NO.

Bartle, J.

November , 2004

Before the court is the motion of Wyeth to dismiss the non-diverse defendants as fraudulently joined in the five above-captioned actions.<sup>1</sup> This motion to dismiss is before the undersigned as transferee judge in Multi-District Litigation ("MDL") 1203, the mass tort litigation involving Pondimin and Redux.

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1. Wyeth has also filed an opposition to notices of withdrawal of plaintiffs' amended motions for remand. For the reasons set forth in this memorandum, we need not address this issue.

All of the plaintiffs are citizens of Florida. They have sued Wyeth, the manufacturer of Pondimin and Redux, a related company, Wyeth Pharmaceuticals, as well as Eckerd Corporation ("Eckerd"), a retail pharmacy chain that allegedly marketed, sold, promoted, and/or distributed Wyeth's diet drugs to plaintiffs. Plaintiffs have also named as defendants several sales representatives of Wyeth. Wyeth and its related company are of diverse citizenship while Eckerd and the sales representatives are not.

Plaintiffs' complaints were originally filed in the Circuit Court of Hillsborough County, Florida in the Fall of 2003. Wyeth removed the actions to the United States District Court for the Middle District of Florida on the ground that the in-state defendants were fraudulently joined in an effort to defeat federal diversity jurisdiction. See 28 U.S.C. § 1332. Plaintiffs in these actions filed remand motions. In July, 2004, all of these cases were then transferred to this court as part of MDL 1203.

On September 30, 2004, plaintiffs filed a notice of withdrawal of their remand motion. Wyeth timely filed an "opposition to the notices of withdrawal of plaintiffs' motions for remand, or in the alternative, motion to dismiss the non-diverse defendants as fraudulently joined." Wyeth contends that plaintiffs cannot "avoid a judicial determination that they have fraudulently joined non-diverse defendants." Plaintiffs' counsel has refused to dismiss the non-diverse defendants from these

cases and has refused to agree not to seek remand once the cases are transferred back to the Middle District of Florida.

Wyeth contends that we should dismiss plaintiffs' claims against the non-diverse defendants pursuant to our duty "continually to inquire into our own jurisdiction." Chabal v. Reagan, 822 F.2d 349, 355 (3d Cir. 1987). Wyeth cites 28 U.S.C. § 1447(c), which provides "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." It argues that parties may not simply consent to federal jurisdiction. We agree.

This court addressed the issue of fraudulent joinder of non-diverse sales representatives and Eckerd in Memorandum and PTO No. 3856 in Bankston, et al. v. Wyeth, et al., CIV. A. No. 03-20765 (E.D. Pa. Aug. 12, 2004), which is also part of the nationwide diet drug litigation. As in Bankston, plaintiffs here deny Wyeth's allegations of fraudulent joinder of Eckerd and the sales representative, the non-diverse defendants. For the same reasons set forth in Bankston, we find that plaintiffs have fraudulently joined Eckerd and Wyeth's sales representatives in an effort to defeat federal subject matter jurisdiction. Accordingly, we will grant the motions of Wyeth to dismiss these non-diverse defendants.

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PRETRIAL ORDER NO.

AND NOW, this            day of November, 2004, for the  
reasons set forth in the accompanying Memorandum, it is hereby  
ORDERED that:

- (1) the motion of Wyeth to dismiss Eckerd and the  
sales representatives as fraudulently joined is GRANTED; and
- (2) plaintiffs' notices of withdrawal of their amended  
motions for remand are moot.

BY THE COURT:

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J.