

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

BRUESEWITZ, et al	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
WYETH, INC.	:	NO. 05-5994
Defendant	:	

MEMORANDUM

Baylson, J.

March 27, 2006

I. Introduction

Presently before this Court is a Motion to Remand, filed by Plaintiffs. On October 12, 2005, Pennsylvania residents Russell and Robalee Bruesewitz filed a negligence action on behalf of themselves and their minor daughter, Hannah Bruesewitz, (collectively “Plaintiffs”) in the Court of Common Pleas of Philadelphia County against Defendant Wyeth, Inc. (“Wyeth” or “Defendant”). Plaintiffs’ negligence action arises out of injuries allegedly caused by the administration of three Wyeth-manufactured vaccines — Diphtheria and Tetanus Toxoids and Pertussis Vaccine Adsorbed (“DTP”) — to Hannah Bruesewitz.

On November 15, 2005, Wyeth filed a notice of removal alleging diversity jurisdiction pursuant to 28 U.S.C. § 1332. On December 13, 2005, Plaintiffs timely filed a Motion to Remand (Doc. No. 4) arguing that complete diversity did not exist because the Plaintiffs and Wyeth are all citizens of Pennsylvania. On December 27, 2005, Wyeth filed a Response to Plaintiffs’ Motion (Doc. No. 5), and Plaintiffs filed a Reply on January 10, 2006 (Doc. No. 8). Finally, Wyeth filed a Motion to File a Surreply on January 23, 2006 (Doc. No. 10).

II. Background

In 1992, American Cyanamid Company (“Cyanamid”) was an independent pharmaceutical company incorporated in the state of Maine and headquartered in New Jersey. Def.’s Ex. 1, Lewin Aff. at ¶ 2 (affidavit submitted by Bradford A. Lewis, a senior attorney at Wyeth). Lederle Laboratories was an unincorporated division of Cyanamid. Id. at ¶ 3. Cyanamid manufactured and distributed vaccines, including DTP, which it sold under the trade name TRI-IMMUNOL® through Lederle Laboratories. Id.

In 1994, American Home Products Corporation (“APHC”), incorporated in New Jersey, acquired Cyanamid and its unincorporated divisions, including Lederle Laboratories. Id. at ¶ 4. At that time, APHC was responsible for the manufacturing, distribution and sale of TRI-IMMUNOL®. Id. In 2002, AHPC changed its name to Wyeth, and it is registered to conduct business in the State of Pennsylvania as Wyeth, Inc. Id.

III. Discussion

Federal district courts have jurisdiction over cases where the matter in controversy exceeds the sum or value of \$75,000, and there exists complete diversity between citizens of different states. 28 U.S.C. § 1332(a). “Lack of subject matter jurisdiction voids any decree entered in a federal court and the continuation of litigation in a federal court without jurisdiction would be futile.” Steel Valley Auth. v. Union Switch & Signal Div., 809 F.2d 1006, 1010 (3d Cir. 1987); Dunson v. McNeil-PPC, Inc., 346 F. Supp. 2d 735, 737 (E.D. Pa. 2004). Thus “[i]f the court determines that it lacks federal subject matter jurisdiction, then remand is mandatory.” Apoian v. Am. Home Prods., Corp., 108 F. Supp. 2d 454, 455 (E.D. Pa. 2000).

Federal “removal statutes are to be strictly construed against removal and all doubts

should be resolved in favor of remand.” Steel Valley Auth., 809 F.2d at 1010. In Brown v. Francis, 75 F.3d 860 (3d Cir. 1996), the Third Circuit interpreted “all doubts” to mean that if “there is any doubt as to the propriety of removal, [the] case should not be removed to federal court.” Id. at 865. The “removing party bears the burden of proving the existence of federal subject matter jurisdiction.” Apoian, 108 F. Supp. 2d at 455. In the instant case, the Plaintiffs are citizens of Pennsylvania, and the Defendant’s citizenship is in controversy.

A corporation is a citizen of both the State in which it was incorporated and the State “where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). It follows that a corporation may be a citizen of two states, but a corporation only has one principal place of business. To determine where a corporation has its principal place of business, the Third Circuit applies the “center of corporate activities” test. Kelly v. U.S. Steel Corp., 284 F.2d 850 (3d Cir. 1960).

Under this test, the Kelly court requires courts to ascertain “the headquarters of the day-to-day corporate activity and management.” Id. at 853-54; Mennen Co. v. Atl. Mut. Ins. Co., 147 F.3d 287, 291 (3d Cir. 1998) (summarizing Kelly test). To make this determination, a court looks not “where . . . final decisions are made on corporate policy,” but rather where the corporation “conducts its affairs.” Grand Union Supermarkets of the V.I., Inc. v. H.E. Lockhart Mgmt., Inc., 316 F.3d 408, 411 (3d Cir. 2003) (citing Kelly, 284 F.2d at 854). In Kelly, the Third Circuit looked to the location and composition of the defendant corporation’s Operation Policy Committee, which was responsible for conducting the corporation’s business in manufacturing, mining, transportation and general operation, along with policy decision-making and various appointment powers, the location of its Vice Presidents, General Solicitor and the

employees to determine the corporation's principal place of business. Kelly, 284 F.2d at 854.

Relevant factors of lesser importance include: (1) location of physical plants; (2) location of assets; and (3) location of employees. Mennen, 147 F.3d at 391; Kelly, 284 F.2d at 854. The Kelly court also considered several other factors upon which it did not place great weight. For example, "the place of the meeting of the shareholders alone cannot be the principal place of business of a corporation. Although, the situs of the board of director's meetings and financing decisions may be a factor in determining a corporation's principal place of business, this alone will ordinarily not suffice." Wheelabrator Frackville Energy Co., Inc. v. Morea Culm Servs., Inc., 741 F. Supp. 536, 539 (E.D. Pa. 1990) (internal citations omitted); see also Alpha Portland Cement Co. v. MacDonald Engineering Co., 224 F.Supp. 714 (E.D. Pa. 1963) (court found state with majority of executive-administrative employees and corporate offices to be principal place of business).

Plaintiffs contend that Defendant's principal place of business is Pennsylvania because Wyeth Pharmaceutical, its largest division which employs over 44,000 workers, is headquartered in Collegeville and Great Valley, Pennsylvania. Pl.'s Mot. to Remand at 3. Furthermore, the Plaintiffs argue that the Defendant has failed to meet its burden to prove that New Jersey is its principal place of business. Pl.'s Reply at 3. The Defendant maintains, however, that the attached affidavit submitted by Mr. Lewin as well as its 10-K form, demonstrates that its principal place of business is New Jersey. Def.'s Resp. at 6-7.

After careful consideration and application of the Kelly standard, this Court holds that Wyeth has met its burden to prove that New Jersey is its principal place of business, and thus the Motion to Remand will be denied. New Jersey is home to Wyeth's worldwide corporate

headquarters, and Wyeth identifies New Jersey as its principal executive offices on its corporate disclosure filings to the Securities and Exchange Commission, including its 2004 Form 10-K. Pl. Ex. A at ¶¶ 1, 18. Additionally, a substantial majority of its principal corporate officers' primary offices are located in New Jersey. Def.'s Ex. 1 - Lewin Aff. at ¶ 8. Wyeth's corporate officers who are based in New Jersey include its President and Chief Executive Officer, Executive Vice President and Chief Financial Officer, Vice President and Treasurer, Senior Vice President and General Counsel, Senior Vice President of Human Resources, Corporate and Associate General Counsel, and Vice President and Controller. Id. Consequently, it is clear that New Jersey is home to Wyeth's headquarters of day-to-day corporate activities and management decisions, the most important of the Kelly factors.

Factors receiving lesser weight by the Kelly court also support the conclusion that New Jersey is Wyeth's principal place of business. As for its Board of Directors meetings, Wyeth typically holds these meetings in New Jersey. Id. at ¶ 7. Wyeth also houses its corporate books and records in New Jersey. Id. Furthermore, Wyeth's federal and state income tax returns are prepared and filed from New Jersey, its insurance documents and records are kept in the normal course of business in New Jersey and Wyeth's medical, pension and disability plans are maintained in either New Jersey or New York. Id. at ¶¶ 9-11. Finally, Judge Bechtel of this Court has previously determined that Wyeth (formerly AHPC) has its principal place of business in Madison, New Jersey. See In re Diet Drugs Prods. Liab. Litig., 2000 WL 1222042, at *3 (E.D. Pa. Aug. 28, 2000) (court had subject matter jurisdiction because class representatives were citizens of Pennsylvania and AHPC was a Delaware corporation, which had its principal place of business in New Jersey); In re Diet Drugs Prods. Liab. Litig., 1999 WL 673066, at *5 (E.D. Pa.

Aug. 26, 1999) (pursuant to stipulation, AHPC was a citizen of Delaware, its state of incorporation, and New Jersey, its principal place of business).¹

IV. Conclusion

Wyeth has met its burden to prove that its principal place of business is New Jersey. Since Plaintiffs are citizens of Pennsylvania and Wyeth is a citizen of both Delaware and New Jersey, complete diversity exists between the parties. Therefore, this court has jurisdiction over the above captioned matter, and Plaintiffs' Motion to Remand is denied. Moreover, Defendant's Motion to File a Surreply (Doc. No. 10) is granted.

An appropriate Order follows.

¹Plaintiffs' argument that this Court should find Pennsylvania to be Wyeth's principal place of business because Wyeth Pharmaceuticals is headquartered in Pennsylvania wholly fails. First, *Wyeth Inc.*, the parent organization, is the named defendant; its pharmaceutical division is not a named party in this case. To the extent that the caption includes mention of "Wyeth Laboratories, Wyeth-Ayerst Laboratories, Wyeth Lederle Vaccines, and Lederle Laboratories," we note that Plaintiffs only assert that Wyeth, Inc. was "formerly known as" these entities. In fact, Wyeth, Inc. has never been known by any of these names. Def.'s Ex. 1 - Lewin Aff. at ¶¶ 14-17. Second, even if it were a named party, a corporation's unincorporated division is not an independent entity for diversity purposes. "[A] subsidiary corporation which is incorporated as a separate entity from its parent corporation is considered to have its own principal place of business." Quaker State Dyeing & Finishing Co., Inc., v. ITT Terryphone Corp., 461 F.2d 1140 (3d Cir. 1972). Unlike a subsidiary corporation, however, "an unincorporated division has the same citizenship of the corporation of which it is a part." Kotzo v. Vitamin World, 1991 WL 181204, at *1 (E.D. Pa. Sept. 11, 1991). See also Mount Olivet Tabernacle Church v. Emerson Elec. Co., 1997 WL 89118, at *1 (E.D. Pa. Feb. 26, 1997) (holding an unincorporated division shares the citizenship of the company of which it was a part). The entities are entitled to different treatment because "[a] division of a corporation does not possess the formal separateness upon which the general rule is based, and thus is not an independent entity for jurisdictional purposes." Schwartz v. Elec. Data Sys., Inc., 913 F.2d 279, 284 (6th Cir. 1990). Here, because Wyeth Pharmaceutical is an unincorporated division, it simply is not determinative as to *Wyeth Inc.*'s principal place of business. Mears v. McNeil-PPC, Inc., 1995 WL 684862, at *1 (E.D. Pa. Nov. 15, 1995) ("citizenship of a corporation for diversity purposes cannot be based upon the location of an unincorporated division of a company.").

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ORDER

AND NOW, this day of March 2006, based on the foregoing memorandum and upon consideration of the pleadings and briefs, it is hereby ORDERED that Plaintiffs' Motion to Remand (Doc. No. 4) is DENIED. Defendant's Motion to File a Surreply (Doc. No. 10) is GRANTED.

BY THE COURT:

/s/ **Michael M. Baylson**

MICHAEL M. BAYLSON, U.S.D.J.