

Products Corporation, CIV.A. No. 99-20593 (E.D. Pa. Aug. 28, 2000) (Pretrial Order ("PTO") No. 1415), which encompassed persons who ingested Wyeth's diet drugs Pondimin and Redux. See e.g., Settlement Agreement at § IV.(A), (B), and (D)(4). Under the Settlement Agreement, those who have exercised an intermediate or back-end opt-out may sue Wyeth for compensatory damages in the tort system rather than obtain benefits from the AHP Settlement Trust.

Plaintiff originally filed her complaint in the Circuit Court of Hillsborough County, Florida on November 24, 2003, more than six years after the diet drugs were withdrawn from the market in September, 1997. On December 18, 2003, Wyeth removed the case to the United States District Court for the Middle District of Florida, asserting that plaintiff fraudulently joined Eckerd and Williams. Thereafter, plaintiff moved to remand this action under 28 U.S.C. § 1447(c). The Florida federal court deferred ruling on plaintiff's motion, and the case was then transferred to this court as part of MDL 1203.

Wyeth contends that remand is inappropriate because Eckerd and Williams are fraudulently joined. This court addressed similar issues 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. In Bankston, we laid out in detail the standards for removal based on diversity jurisdiction and fraudulent joinder. See id. Because we examined the same legal issues as they

applied to nearly identical facts in Bankston, we need not revisit them here.

As in Bankston, plaintiff argues that complete diversity does not exist as required by 28 U.S.C. § 1332. Similarly, plaintiff here denies Wyeth's allegations of fraudulent joinder of Eckerd and Williams, the non-diverse defendants. For the same reasons set forth in Bankston, we find that plaintiff has fraudulently joined Eckerd and Williams in an effort to defeat federal diversity jurisdiction.

We will deny plaintiff's motion to remand this action to the Circuit Court of Hillsborough County, Florida and will dismiss the complaint as to all defendants except Wyeth and Wyeth Pharmaceuticals.

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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HELEN TOTH	:	
v.	:	CIVIL ACTION NO. 04-23801
WYETH, et al.	:	

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 plaintiff to remand is DENIED; and
- (2) all defendants except Wyeth and Wyeth
Pharmaceuticals are DISMISSED.

BY THE COURT:

J.