UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: ABBOTT LABORATORIES, et al., PRETERM INFANT NUTRITION PRODUCTS LIABILITY LITIGATION	)	**MDL No. 3026**
	)	**Master Docket No. 22 C 71**
This Document Relates to: Removed Pennsylvania Cases[1]	)	**Judge Rebecca R. Pallmeyer**

MEMORANDUM OPINION AND ORDER

In dozens of cases, parents of premature infants have alleged that infant formula manufactured by Defendant Manufacturers—Abbott Laboratories ("Abbott") and Mead Johnson & Company, LLC and Mead Johnson Nutrition Company (collectively, "Mead Johnson")—caused premature infants to develop necrotizing enterocolitis ("NEC"). The Judicial Panel on Multidistrict Litigation has consolidated a number of these cases for pretrial proceedings before this court. In

[1] This opinion relates to the cases that were originally filed in Pennsylvania state court and have pending remand motions. Specifically, the opinion concerns the following cases with Plaintiffs who are Pennsylvania citizens: *Abdullah v. Mead Johnson & Co.* ([22] in Case No. 1:22-cv-02511); *Drayton v. Mead Johnson & Co.* ([22] in Case No. 1:22-cv-02513); *Stills v. Mead Johnson & Co.* ([23] in Case No. 1:22-cv-02515); *Gray v. Mead Johnson & Co.* ([17] in Case No. 1:22-cv-02714); *Henderson v. Mead Johnson & Co.* ([24] in Case No. 1:22-cv-02611); *Hines v. Mead Johnson & Co.* ([23] in Case No. 1:22-cv-02612); *Johnson v. Mead Johnson & Co.* ([23] in Case No. 1:22-cv-02613); *McMillian v. Mead Johnson & Co.* ([24] in Case No. 1:22-cv-02614); *Moment v. Mead Johnson & Co.* ([24] in Case No. 1:22-cv-02615); *Sanders v. Mead Johnson & Co.* ([23] in Case No. 1:22-cv-02617); *Short v. Mead Johnson & Co.* ([24] in Case No. 1:22-cv-02618); *Whitfield v. Mead Johnson & Co.* ([23] in Case No. 1:22-cv-02619); *Thomas v. Mead Johnson & Co.* ([23] in Case No. 1:22-cv-02620); *Williams v. Mead Johnson & Co.* ([23] in Case No. 1:22-cv-02621); *Witherspoon v. Mead Johnson & Co.* ([22] in Case No. 1:22-cv-02623); *Goodmond v. Mead Johnson & Co.* ([16] in Case No. 1:22-cv-02712); *Goodmond v. Mead Johnson & Co.* ([16] in Case No. 1:22-cv-02713); *Kajuffa v. Mead Johnson & Co.* ([19] in Case No. 1:22-cv-02716); *Mays v. Mead Johnson & Co.* ([17] in Case No. 1:22-cv-02719); *Parker v. Mead Johnson & Co.* ([19] in Case No. 1:22-cv-02760); *Ross v. Mead Johnson & Co.* ([19] in Case No. 1:22-cv-02761); *Wiggins v. Mead Johnson & Co.* ([19] in Case No. 1:22-cv-02762); *Watson v. Mead Johnson & Co.* ([16] in Case No. 1:22-cv-02763). The opinion also concerns the following cases with Plaintiffs who are non-Pennsylvania citizens: *Carter v. Mead Johnson & Co.* ([19] in Case No. 1:22-cv-02516); *Padilla v. Mead Johnson & Co.* ([18] in Case No. 1:22-cv-02720); *Taylor v. Mead Johnson & Co.* ([19] in Case No. 1:22-cv-02517); *Walker-Savage v. Mead Johnson & Co.* ([19] in Case No. 1:22-cv-02616); *Weiger v. Mead Johnson & Co.* ([21] in Case No. 1:22-cv-02518); *Wieger v. Mead Johnson & Co.* ([22] in Case No. 1:22-cv-02519).

this opinion, the court addresses motions for remand filed by Plaintiffs in cases originally filed in Pennsylvania state court and now before this court. Unlike most other cases in this MDL, the complaints in these Pennsylvania lawsuits include negligence claims against the in-state hospitals where the preterm infants were fed the formula at issue ("Defendant Hospitals"). Resisting remand, Abbott argues that Plaintiffs fraudulently joined these in-state hospitals to defeat complete diversity, *see* 28 U.S.C. § 1332(a), or to trigger the forum-defendant rule and preclude removal. *See* 28 U.S.C. § 1441(b)(2). Because Plaintiffs have no good-faith intention to pursue any viable claims against the Hospitals, Abbott urges, the court should deny their remand motions. For the reasons explained below, the court defers ruling on these motions, pending limited supplemental briefing.

BACKGROUND

The following facts, primarily taken from Plaintiffs' complaints, are assumed to be true at this stage of the proceedings.[2] The court first recites the relevant jurisdictional facts, and then turns to Plaintiffs' substantive allegations, focusing on those levied against the Defendant Hospitals.

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[2] The parties have not identified any differences among the numerous complaints originally filed in Pennsylvania state court, with one exception. As Plaintiffs point out, in a small number of cases, the parties are completely diverse, but the named Plaintiffs are non-Pennsylvania citizens—which means the forum-defendant rule (rather than a lack of complete diversity) is the basis for their request to remand to state court. *See supra* at note 1.

As the allegations appear otherwise to be substantively identical, the court uses the following documents from *Parker v. Mead Johnson & Co.* (Case No. 1:22-cv-02760) as representative: Plaintiff's Complaint ([1-1], hereinafter "Parker Compl."), Abbott's Notice of Removal ([1], hereinafter "Parker Notice of Removal"), and Plaintiff's Motion to Remand ([19], hereinafter "Parker Mot. to Remand"). Other citations are to the MDL Master Docket, No.1:22-cv-00071: Abbott's Omnibus Memorandum of Law in Opposition to Plaintiffs' Motions to Remand to Pennsylvania ([115], hereinafter "Def.'s Opp."), and Pennsylvania Plaintiffs' Reply in Support of Their Motions to Remand ([125], hereinafter "Pls.' Reply").

For arguments specifically concerning the non-Pennsylvania Plaintiffs, the court cites to the following documents in *Carter v. Mead Johnson & Co.* (Case No. 1:22-cv-02516): Plaintiff's Complaint ([1-1], hereinafter "Carter Compl."), and Plaintiff's Motion to Remand ([19], hereinafter "Carter Mot. to Remand"). The court also cites to the Non-Pennsylvania Plaintiffs' Reply in Support of Their Motions to Remand ([126] in Master Docket No. 1:22-cv-00071, hereinafter "Non-Pa. Pls.' Reply").

I. Jurisdictional Facts

Defendant Abbott is incorporated in and has its principal place of business in Illinois. (Parker Compl. ¶ 5.) Defendant Mead Johnson is incorporated in Delaware, and has its principal place of business in either Illinois (according to Plaintiffs) or Indiana (according to Defendants). (*Id.* ¶ 4; Parker Notice of Removal ¶ 31). The Defendant Hospitals are non-profit corporations which are organized under the laws of Pennsylvania and have their principal places of business in Pennsylvania. (Parker Compl. ¶ 6). It is undisputed that each lawsuit alleges an amount in controversy that exceeds the jurisdictional amount of $75,000. (*See, e.g.*, Parker Notice of Removal ¶¶ 26–27.)

In most of the instant cases with pending remand motions, Plaintiffs are citizens of Pennsylvania. (*See, e.g.*, Parker Compl. ¶ 3.) In these cases, there is complete diversity—and the statutory requirements for diversity jurisdiction are met—only if the Defendant Hospitals' Pennsylvania citizenship is disregarded. *See* 28 U.S.C. § 1332(a). In a smaller number of cases, Plaintiffs are citizens of states other than Pennsylvania, Delaware, Illinois, or Indiana. (*See, e.g.*, Carter Compl. ¶ 3.) In these cases, all statutory requirements for diversity jurisdiction are satisfied. But the Hospitals' presence in the cases triggers the removal statute's forum-defendant rule, which precludes removal of diversity actions where any "properly joined and served" defendant is a citizen of the forum-state (here, Pennsylvania). *See* 28 U.S.C. § 1441(b)(2); *see also supra* at note 1 (listing cases by Plaintiffs' citizenship).

II. Allegations Against In-State Hospitals

Plaintiffs' lawsuits arise out of injuries suffered by premature infants, who were given Defendant Manufacturers' cow's-milk-based infant formula at a Defendant Hospital. (Parker Compl. ¶ 1.) Plaintiffs allege that this formula caused premature infants to develop necrotizing enterocolitis ("NEC"), a condition that occurs when bacteria breaches the walls of the intestine, and can result in serious injury or death. (*Id.* ¶¶ 1, 14.) "Preterm and low-birth-weight infants are especially susceptible to NEC because of their underdeveloped digestive systems," and Plaintiffs

allege that "[e]xtensive scientific research" confirms that cow's-milk-based feeding products cause NEC in premature infants. (*Id.* ¶ 15.) They allege, further, that at the time the infants in these cases were fed Defendant Manufacturers' products, "the science clearly demonstrated to Defendants that these products cause NEC," and there was "scientific consensus that the Defendant Manufacturers' cow's[-]milk-based products present a dire threat to the health and development of preterm infants." (*Id.* ¶¶ 27–28.) Despite knowing of the increased risk of NEC for preterm infants, Defendant Manufacturers are alleged to "have continued to sell their unreasonably dangerous products" without sufficient warning. (*Id.* ¶¶ 29, 47, 52.)

The Defendant Hospitals were also allegedly "aware of the significantly increased risk of NEC and death associated with providing Abbott's and Mead's cow's[-]milk-based products to its premature infant patients," and "knew or should have known" that these products "can cause NEC in premature infants." (*Id.* ¶ 55.) Instead of "warning of those dangers" or "supplying breast milk-based feeding products to preterm infants," the Defendant Hospitals "continued to source, distribute, and supply the Defendant Manufacturers' products in their hospitals without providing full and adequate warnings of the attendant risks to parents, healthcare professionals, and other medical staff at its relevant facilities." (*Id.*) Plaintiffs allege that there are safer options besides cow's-milk-based products for feeding preterm infants—specifically, "the mother's own milk," "pasteurized donor breast milk" (which can be delivered nationwide through "an established network"), and "shelf-stable formula and fortifiers derived from pasteurized breast milk." (*Id.* ¶ 23.) Plaintiffs further assert that other "hospitals across the country warn and obtain consent from parents" and "provid[e] other safer forms of nutrition, such as donor breast milk." (*Id.* ¶ 56.) The complaint allegations provide no further information on how other hospitals (as opposed to these hospitals' medical professionals) "obtain consent."

According to Plaintiffs, the Hospitals' "failure to warn of the risks posed by the Defendant Manufacturers' products is entrenched (and compounded) by the financial benefits [they] accrue[] from [their] relationships with the Defendant Manufacturers." (*Id.* ¶ 57.) Defendant Manufacturers

are alleged to "incentivize hospitals that know the risks to use their products by providing them to the hospital for free or at a significant discount." (*Id.* ¶ 28.) Thus, Plaintiffs appear to suggest, in return for "receiv[ing] the Defendant Manufacturers' cow's[-]milk-based products for free or at a significant discount," the Hospitals granted Defendant Manufacturers' sales representatives access to hospital professionals and medical staff. (*Id.* ¶ 57.) The sales representatives then "provided deceptive information that [the Hospitals] reasonably knew or should have known would ultimately reach parents through those staff." (*Id.*) The Hospitals "knowingly authorized" these sales representatives "to market, advertise, distribute, and/or sell their products" at the Hospital, and "knowingly allowed" the representatives "to routinely misrepresent the risks and benefits of Defendants' products to [the Hospital]'s healthcare professionals and medical staff." (*Id.* ¶¶ 113–14.)

Based on these allegations, Plaintiffs have brought numerous claims against Abbott and Mead under Pennsylvania law: strict liability for design defect and failure to warn, intentional and negligent misrepresentation, and general negligence. (*See id.* ¶¶ 61–107.) Plaintiffs also brought two state-law claims against the Defendant Hospitals: negligent failure to warn and "negligent corporate liability of healthcare provider" (that is, a corporate negligence claim under Pennsylvania law). (*See id.* ¶¶ 108–42.)

For the negligent failure-to-warn claim, Plaintiffs allege that Defendant Hospitals were purchasers, suppliers, or distributors of the cow's-milk-based products at issue in this litigation, and owed a duty to the general consuming public to purchase, supply, and distribute products free of unreasonable risk of harm. (*Id.* ¶ 109.) The Hospitals allegedly breached this duty by failing to warn their medical professionals and patients about Defendant Manufacturers' products, including by failing "to provide a warning in a method reasonably calculated/expected to reach the parents of newborns," "to warn or instruct its healthcare professionals and medical staff on the information that should be provided to parents in order to make an informed choice" about the

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