

Vanderwerf v. Glaxosmithkline, PLC., Not Reported in F.Supp.2d (2005)

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2005 WL 6151369

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United States District Court,
E.D. Pennsylvania.

Debra VANDERWERF, et al., Plaintiff

v.

GLAXOSMITHKLINE,
PLC., et al., Defendants.

Civil Action No. 05-1315. | May 5, 2005.

Attorneys and Law Firms

Harris L. Pogust, Pogust & Braslow LLC,
Conshohocken, PA, for Plaintiff.

Andrew G. Berg, King & Spalding LLP, Washington,
DC, Anthony Vale, Edward J. Sackman, Pepper
Hamilton LLP, Philadelphia, PA, for Defendants.

Opinion

ORDER

MARY A. McLAUGHLIN, District Judge.

*1 AND NOW, this 5th day of May 2005, upon consideration of the plaintiffs' Motion to Remand (Docket No. 8) and Defendant Eli Lilly and Company's Opposition to Plaintiffs' Motion for Remand, IT IS HEREBY ORDERED that the motion is DENIED.

This case was initially brought in the Court of Common Pleas of Philadelphia County. Eli Lilly and

Company removed to this Court on March 21, 2005. The plaintiffs have now moved to remand this case to state court, pursuant to 28 U.S.C. § 1447(c).

The basis of the plaintiffs' motion to remand is that the presence of defendant SmithKline Beecham Corporation, a Pennsylvania resident, defeats removal jurisdiction. Eli Lilly and Company argues that removal was proper under 28 U.S.C. § 1441(b) because there was no properly served in-state defendant in the action at the time of removal.

Diversity of citizenship actions, such as this one, are removable "only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought." 28 U.S.C. § 1441(b) (emphasis added). Under this provision, the presence of an unserved defendant with residence in the forum state does not defeat removal where there is complete diversity of citizenship.¹ See *Republic Western Insurance Co. v. Int'l Ins. Co.*, 765 F.Supp. 628 (N.D.Cal.1991); see also 14A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3723 (3d ed. 1998) ("[T]he language in Section 1441(b) ... implies that a resident defendant who has not been served may be ignored in determining removability.").

The plaintiffs admit that at the time Eli Lilly and Company filed its Notice of Removal, they had not served SmithKline Beecham Corporation. See Pls.' Mem. Mot. Remand. Because SmithKline Beecham Corporation had not yet been served at the time that Eli Lilly and Company filed its Notice of Removal, and the parties do not dispute that the action meets the requirements for diversity of citizenship jurisdiction, this case was removed properly under section 1441(b).

Footnotes

1 The cases on which the plaintiffs rely in their memorandum for the motion to remand are inapposite. They were cases where there was not complete diversity of citizenship. See *Pullman Co. v. Jenkins*, 305 U.S. 534, 541, 59 S.Ct. 347, 83 L.Ed. 334 (1939); *Castner v. Exxon Company*, 563 F.Supp. 684, 687 (E.D.Pa.1983). Here, there is complete diversity of citizenship.