

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

JESSICA CASEY, MELODY EDWARDS, and
DEBBIE FOSTER, individually, and, on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

Civil Action No. 17-521

ROGER C. DENTON, individually;
SCHLICHTER, BOGARD & DENTON, L.L.P.;
MICHAEL S. BURG, individually; BURG,
SIMPSON, ELDREDGE, HERSH &
JARDINE, P.C.; MICHAEL A. LONDON,
individually, DOUGLAS & LONDON, P.C.;
MARK R. NIEMEYER, individually;
NIEMEYER, GREBEL & KRUSE, LLC.;
DANIEL P. MASSEY, individually; DANIEL
MASSEY LAW FIRM, P.C.; DAVID M.
PETERSON, individually; PETERSON &
ASSOCIATES, P.C.; GREGORY McEWEN,
individually; and McEWEN LAW FIRM, LTD.

Defendants.

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, pursuant to §§ 1331, 1367, and 1446, Defendants Michael S. Burg and Burg, Simpson, Eldredge, Hersh & Jardine, P.C. hereby remove this action to the United States District Court for the Southern District of Illinois from the Circuit Court of the Twentieth Judicial Circuit, St. Clair County, Illinois, where this action is now pending. For the reasons explained below, the Court has original jurisdiction over this matter pursuant to 28

U.S.C. § 1331 because it presents a substantial federal question. The Court also has supplemental jurisdiction over this matter pursuant to U.S.C. § 1367(a).

I. THE NATURE OF THE ACTION

1. On or about May 8, 2017, Plaintiffs Jessica Casey, Melody Edwards, and Debbie Foster filed a putative class-action complaint in the Circuit Court of the Twentieth Judicial Circuit, St. Clair County, Illinois, captioned *Jessica Casey, Melody Edwards, and Debbie Foster, individually, and, on behalf of themselves and all others similarly situated v. Roger C. Denton, individually; Schlichter, Bogard & Denton, L.L.P.; Michael S. Burg, individually; Burg, Simpson, Eldredge, Hersh & Jardine, P.C.; Michael A. London, individually, Douglas & London, P.C.; Mark R. Niemeyer, individually; Niemeyer, Grebel & Kruse, L.L.C.; Daniel P. Massey, individually; Daniel Massey Law Firm, P.C.; David M. Peterson; Peterson & Associates, P.C.; Gregory McEwen, individually; and McEwen Law Firm, Ltd.*, No. 17-L-250 (“Complaint”).

2. This class action stems from multidistrict litigation consolidated in this Court, captioned *In re Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, MDL 2100, No. 3:09-md-02100-DRH-CJP (the “MDL”). The MDL consolidated individual personal injury lawsuits relating to Bayer Corporation-manufactured combined hormonal oral contraceptives, including YAZ, Yasmin and the generic equivalent Gianvi. As part of the MDL, pending in the United States District Court for the Southern District of Illinois, before the Honorable Judge David R. Herndon, thousands of women brought personal injury lawsuits against Bayer Corporation alleging varying personal injuries as a result of thrombotic events.

3. The Complaint is brought on behalf of Plaintiffs and the putative class defined as follows:

All individuals who were prescribed, obtained and consumed Bayer-manufactured Yaz and/or its generic, Bayer-manufactured counterparts from January 1, 1999 up to and including the present and whose cases against Bayer were dismissed with prejudice in the U.S. District Court by its order of January 7, 2016 (docketed January 11, 2016) for failure to comply with that Court's standing Case Management Order No. 79

Compl. ¶ 26.

4. According to Plaintiffs, four of the individual Defendants were either liaison or court-designated lead counsel in the MDL (the "Lead/Liaison Defendants"). Compl. ¶¶ 12, 14, 16, 18. They were individually appointed by the Court in its Order #2: Order Appointing Plaintiffs' Steering Committee ("Order #2"), pursuant to its authority under 28 U.S.C. § 1407. *See* Compl. ¶ 54; Order #2, MDL Doc 180, *Exhibit 1*.

5. Plaintiffs allege that the Lead/Liaison Defendants were "reposed by the Court and applicable [federal] statutes with duties to the putative class members of trust, confidence and loyalty." Compl. ¶ 57 (emphasis added). They further allege that the Lead/Liaison Defendants "maintained the right to control the prosecution of the named class Plaintiff's cases." *Id.* ¶ 64.

6. Plaintiffs then claim that Lead/Liaison Defendants breached their alleged duties by failing to comply with an order issued by this Court, Case Management Order No. 79 ("CMO 79"). *Id.* ¶¶ 69–75. Specifically, they allege that Lead/Liaison Defendants are responsible for January 11, 2016, orders of this Court dismissing Plaintiffs' claims in the MDL. *Id.* ¶ 76.

II. BASES FOR REMOVAL

7. The Court has original jurisdiction over this civil action because it is a "civil action arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

Among other things, Plaintiffs' allegations call on the Court to reach determinations regarding the nature of, and the extent of, the duties of lead and liaison counsel in federal multidistrict litigation, appointed by a federal court, pursuant to federal statute. *See* 28 U.S.C. § 1407. Moreover, this lawsuit will require interpretation of how those duties were exercised pursuant to orders of this Court.

8. The Court also has supplemental jurisdiction to its original jurisdiction in the MDL. *See* 28 U.S.C. § 1367(a). This civil action and the MDL derive from a common nucleus of operative fact. Moreover, the Court has "obtained total familiarity with the subject matter of the [underlying] suit and the professional services of the" Defendants. *Achtman v. Kirby, McInerney & Squire, LLP*, 464 F.3d 328, 336 (2d Cir. 2006) (affirming exercise of supplemental jurisdiction over legal malpractice suit arising from a federal securities class action).

III. COMPLIANCE WITH 28 U.S.C. § 1446.

9. On or about May 11, 2017, Plaintiffs sent Defendant Burg, Simpson, Eldredge, Hersh & Jardine, P.C, and Defendant Michael S. Burg a Summons and Notice and Acknowledgment of Receipt of Summons and Complaint, via Certified mail. Pursuant to section 2-213 of the Illinois Code of Civil Procedure, service is not effected unless and until Defendants return the acknowledgment.

10. Formal service is not a prerequisite for removal. *Butner v. Boehringer Ingelheim Pharms., Inc. (In re Pradaxa)*, 2013 U.S. Dist. LEXIS 24313, *11 (S.D. Ill. Feb. 22, 2013) (Herndon, J.) (noting that 28 U.S.C. 1446 does not require that a defendant formally receive a complaint before removing). Removal is therefore timely.

11. To undersigned counsel's knowledge, while other parties also may have been asked to waive service, no party actually has been served. Thus, there are no parties "properly joined *and served*" who would be required to provide consent under 28 U.S.C. § 1446(2)(A) (emphasis added). *See also Troxell v. Fedders of N. Am., Inc.*, 160 F.3d 381, 383 (7th Cir. 1998) (transmittal of a waiver does not constitute service); *Howard v. Riley*, No. 13-CV-1231, 2013 WL 4201409, at *2 (C.D. Ill. Aug. 14, 2013) (for purposes of 28 U.S.C. § 1446(2)(A), "[s]ending a waiver of service to a defendant does not constitute service of process").

12. This Notice of Removal is being timely filed and served pursuant to 28 U.S.C. § 1446(b). Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served by overnight delivery on Plaintiffs by service upon their attorneys of record, and will be filed with the Circuit Court of the Twentieth Judicial Circuit, St. Clair County, Illinois.

13. A copy of all process, pleadings, and orders in this action are attached as *Exhibit 2*. The civil cover sheet is attached as *Exhibit 3*.

14. By filing this Notice, Defendants do not waive and instead expressly reserve their right to raise any and all defenses and objections that may be available to them.

WHEREFORE, Defendants Michael S. Burg and Burg and Simpson, Eldredge, Hersh & Jardine, P.C. respectfully request that the above-captioned action be removed from the Circuit Court of the Twentieth Judicial Circuit, St. Clair County, Illinois, to the United States District Court for the Southern District of Illinois.

Dated: May 16, 2017

Respectfully submitted,

s/ Peter W. Herzog III

Peter W. Herzog III
Thomas J. Palazzolo
Wheeler Trigg O'Donnell LLP
211 N. Broadway, Suite 2825
St. Louis, Missouri 63102-2110
Telephone: 314.326.4128
Facsimile: 303.244.1879
Email: pherzog@wtotrial.com
palazzolo@wtotrial.com

Attorneys for Defendants Michael S. Burg and
Burg, Simpson, Eldredge, Hersh & Jardine, P.C.

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2017, I mailed by United States Postal Service, the documents to the following:

Kevin Rogers
Law Offices of Kevin Rogers
307 N. Michigan Avenue, Suite 305
Chicago, IL 60601
Telephone: 312.332.1188
Facsimile: 312.332.0192
kevin@kevinrogerslaw.com

Attorneys for the Plaintiffs and the Class

I hereby certify that on May 16, 2017, I emailed the documents to the following:

Daniel P. Massey
THE MASSEY LAW FIRM, P.C.
14300 N. Northsight Blvd., Suite 108
Scottsdale, AZ 85260
Telephone: 602.955.0055
Facsimile: 602.955.3161
dan@masseylaw.com

Gregory McEwen
McEWEN LAW FIRM LTD
5850 Blackshire Path
Inver Grove Heights, MN 55076
Telephone: 651.224.3833
Facsimile: 651.223.5790
gmcewen@mcewenlaw.com

Michael A. London
DOUGLAS & LONDON P.C.
59 Maiden Lane 6th floor
New York, NY 10038
Telephone: 212.566.7500
Facsimile: 212.566.7501
mlondon@douglasandlondon.com

Roger C. Denton
SCHLICHTER BOGARD & DENTON
100 South Fourth Street, Suite 1200
St. Louis, Missouri 63102
Telephone: 314.621.6115
Facsimile: 314.621.7151
rdenton@uselaws.com

Mark R. Niemeyer
NIEMEYER GREBEL & KRUSE, LLC
10 S. Broadway, Suite 1125
St. Louis, MO 63102
Telephone: 314.387.9181
Facsimile: 314.665.3017
niemeyer@ngklawfirm.com

David M. Peterson
PETERSON & ASSOCIATES, P.C.
801 W. 47th Street Suite 107
Kansas City, MO 64112
Telephone: 816.531.4440
Facsimile: 816.531.0660
dmp@petersonlawfirm.com

/s/ Peter W. Herzog III
