

1 **UNITED STATES COURT OF APPEALS**
2 **FOR THE SECOND CIRCUIT**

3 August Term 2009

4 (Submitted: August 26, 2009)

Decided: January 27, 2010)

5 Docket No. 08-3487-cv

6 GREG BOUNDS,

7 Plaintiff-Appellant,

8 - v. -

9 PINE BELT MENTAL HEALTH CARE RESOURCES, WALID RAHHAL-MOHAMED,
10 M.D., CHRIS LAMOUSIN, M.D. and ASIM ULUSARAC, M.D.,

11 Defendants-Appellees,

12 ELI LILLY and COMPANY,

13 Defendants.

14 Before: MINER, POOLER, and KATZMANN, Circuit Judges.

15 Appeal from an order entered in the United States District Court for the Eastern District
16 of New York (Weinstein, J.) denying reconsideration of a judgment entered in the United States
17 District Court for the Southern District of Mississippi (Starrett, J.) denying a motion by plaintiff-
18 appellant, a citizen of Mississippi, to remand the action to the Circuit Court of Forrest County,
19 Mississippi following its removal to the Federal District Court by defendant-appellee drug
20 manufacturer, a citizen of Indiana; and granting a motion by defendants-appellees, a mental
21 health facility and three physicians employed there, all citizens of Mississippi, to dismiss the
22 complaint for failure to state a claim against the Mississippi citizen defendants in an action
23 asserting malpractice and negligence claims against them and products liability claims against the
24 drug manufacturer, the District Court having determined: (1) that plaintiff had failed to comply
25 with the notice requirements of the Mississippi Tort Claims Act, requiring dismissal of the
26 claims against all the Mississippi citizen defendants; (2) that the Mississippi citizen defendants
27 therefore were improperly joined with the non-citizen drug manufacturer in the removed state
28 action; and (3) that diversity jurisdiction accordingly lies in federal court such as to warrant
29 denial of remand.

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31 Reversed with instructions to remand to the Circuit Court of Forrest County, Mississippi.

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Blewett W. Thomas, Gulfport, MS, for Plaintiff-Appellant.

Vicki R. Leggett, Zachary & Leggett, PLLC, Hattiesburg, MS, for Defendants-Appellees.

1 MINER, Circuit Judge:

2 Plaintiff-appellant Greg Bounds, a citizen of Mississippi, appeals from an order entered in
3 the United States District Court for the Eastern District of New York (Weinstein, J.) denying
4 reconsideration of a judgment entered in the United States District Court for the Southern District
5 of Mississippi (Starrett, J.). In re Zyprexa Prods. Liab. Litig., Nos. 04-MD-1596; 08-cv-1364,
6 2008 WL 2466208 (E.D.N.Y. June 18, 2008). That judgment denied a motion by Bounds to
7 remand this action to the Circuit Court of Forrest County, Mississippi following its removal to
8 the United States District Court for the Southern District of Mississippi by defendant-appellee Eli
9 Lilly Company, a citizen of Indiana. Greg Bounds v. Pine Belt Mental Health Care Res., No.
10 2:07cv356-KS-MTP, 2008 WL 552865 (S.D. Miss. Feb. 27, 2008). The judgment also granted a
11 motion by defendants-appellees Pine Belt Mental Health Care Resources, Walid Rahhal-
12 Mohamed, M.D., Chris Lamousin, M.D. and Asim Ulusarac, M.D., all citizens of Mississippi, to
13 dismiss for failure to state a claim against them (together, “the Mississippi citizen defendants”).
14 Id. at *1, *4. In the complaint, Bounds pleaded, inter alia, negligence and malpractice claims
15 against the Mississippi citizen defendants and product liability claims against the Eli Lilly
16 Company. Id. at *1. The District Court determined: (1) that plaintiff had failed to comply with
17 the notice requirements of the Mississippi Tort Claims Act (the “Act”), requiring dismissal of the
18 claims against the Mississippi citizen defendants; (2) that the said defendants therefore were
19 improperly joined with the Eli Lilly Company in the removed state action; and (3) that diversity
20 jurisdiction accordingly lies in federal court such as to warrant denial of remand. Id. at *1, *3.

21 **BACKGROUND**

22 I. Nature of the Claims

23 Bounds is fifty-one years of age and has been treated for various mental illnesses over a
24 period of fifteen years. He has been committed by court order in the past to mental health
25 facilities and has been adjudicated as totally disabled by reason of his mental disabilities by the

1 Social Security Administration. In 1998, he became a patient of the Pine Belt Mental Health
2 Care Resources (“Pine Belt”) in Hattiesburg, Mississippi. At that facility, he came under the care
3 of Doctors Mohamed, Lamousin and Ulusarac (the “physicians”), who were employees of the
4 facility. In June of 1998, the physicians began to prescribe the drug known as Zyprexa for
5 Bounds. Zyprexa is a drug manufactured by the Eli Lilly Company (“Eli Lilly”) and used in the
6 treatment of schizophrenia. Bounds claims that he immediately sustained adverse reactions to
7 the drug but that the physicians continued to prescribe it for him.

8 In 2003, Bounds was diagnosed with the onset of diabetes mellitus type 2 or adult-onset
9 diabetes. He claims that, despite public warnings that diabetes mellitus type 2 was a potentially
10 dangerous side effect of Zyprexa, the physicians continued to prescribe it for his use over a
11 period of approximately two years. In January of 2004, Bounds reported to the physicians that
12 his personal physician had discovered neuropathy in both his feet, neuropathy being a condition
13 said to be due to his diabetic condition and, ultimately, to the use of Zyprexa.

14 On November 25, 2006, counsel for Bounds forwarded a letter by certified mail to Pine
15 Belt. The text of the letter in its entirety is as follows:

16 As attorney for Greg Bounds, this letter is to serve as the statutory notice
17 required under Miss. Code Ann. § 15-1-36(15) of his claims of professional
18 negligence against your facility and his intention to begin legal action within sixty
19 (60) days of this notice. Primarily, Mr. Bounds alleges that you were
20 professionally negligent in your failure to advise him that the prescription Zyprexa
21 could result in various complications, including but not limited to diabetes, and
22 your continued prescription of Zyprexa once he developed diabetes. Additionally,
23 Mr. Bounds alleges that you were professionally negligent in your failure to
24 advise and instruct your staff on the dangers and complications that studies had
25 shown to be related to the prescription Zyprexa.

26 Mr. Bounds may assert such additional claims as his experts or
27 representatives believe the evidence supports.

28 The “Miss. Code Ann. § 15-1-36 (15)” citation in the letter describes a Mississippi statute that
29 requires sixty days prior written notice in advance of suit against any health care provider for
30 professional negligence. This statute provides that the notice must advise the health care

1 provider “of the legal basis of the claim and the type of loss sustained, including with specificity
2 the nature of the injuries suffered.” Id. Apparently, there was no specific response to the letter,
3 although the Mississippi citizen defendants do not contest the statement in Bounds’ brief on
4 appeal that, subsequent to the letter, “Bounds’ attorney cooperated with the insurer and attorneys
5 representing the Mississippi citizen defendants in providing additional information and medical
6 releases for Bounds to facilitate their investigation of the claims.”

7 II. Commencement of the Action, Removal, and Proceedings in the District Courts

8 This action was commenced by the filing of a complaint in the Forrest County Circuit
9 Court on July 20, 2007. The complaint alleges causes of action in malpractice and professional
10 negligence against the Mississippi citizen defendants (Count I); negligence and gross negligence
11 against Eli Lilly (Count II); strict liability in tort and failure to warn against Eli Lilly (Count III);
12 liability under the Mississippi Extended Manufacturers Liability Doctrine against all defendants
13 (Count IV); breach of implied warranty against all defendants (Count V); breach of express
14 warranty against all defendants (Count VI); fraud against all defendants (Count VII); and fraud
15 by concealment against all defendants (Count VIII). The complaint included the following
16 specific allegations in paragraph four thereof:

17 The Plaintiff specifically avers that the core claim alleged in this Complaint
18 contends that the health care providers named as Defendants herein (to wit, Pine
19 Belt Mental Health Care and the individual defendants Rahhal-Mohamed,
20 Lamousin and Ulusarac) were professionally negligent and commitment [sic]
21 medical malpractice in their treatment of the Plaintiff, with the claims alleged
22 against the defendant Eil [sic] Lilly being primarily either a proximate cause of or
23 a contributing factor to such professionally [sic] negligence, or otherwise alleging
24 that Eli Lilly committed acts collaterally related to or causally connected to the
25 alleged acts of professional negligence and medical malpractice. Accordingly,
26 any attempt by any named Defendant herein to remove this case to federal court
27 would be baseless in fact, frivolous and in contradiction to controlling and
28 applicable legal authority.

29 Thereafter, on December 14, 2007, Eli Lilly removed the action to the United States
30 District Court for the Southern District of Mississippi. In its Notice of Removal, Eli Lilly

1 asserted that Bounds had failed to comply with the requirements of the Mississippi Tort Claim
2 Act, Miss. Code Ann. § 11-46-11(1), which requires written notice containing specific
3 information to be served within ninety days prior to filing suit on tort claims against
4 governmental entities in Mississippi. Included in the Notice of Removal was the following:

5 19. Because Plaintiff did not provide timely and proper notice as required
6 by Miss. Code Ann. § 11-46-11 (2007), the Complaint is insufficient as a matter
7 of law to state claims against Defendants Pine Belt Mental Health Care, Rahhal-
8 Mohamed, Lamousin and Ulusarac[,] and those claims must be dismissed.
9 Accordingly, Defendants Pine Belt Mental Health Care, Rahhal-Mohamed and
10 Lamousin have been fraudulently and improperly joined as Defendants to defeat
11 diversity and must be disregarded for purposes of determining diversity of
12 citizenship for federal jurisdiction.

13 Accordingly, Eli Lilly contended that jurisdiction in the Mississippi District Court was properly
14 invoked on the basis of complete diversity of citizenship, since it was a citizen of Indiana and the
15 sole remaining defendant, and plaintiff Bounds was a citizen of Mississippi. Bounds thereafter
16 filed a motion to remand, and the Mississippi citizen defendants filed a motion to dismiss the
17 action with respect to the claims pleaded against them.

18 III. Decisions of the District Courts

19 In its opinion for dismissal, the Mississippi District Court first observed that federal
20 diversity jurisdiction cannot be defeated by the improper joinder of an in-state defendant and that
21 there is improper joinder where “(1) there is actual fraud in pleading jurisdictional facts; or (2)
22 the plaintiff is unable to establish a cause of action against the non-diverse defendant.” Bounds
23 v. Pine Belt Mental Health Care Res., No. 2:07cv356, 2008 WL 552865, at *2 (S.D. Miss. Feb.
24 27, 2008). The court further noted that, unless there is a reasonable basis for liability, a non-
25 diverse defendant cannot remain in the lawsuit. Id.

26 Turning to the provisions of the Mississippi Tort Claims Act, the Mississippi District
27 Court reviewed the notice requirements of that statute, said to provide the exclusive remedy in
28 suits against Mississippi governmental entities such as Pine Belt (and to employees acting within

1 the scope of their employment). Id. at *3. The court found that Bounds failed to comply with at
2 least four of the seven categories of the notice requirement in the letter provided by his attorney
3 as quoted above. The court concluded that these failures were serious enough to defeat any
4 possibility of Bounds' recovery against the in-state defendants despite Bounds' claim that he had
5 substantially complied with the requirements. The Mississippi District Court concluded its
6 opinion as follows:

7 The MTCA [Mississippi Tort Claims Act] establishes rigid and inflexible
8 notice requirements for plaintiffs who plan to pursue litigation against the state.
9 Although state courts have excused plaintiffs who offered meager responses to
10 each of the seven statutory categories, no state court has excused a plaintiff who
11 wholly ignored one or more of the items required. Bound's failure to comply with
12 Miss. Code Ann. § 11-46-11(2) leaves no reasonable basis upon which this Court
13 could predict that he might recover against the in-state Defendants. Their joinder
14 to this action is therefore improper, and the in-state Defendants should be
15 dismissed, while the motion to remand should be denied.

16 Id. at *4.

17 Bounds moved for reconsideration of the Mississippi District Court's judgment, but
18 before the District Court could rule on the motion, the case was transferred to the United States
19 District Court for the Eastern District of New York by the Multi-District Litigation Panel as part
20 of the Zyprexa Products Liability Litigation. See In re Zyprexa Prods. Liab. Litig., 239 F.R.D.
21 316 (E.D.N.Y. 2007). It therefore fell to Judge Weinstein of the Eastern District of New York, to
22 whom the Multi-District Litigation was assigned, to decide the motion for reconsideration.
23 Judge Weinstein denied the motion, retaining the action against Eli Lilly alone in the Eastern
24 District. In his June 18, 2000 order denying the motion, Judge Weinstein wrote as follows:

25 No facts or controlling decisions were overlooked by the Mississippi federal
26 court. Subject matter jurisdiction lies in federal court and the case was properly
27 transferred to this court by the Judicial Panel on Multidistrict Litigation.
28 Plaintiff's motion to reconsider is denied.

29 In re Zyprexa Prods. Liab. Litig., 04-MD-1596, 08-cv-1364, 2008 WL 2466208, at *1 (E.D.N.Y.
30 June 18, 2008). It is from this Order that Bounds now appeals, having filed his Notice of Appeal

1 on July 10, 2008. Thereafter, by Stipulation and Order of Dismissal dated December 11, 2008,
2 all claims asserted against Eli Lilly in this action were dismissed with prejudice.

3 Having filed a timely Notice of Appeal, Bounds asserts the following arguments here.

4 IV. Arguments on Appeal

5 On appeal, Bounds argues that the Mississippi citizen defendants were prohibited by state
6 law from waiving the state's Eleventh Amendment Immunity and consenting to federal
7 jurisdiction; that he has alleged in his complaint claims and causes of action not governed by the
8 Mississippi Tort Claims Act; that he has sufficiently complied with the notice provisions of the
9 Act; that the Mississippi citizen defendants are estopped from asserting his failure to comply
10 with the notice provisions of the Act; and that the result reached in the district courts' opinions
11 unconstitutionally deprived him of his property interests in the proper treatment of his mental
12 illnesses, as guaranteed by Mississippi statute, without due process of law, and of his right of
13 access to the courts for redress of grievances.

14 In response, the Mississippi citizen defendants assert that the Eleventh Amendment is
15 irrelevant in an analysis of improper joinder; that the fraud allegations included in the complaint
16 do not excuse Bounds from complying with the Mississippi Tort Claims Act; that Bounds has
17 failed to comply with the notice requirements of the Act; that his failure to comply cannot be
18 excused by a subsequent investigation of his claims by the state; and that there are no
19 constitutional violations that support Bounds' claim.

20 **ANALYSIS**

21 I. Of the Standard of Review

22 In our analysis of the decision of the district courts, we apply a de novo standard of
23 review, both to the denial of Bounds' motion to remand the action and to the grant of the
24 Mississippi citizen defendants' motion to dismiss the action for failure to state a claim pursuant
25 to Federal Rule of Civil Procedure 12(b)(6). Accordingly, we examine anew the application of

1 law to fact undertaken by the district courts in arriving at the decisions appealed from.

2 II. Of Removal and Remand

3 The federal removal statute allows a defendant to remove an action to the United States
4 District Court in “any civil action brought in a State court of which the district courts of the
5 United States have original jurisdiction.” 28 U.S.C. § 1441(a). The district courts “have original
6 jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United
7 States.” 28 U.S.C. § 1331. The district courts also “have original jurisdiction of all civil actions
8 where the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and
9 is between . . . [inter alia] citizens of different States.” 28 U.S.C. § 1332(a). The former is
10 denominated “Federal Question” jurisdiction, and the latter is denominated “Diversity of
11 Citizenship” jurisdiction. Eli Lilly purported to invoke the latter in its Notice of Removal.

12 To remove a case based on diversity jurisdiction, it is incumbent upon the diverse
13 defendant to aver that all the requirements of diversity jurisdiction have been met. 28 U.S.C. §
14 1446. Complete diversity of citizenship of the parties is required, since an “action shall be
15 removable only if none of the parties in interest properly joined and served as defendants is a
16 citizen of the State in which such action is brought.” 28 U.S.C. § 1441(b). In other words:
17 “When a plaintiff sues more than one defendant in a diversity action, the plaintiff must meet the
18 requirements of the diversity statute for each defendant or face dismissal.” Newman-Green, Inc.
19 v. Alfonzo-Larrain, 490 U.S. 826, 829 (1989). Bounds insists that there is not complete diversity
20 by reason of the proper joinder of the Mississippi citizen defendants and that federal court
21 jurisdiction consequently is lacking. Accordingly, he seeks remand under the provisions of 28
22 U.S.C. § 1447(c): “If at any time before final judgment it appears that the district court lacks
23 subject matter jurisdiction, the case shall be remanded [to the state court].”

24 A plaintiff may not defeat federal court diversity jurisdiction by improperly joining as a
25 defendant a non-diverse party with no real connection to the controversy. This rule is known as

1 the doctrine of fraudulent joinder:

2 The doctrine of fraudulent joinder is meant to prevent plaintiffs from joining non-
3 diverse parties in an effort to defeat federal jurisdiction. Under the doctrine,
4 courts overlook the presence of a non-diverse defendant if from the pleadings
5 there is no possibility that the claims against that defendant could be asserted in
6 state court. The defendant bears the heavy burden of proving the circumstances
7 by clear and convincing evidence, with all factual and legal ambiguities resolved
8 in favor of plaintiff.

9 Briarpatch Ltd., L.P. v. Phoenix Pictures, Inc., 373 F.3d 296, 302 (2d Cir. 2004) (citations
10 omitted). The District Court determined that Bounds’ complaint failed to state a claim against
11 the Mississippi citizen defendants under the provisions of the Mississippi Tort Claims Act. It
12 was this determination that led to the finding that the Mississippi citizen defendants were
13 improperly joined as defendants, leading to the denial of Bounds’ motion to remand as well as to
14 the dismissal of his action against the Mississippi citizen defendants.

15 III. Of the Mississippi Tort Claims Act

16 As it pertains to the claims of professional negligence and medical malpractice asserted
17 by Bounds, the Mississippi Tort Claims Act provides: “[T]he immunity of the state and its
18 political subdivisions from claims for money damages arising out of the torts of such
19 governmental entities and the torts of their employees while acting within the course and scope
20 of their employment is hereby waived.” Miss. Code Ann. § 11-46-5(1). These claims may be
21 pursued only in accordance with the Act, which “is the exclusive remedy for filing a lawsuit
22 against governmental entities and [their] employees.” City of Jackson v. Brister, 838 So.2d 274,
23 278 (Miss. 2003); see also Miss. Code Ann. § 11-46-7. Pine Belt is a facility of the State of
24 Mississippi and therefore a government entity, and the defendant physicians are its employees.

25 The Act includes the following provision:

26 After all procedures within a governmental entity have been exhausted, any
27 person having a claim for injury arising under the provisions of this chapter
28 against a governmental entity or its employee shall proceed as he might in any
29 action at law or in equity; provided, however, that ninety (90) days prior to
30 maintaining an action thereon, such person shall file a notice of claim with the

1 chief executive officer of the governmental entity.

2 Miss. Code Ann. § 11-46-11. The Supreme Court of Mississippi has stated that the notice
3 requirements are “substantive requirements, which are no more or less important than a statute of
4 limitations.” Stuart v. Univ. of Miss. Med. Ctr., 21 So.3d 544, 550 (Miss. 1999).

5 It is unchallenged that Bounds exhausted internal procedures and that he served a notice
6 on Pine Belt, although the Chief Executive Officer was not specifically named in the notice.

7 What is contested is the adequacy of the notice served. The required contents of the Notice of
8 Claim are set forth in the Act as follows:

9 Every notice of claim shall contain a short and plain statement of the facts upon
10 which the claim is based, including the circumstances which brought about the
11 injury, the extent of the injury, the time and place the injury occurred, the names
12 of all persons known to be involved, the amount of money damages sought and
13 the residence of the person making the claims at the time of the injury and at the
14 time of filing the notice.

15 Miss. Code Ann. § 11-46-11(2).

16 To satisfy the foregoing requirements, Mississippi law requires only substantial
17 compliance. See Powell v. City of Pascagoula, 752 So.2d 999, 1004–05 (Miss. 1999);
18 Thornburg v. Magnolia Reg’l Health Ctr., 741 So.2d 220, 222 (Miss. 1999). In approving the
19 test of substantial compliance, the Mississippi Supreme Court has issued the following caveat:

20 Even though this Court now finds substantial compliance to be sufficient, we
21 stress that substantial compliance is not the same as, nor a substitute for, non-
22 compliance. The determination of substantial compliance is a legal, though fact-
23 sensitive question and is, therefore, necessarily decided on an ad hoc basis.

24 Carr v. Town of Shubuta, 733 So.2d 261, 265 (Miss. 1999), overruled on other grounds by
25 Stuart, 21 So.3d at 550 (holding that the notice requirements set forth in the statute are
26 “nonjurisdictional and, therefore, waivable”).

27 In its most recent application of the substantial compliance rule, the Mississippi Supreme
28 Court in Lee v. Mem’l Hosp. at Gulfport, 999 So.2d 1263 (Miss. 2008) (en banc), was
29 confronted with a claim against a hospital for medical malpractice arising from a coronary artery

1 by-pass graft with closure of the sternum. Id. at 1264. The Notice of Claim consisted of a letter
2 bearing the letterhead and signature of the claimant’s attorney as well as the claimant’s name and
3 date of birth. Id. There followed a narrative description of the claimant’s hospitalization, her
4 surgery, post-operative difficulties, and the further course of treatment necessitated by the
5 injuries suffered during the heart surgery. Id. Included was a statement that “[t]he substandard
6 care rendered by [hospital] employees proximately caused and/or was a proximate contributing
7 cause of Ms. Lee’s injuries.” Id. The letter concluded with a request for an explanation as to
8 why the hospital should not be held accountable for the injuries or, if there were no explanation,
9 that the letter be passed on to the hospital’s insurance carrier. Id.

10 After reviewing the Notice of Claim, the Court in Lee determined that there had been
11 substantial compliance with the requirements of the Mississippi Tort Claims Act. Specifically,
12 the Court noted that the claimant: described the circumstances that brought about her injury;
13 provided information regarding the extent of her injuries; adequately set forth the dates of her
14 hospitalization and of the discovery of her injuries; listed all persons known to be involved,
15 although the claimant was unable to verify the names of those who cared for her at the time of
16 injury; stated the place of her injury; and set forth her medical special damages as “exceed[ing]
17 \$100,000.” Id. at 1267. Although the claimant did not provide her residence at the time of injury
18 or notice, the Court found substantial compliance with the residence requirement because “[t]he
19 address of Lee’s counsel was provided, and Lee’s date-of-birth and dates of hospitalization were
20 provided for identification purposes.” Id. The Court concluded: “Clearly [the hospital] was able
21 to identify Lee as a patient and investigate and conduct a ‘review of the matter’ as evidenced by
22 its letter of denial.” Id.

23 IV. Of the Application of the Mississippi Tort Claims Act and Its Consequences

24 Although the letter dated November 20, 2006, from Bounds’ attorney to Pine Belt recited
25 that it was sent in compliance with Miss. Code Ann. § 15-1-36(15), which requires a claimant to

1 provide notice before maintaining a malpractice action against any provider of medical care, it
2 also was substantially compliant with the notice requirements of the Mississippi Tort Claims Act,
3 Miss. Code Ann. § 11-46-11(2). Bounds' letter was written on the letterhead of his attorney,
4 stated an intention to begin legal action within sixty days, and alleged professional negligence on
5 the part of Pine Belt in prescribing Zyprexa for Bounds and in continuing to prescribe the drug
6 after Bounds developed diabetes. Also set forth in the letter was an allegation that Pine Belt was
7 "professionally negligent in [its] failure to advise and instruct [its] staff on the dangers and
8 complications that studies had shown to be related to the prescription of Zyprexa."

9 Moreover, as in Lee, the information furnished here enabled the facility to identify the
10 claimant as a patient and to investigate and conduct a review of the matter. The Act is said to
11 require that the governmental entity be afforded sufficient information to investigate the claim as
12 the key factor in an analysis of substantial compliance:

13 In general, a notice that is filed within the [requisite] period, informs the
14 municipality of the claimant's intent to make a claim and contains sufficient
15 information which reasonabl[y] affords the municipality an opportunity to
16 promptly investigate the claim satisfies the purpose of the statute and will be held
17 to substantially comply with it.

18 Carr, 733 So.2d at 263 (quoting Collier v. Prater, 544 N.E.2d 497, 498–99 (Ind. 1989)) (first
19 alteration in original). The letter from Bounds' attorney provided information sufficient to
20 enable Pine Belt to investigate promptly and to review the claim. Indeed, it appears that the
21 insurance carrier for Pine Belt investigated the matter soon after the letter was received and
22 solicited further information from Bounds' attorney with regard to the claim. In view of the
23 foregoing, there was sufficient compliance with the Act to state a claim against Pine Belt and its
24 physician-employees. Complete diversity therefore did not exist ab inito in this action. Removal
25 to the District Court in Mississippi therefore was improper, and we need not address any of
26 Bounds' other arguments against removal.

1 **CONCLUSION**

2 The judgment of the District Court dismissing the claims against the Mississippi citizen
3 defendants for failure to state a claim is reversed. This action, now minus the Eli Lilly Company,
4 is remanded to the United States District Court for the Eastern District of New York with
5 instructions to remand to the Circuit Court of Forrest County, Mississippi. See In re New
6 England Mut. Life Ins. Co. Sales Practice Litig., 324 F. Supp. 2d 288, 291–92 (D. Mass. 2004)
7 (“The Judicial Panel on Multidistrict Litigation . . . has concluded repeatedly that pending
8 motions to remand [multi-district litigation-transferred actions] to their respective state courts
9 can be presented to and decided by the transferee judge.” (internal quotation marks omitted)).