

# United States Court of Appeals

For the Seventh Circuit  
Chicago, Illinois 60604

January 19, 2018

## Before

WILLIAM J. BAUER, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

SARA L. DARROW, *District Judge\**

No. 17-2056

IN RE: TESTOSTERONE  
REPLACEMENT THERAPY PRODUCTS  
LIABILITY LITIGATION

RODNEY GUILBEAU, *et al.*,  
*Plaintiffs-Appellants*,

*v.*

PFIZER, INC. and PHARMACIA &  
UPJOHN COMPANY, LLC,  
*Defendants-Appellees*.

Appeal from the United States District  
Court for the Northern District of  
Illinois, Eastern Division.

MDL No. 2545  
Master Docket Case No. 1:14-cv-01748

**Matthew F. Kennelly**,  
*District Judge*.

## ORDER

In the multidistrict litigation docket that gave rise to this appeal (MDL No. 2545), the district court dismissed all cases with prejudice that involved the above-named defendants, Pfizer, Inc. and Pharmacia & Upjohn Company, LLC, the makers of the drug

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\* Of the Central District of Illinois, sitting by designation.

Depo-Testosterone.<sup>1</sup> Some of the more than one thousand individual cases subject to this appeal were resolved by final judgments, see Master Dkt. Nos. 1824, 1969, while others were resolved by partial final judgments pursuant to Fed. R. Civ. P. 54(b), see Master Dkt. Nos. 1865, 1970. By separate opinion issued today, we affirm the district court's decisions with respect to both the defendants' preemption defense and the denial of discovery on the preemption defense.

In the course of briefing this appeal, however, the parties have since noted the lack of complete diversity of citizenship in forty of the cases affected by these District Court orders. The list of these cases, contained in Appellate Dkt. 15-1, is reproduced below. In each case, there is at least one defendant who is a citizen of the same state as the plaintiff, which would ordinarily deprive the federal courts of subject matter jurisdiction. See 28 U.S.C. § 1332(a),(c); *McCready v. eBay, Inc.*, 453 F.3d 882, 890–91 (7th Cir. 2006) (noting complete diversity requirement). Though some cases may involve only one (non-diverse) defendant, it is possible that some of these cases may be properly brought against remaining diverse defendants and that the non-diverse defendants could and should be dismissed to preserve subject matter jurisdiction. It would be possible in theory for us to take these forty cases one by one to decide whether the non-diverse defendants are dispensable parties who should be dismissed on appeal. See *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826 (1989); 28 U.S.C. § 1653 (allowing amendment of defective jurisdictional allegations in both trial and appellate courts). Given the number of these cases, the paucity of relevant information before us, and the district court's much greater familiarity with the details of the litigation and its effective management, we think the better course is to have the district court sort out these jurisdictional problems with more detailed assistance from counsel.

Accordingly, due to a lack of complete diversity of citizenship, the final judgments or partial final judgments entered by the district court in the cases listed below are VACATED and REMANDED for proceedings consistent with this order and the accompanying opinion issued in this appeal, No. 17-2056.

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<sup>1</sup> The district court explained its conclusions in several case management orders issued March 7, 2016, March 30, 2017, April 18, 2017 and May 26, 2017. See Master Dkt. Nos. 1211, 1824, 1865, 1969, 1970.

**CASES AFFECTED**

<b>Plaintiff/District Court Case No.</b>	<b>Plaintiff's Citizenship</b>	<b>Non-Diverse Defendant(s) to be Dismissed</b>	<b>Master Docket Document Ordering Dismissal</b>
<b><u>Final Judgment Cases</u></b>			
Evans, Sr. Glenn E., 16-cv-3668	CA	McKesson Corporation	1824
Puryear, David, 16-cv-3650	CA	McKesson Corporation	1824
Barrett, Thomas, 16-cv-7627	MI	Pharmacia & Upjohn Company LLC	1824
Bowen, III, Clinton, 16-cv-8749	MI	Pharmacia & Upjohn Company LLC	1824
Dougherty, Michael, 15-cv-2824	MI	Pharmacia & Upjohn Company LLC	1824
Dunn, Lawrence, 16-cv-1363	MI	Pharmacia & Upjohn Company LLC	1824
Gomez, Luiz C., 16-cv-10157	MI	Pharmacia & Upjohn Company LLC	1824
Hampton, Duane, 15-cv-9564	MI	Pharmacia & Upjohn Company LLC	1824
Knight, Andre L., 16-cv-6039	MI	Pharmacia & Upjohn Company LLC	1824
Lewis, Russell, 15-cv-8889	MI	Pharmacia & Upjohn Company LLC	1824

Lockner, Steven, 16-cv-8912	MI	Pharmacia & Upjohn Company LLC	1824
Mangas, Brian, 16-cv-7617	MI	Pharmacia & Upjohn Company LLC	1824
McClerkin, Duncan, 15-cv-4757	MI	Pharmacia & Upjohn Company LLC	1824
Morgan, Michael, 15-cv-6038	MI	Pharmacia & Upjohn Company LLC	1824
Naragon, Robert C., 15-cv-6546	MI	Pharmacia & Upjohn Company LLC	1824
Orzel, John F., 15-cv-11598	MI	Pharmacia & Upjohn Company LLC	1824
Patrick, Tony N., 16-cv-4578	MI	Pharmacia & Upjohn Company LLC	1824
Sawyers, Dennis, 15-cv-7590	MI	Pharmacia & Upjohn Company LLC	1824
Stapples, Herman, 15-cv-11418	MI	Pharmacia & Upjohn Company LLC	1824
Craig, Michael A., 17-cv-1451	MI	Pharmacia & Upjohn Company LLC	1969
Fleeger, David, 17-cv-465	MI	Pharmacia & Upjohn Company LLC	1969
Griffith, Gary, 17-cv-558	MI	Pharmacia & Upjohn Company LLC	1969

Hitz, Frank F., 17-cv-685	MI	Pharmacia & Upjohn Company LLC	1969
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<b>Rule 54(b) Cases</b>			
Canion, Thomas, 15-cv-6448	GA	AbbVie Products LLC	1865
Henderson, Ronald E., 16-cv-1527	GA	AbbVie Products LLC	1865
Johnson, Ralph Derrell, 16-cv-1277	GA	AbbVie Products LLC	1865
Linkous, Brian K., 16-cv-7186	GA	AbbVie Products LLC	1865
Tallevast, John, 16-cv-1772	GA	AbbVie Products LLC	1865
Thompson, Roger, 16-cv-1716	GA	AbbVie Products LLC	1865
Crawford, Edward Lee, 16-cv-1397	FL	Anda, Inc.	1865
Gagnier, Peter T., 16-cv-1349	FL	Anda, Inc.	1865
Jackson, Roosevelt, 16-cv-1158	FL	Anda, Inc.	1865
King, John, 16-cv-3194	VA	Besins Healthcare Inc.	1865
Baggett, Dennie, 16-cv-7404	MI	Pharmacia & Upjohn Company LLC	1865
Coursen, Michael, 16-cv-2676	MI	Pharmacia & Upjohn Company LLC	1865
Harte, Patrick, 16-cv-3946	MI	Pharmacia & Upjohn Company LLC	1865
Howse, Jr., John, 16-cv-1521	MI	Pharmacia & Upjohn Company LLC	1865

Sutphin, Anthony, 16-cv-4485	MI	Pharmacia & Upjohn Company LLC	1865
Barton, Terry, 17-cv-2262	FL	Anda, Inc.	1970
Coffey, Robert J., 17-cv-626	FL	Anda, Inc.	1970