

JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CAROLYN WEIRICK and ELVIRA  
GRACIELA ESCUDERO LORA,

Plaintiffs,

v.

BRENNTAG NORTH AMERICA,  
INC., et al.,

Defendants.

Case No.: CV 19-03036-CJC (JCx)

ORDER GRANTING PLAINTIFFS'  
*EX PARTE* APPLICATION FOR  
REMAND [Dkt. 10]

**I. INTRODUCTION & BACKGROUND**

This action is one of thousands of personal injury lawsuits filed in state courts across the country alleging injury and wrongful death caused by exposure to asbestos from the talc used in Johnson & Johnson's baby powder products. On April 4, 2017, Plaintiff Carolyn Weirick filed this negligence and strict products liability action in Los

1 Angeles County Superior Court against Defendants Johnson & Johnson and Johnson &  
2 Johnson Consumer, Inc. (collectively, “Johnson & Johnson”), Johnson & Johnson’s sole  
3 talc supplier, Imerys Talc America, Inc. (hereinafter “Imerys”), and several other entities.  
4 (Dkt. 1 Ex. A [Complaint]; *id.* at 35 [Operative First Amended Complaint, hereinafter  
5 “FAC”].)<sup>1</sup> Mrs. Weirick filed the lawsuit less than two months after she was diagnosed  
6 with malignant mesothelioma, a fatal and debilitating cancer caused by exposure to  
7 asbestos. She alleges that her exposure to asbestos through her and her mother’s use of  
8 Johnson & Johnson’s talc products caused her cancer.

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10 This case has been substantially litigated in Los Angeles County Superior Court  
11 for the last two years. It is part of a statewide coordinated effort to manage the multitude  
12 of state court proceedings in which plaintiffs have claimed personal injury and wrongful  
13 death resulting from exposure to asbestos. On July 31, 2018, Mrs. Weirick and her  
14 spouse (collectively, “Plaintiffs”) went to trial on their negligence and strict products  
15 liability claims against Johnson & Johnson and Imerys. (Dkt. 10-2 [Declaration of  
16 Jordan Blumenfeld-James] ¶ 4.) Mid-trial on September 14, 2018, Plaintiffs resolved  
17 their claims as to Imerys and dismissed it from the action. The trial proceeded as to  
18 Johnson & Johnson but ultimately concluded in a mistrial due to a hung jury. Plaintiffs  
19 and Johnson & Johnson scheduled a retrial for April 29, 2019, with a final status  
20 conference set for April 22, 2019. Both parties evinced a clear intent to proceed with the  
21 retrial as planned. In the weeks leading up to the final status conference, Johnson &  
22 Johnson filed jury instructions, a juror questionnaire, witness list, statement of the case,  
23 and numerous motions in limine. *See Weirick, et al. v. Breentag North America, et al.*,  
24 Case No. BC 656425 (L.A. Cty. Super. Ct.).

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26  
27 <sup>1</sup> Plaintiff also named as defendants Brenntag North America, Inc., Brenntag Specialties, Inc., Cal Oaks  
28 Pharmacy, Inc., Chanel, Inc., Cyprus Amax Minerals Company, Valeant Pharmaceuticals International  
Corporation, Valeant Pharmaceuticals North America LLC, Whittaker Clark & Daniels, Inc., and Does 1  
through 450. On July 13, 2017, she filed the operative First Amended Complaint adding her spouse,  
Elvira Graciela Escudero Lora, as a plaintiff to the action. (*See FAC.*)

1 On April 18, 2019, days before the final status conference, Johnson & Johnson  
2 removed Plaintiffs’ action to this Court on the ground that it is “related to” Imerys’s  
3 pending bankruptcy proceeding. (Dkt. 1 [Notice of Removal].) On February 13, 2019,  
4 Imerys and its affiliates filed for Chapter 11 bankruptcy in the United States Bankruptcy  
5 Court for the District of Delaware. See *In re Imerys Talc America, et al.*, Case No. 19-  
6 10289-LSS (Bankr. D. Del.). The same day Johnson & Johnson removed Plaintiffs’  
7 action to this Court, it filed a motion in the United States District Court for the District of  
8 Delaware to fix venue for claims related to Imerys’s bankruptcy. (See Dkt. 1-4 Ex. C  
9 [Johnson & Johnson’s Motion to Fix Venue for Claims Related to Imerys’s Bankruptcy].)  
10 Through that motion, Johnson & Johnson seeks to consolidate the thousands of state  
11 court cases filed against it in the District of Delaware. Although Imerys was dismissed  
12 from Plaintiffs’ case months ago, Johnson & Johnson argues that their case—and the  
13 many state proceedings like it—are related to Imerys’s bankruptcy proceeding because  
14 Johnson & Johnson’s supply agreements with Imerys contain contractual  
15 indemnifications and other liability-sharing agreements triggered by personal injury  
16 claims.

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18 When Johnson & Johnson removed Plaintiffs’ action to this Court, Plaintiffs lost  
19 their imminent trial date. With Mrs. Weirick’s health rapidly declining, Plaintiffs filed  
20 the instant *ex parte* application to remand the action to state court so they may proceed to  
21 trial. (Dkt. 10.) Johnson & Johnson opposes the application. (Dkt. 13.) For the  
22 following reasons, Plaintiffs’ application is **GRANTED**.

## 23 24 **II. ANALYSIS**

25  
26 Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins.*  
27 *Co. of Am.*, 511 U.S. 375, 377 (1994). As such, federal courts are presumed to lack  
28 jurisdiction in a particular case “unless the contrary affirmatively appears.” *Stock W.*,

1 *Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir.  
2 1989). Where, as here, a defendant removes the action to federal court, the burden of  
3 establishing subject matter jurisdiction falls on the defendant. *Gaus v. Miles, Inc.*, 980  
4 F.2d 564, 566 (9th Cir. 1992). Johnson & Johnson asserts that this Court has subject  
5 matter jurisdiction over Plaintiffs’ state law claims because they are “related to” Imerys’s  
6 pending bankruptcy proceeding in Delaware.

7  
8 Bankruptcy jurisdiction is governed by 28 U.S.C. § 1334, which vests district  
9 courts with “original but not exclusive jurisdiction of all civil proceedings arising under  
10 title 11, or arising in or related to cases under title 11.” 28 U.S.C. § 1334(b). A party  
11 may remove any claim in a civil action to the district court in which the civil action is  
12 pending, if the district court has jurisdiction over the claim pursuant to Section 1334(b).  
13 *Id.* § 1452(a). Once a claim is removed pursuant to Section 1452(a), the district court to  
14 which the claim is removed may remand the claim “on any equitable ground.” *Id.*  
15 § 1452(b). This is true even if the claim falls within the district court’s subject matter  
16 jurisdiction under Section 1334(b). *See, e.g., TIG Ins. Co. v. Smolker*, 264 B.R. 661,  
17 666–67 (Bankr. C.D. Cal. 2001). An order remanding an action pursuant to Section  
18 1452(b) “is not reviewable by appeal or otherwise” by the court of appeals or Supreme  
19 Court. 28 U.S.C. § 1452(b).

20  
21 Section 1452(b)’s “‘any equitable ground’ remand standard is an unusually broad  
22 grant of authority.” *McCarthy v. Prince*, 230 B.R. 414, 417 (B.A.P. 9th Cir. 1999). In  
23 determining whether equitable grounds exist to remand an action removed under Section  
24 1452(a), courts consider several factors, including the extent to which state law issues  
25 predominate over bankruptcy issues, whether the applicable law involves difficult or  
26 unsettled issues, the degree of relatedness of the state proceeding to the bankruptcy case,  
27 whether any basis for jurisdiction other than Section 1334 exists, comity and respect for  
28 state law decision-making capabilities, the likelihood that either party is engaging in

1 forum shopping, the existence of a right to a jury trial, the burden on the bankruptcy  
2 court’s docket, the feasibility of allowing judgments to be entered in state court while  
3 leaving enforcement to the bankruptcy court, the impact of remand on the administration  
4 of the debtor’s bankruptcy case, and the possibility of prejudice to the parties in the  
5 action. *See In re Cedar Funding, Inc.*, 419 B.R. 807, 820 n.18 (B.A.P. 9th Cir. 2009)  
6 (citing *In re Enron Corp.*, 296 B.R. 505, 508 n.2 (Bankr. C.D. Cal. 2003)). “Because  
7 Section 1452(b) affords ‘an unusually broad grant of authority,’ any one of the relevant  
8 factors may provide a sufficient basis for equitable remand.” *Stichting Pensioenfond*  
9 *ABP v. Countrywide Fin. Corp.*, 447 B.R. 302, 310 (Bankr. C.D. Cal. 2010) (citation  
10 omitted).

11  
12         The relevant factors weigh strongly in favor of granting equitable remand here.  
13 This is a state law action at its core. It is part of a coordinated proceeding of similar  
14 personal injury and wrongful death lawsuits in Los Angeles County Superior Court.  
15 Plaintiffs assert claims for negligence and strict products liability for injuries arising out  
16 of Mrs. Weirick’s alleged exposure to asbestos from Johnson & Johnson’s talc products.  
17 Those claims have not only been pending in state court for two years—they have been  
18 substantially litigated and tried. The parties went to trial on July 31, 2018 and following  
19 a hung jury, scheduled a retrial for April 29, 2019. Other than Johnson & Johnson’s  
20 theory of “related to” jurisdiction under Section 1334(b), there is no basis for removal or  
21 federal jurisdiction. And Johnson & Johnson’s basis for “related to” jurisdiction appears  
22 tenuous. Plaintiffs dismissed Imerys from this action five months before Imerys filed for  
23 bankruptcy. Accordingly, Imerys’s connection to the instant action rests solely on its  
24 contractual indemnification and insurance-sharing agreements with Johnson & Johnson.  
25 On these facts, comity favors remand. *See In re Enron Corp.*, 296 B.R. at 509 (“Comity  
26 dictates that California courts should have the right to adjudicate the exclusively state law  
27 claims involving California-centric plaintiffs and California-centric transactions.”).

1 Plaintiffs' right to a jury trial would be substantially prejudiced if this action is not  
2 remanded. Although Imerys filed for bankruptcy on February 13, 2019, Johnson &  
3 Johnson waited until the eve of trial to remove the action to this Court. In its motion to  
4 fix venue filed in the Delaware District Court, Johnson & Johnson represented that it was  
5 not seeking to remove cases where "trial is ongoing or scheduled to begin." (*See* Dkt. 1-4  
6 Ex. C at 7 n.4.) Contrary to that representation, Johnson & Johnson removed this action  
7 four days before the parties' pretrial conference. The parties at that point had conducted  
8 discovery, prepared expert disclosures, and filed trial documents in accordance with  
9 California state law and procedure. By all counts, they were ready to go to trial. If this  
10 action is transferred to Delaware, all of this effort will have to be duplicated. Trial will  
11 be delayed by months or even years. Mrs. Weirick does not have months or years.  
12 Johnson & Johnson's removal has risked depriving her of her day in court.

13  
14 Johnson & Johnson and Imerys, by contrast, are not likely to suffer serious  
15 prejudice if this action is remanded. Adjudication of Plaintiffs' California state law  
16 claims against Johnson & Johnson in California state court will not significantly hamper  
17 the administration of Imerys's bankruptcy estates. Plaintiffs assert no claims against  
18 Imerys and Imerys asserts no claims against Plaintiffs. If Johnson & Johnson is entitled  
19 to contribution or indemnity from Imerys, it can assert a claim against Imerys's estates in  
20 the Delaware Bankruptcy Court. Since Imerys is not a party to this action, it will not be  
21 precluded from raising any defenses it may have against Johnson & Johnson.<sup>2</sup>

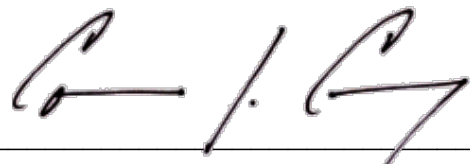
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23  
24 <sup>2</sup> Johnson & Johnson alternatively argues that this Court should abstain from ruling on Plaintiffs'  
25 application for remand so the Delaware District Court may first rule on the motion to fix venue.  
26 Johnson & Johnson relies on 28 U.S.C. § 157(b)(5), which states that "personal injury tort and wrongful  
27 death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district  
28 court in the district in which the claim arose, as determined by the district court in which the bankruptcy  
case is pending." This provision governs venue, not jurisdiction. *See Stern v. Marshall*, 564 U.S. 462,  
478–79 (2011). The issue before the Court is whether removal jurisdiction is proper. Johnson &  
Johnson offers no authority for the proposition that the Court cannot rule on Plaintiffs' application for  
remand before the Delaware District Court rules on the motion to fix venue.

1 Johnson & Johnson argues that the Court should decline to remand this action to  
2 allow the “orderly transfer” of the thousands of state actions against it to the Delaware  
3 District Court. According to Johnson & Johnson, transfer will provide Plaintiffs “the best  
4 chance for an efficient adjudication.” (Dkt. 13 [Opposition] at 24.) The Court disagrees.  
5 Johnson & Johnson deprived Plaintiffs of their best chance for an efficient adjudication  
6 when it removed this action a week before the parties’ scheduled trial. Equitable  
7 considerations compel the Court to return Plaintiffs’ case to state court.<sup>3</sup>

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9 **III. CONCLUSION**

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11 For the foregoing reasons, Plaintiffs’ *ex parte* application for remand is  
12 **GRANTED**. This action is hereby remanded to Los Angeles County Superior Court.

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16 DATED: May 3, 2019



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18 \_\_\_\_\_  
CORMAC J. CARNEY

19 UNITED STATES DISTRICT JUDGE  
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27 \_\_\_\_\_  
28 <sup>3</sup> Plaintiffs offer several other arguments in support of their application for remand. For instance, they argue that Johnson & Johnson’s removal was untimely and that Plaintiffs’ claims are subject to mandatory abstention. Because the Court finds that equitable remand is proper pursuant to 28 U.S.C. § 1452(b), it need not address Plaintiffs’ remaining grounds for removal.