

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

**DOLLY ROLAND, et al.,
Plaintiffs,**

v.

No. 3:17-cv-00582-DRH

**JANSSEN RESEARCH & DEVELOPMENT,
LLC, f/k/a JOHNSON AND JOHNSON
PHARMACEUTICAL RESEARCH AND
DEVELOPMENT LLC; JANSSEN ORTHO
LLC; JANSSEN PHARMACEUTICALS, INC.,
f/k/a JANSSEN PHARMACEUTICA, INC., f/k/a
ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS,
INC.; BAYER HEALTHCARE PHAMACEUTICALS INC.;;
BAYER PHARMA AG; BAYER CORPORATION;
BAYER HEALTHCARE LLC; BAYER HEALTHCARE AG;
BAYER AG,**

Defendants.

ORDER

HERNDON, District Judge:

Before the Court is plaintiffs' Motion to Remand (Doc. 15), pursuant to 28 U.S.C. § 1447(c). Defendants oppose (Doc. 19). Based on the following, the Court **GRANTS** the Motion to Remand (Doc. 15) for lack of subject matter jurisdiction, and **REMANDS** the matter to the St. Clair County, Illinois Circuit Court.

I. BACKGROUND

On April 27, 2017, plaintiffs filed a one hundred eight (108) count complaint against defendants in the Circuit Court, Twentieth Judicial Circuit, St. Clair County, Illinois (Doc. 1-1). Plaintiffs sought relief for personal injuries and

economic damages suffered by use of Xarelto (rivaroxaban), which was designed, researched, developed, manufactured, tested, labeled, advertised, marketed, promoted, distributed, and sold by defendants and their representatives (*Id.*). Moreover, plaintiffs allege defendants failed to adequately test Xarelto, and further, failed to warn consumers or physicians of its life-threatening risks—including the risk of uncontrollable bleeding (*Id.*).

On June 2, 2017, defendants removed the case to this Court based on diversity jurisdiction pursuant to 28 U.S.C. §§ 1331, 1441 and 1446 (Doc. 1). Defendants claim the case was filed by numerous improperly joined out-of-state plaintiffs and one Illinois-resident plaintiff; and as a result, argue this Court has subject matter jurisdiction over the case under 28 U.S.C. § 1332(a) (*Id.* at 2). Specifically, defendants contend that—on its face—plaintiffs’ complaint does not allege complete diversity between parties,¹ and it has not been established that any named defendant is subject to personal jurisdiction in Illinois for claims asserted (*Id.* at 5). As a consequence, defendants maintain this Court lacks personal jurisdiction regarding non-resident plaintiffs’ claims, and possesses the discretion to dispose of claims on the ground of personal jurisdiction prior to ruling on the issue of subject matter jurisdiction (*Id.*).

¹ Defendants declare themselves citizens of Delaware, Germany, Indiana, Ireland, Netherlands, New Jersey, Pennsylvania, and Bermuda; and contend that Nonresident plaintiffs are citizens of New Jersey (John Luddy), Pennsylvania (Norman Carl and Germaine Carey, Individually and as Representative for William Carey), Arkansas (Lydia Holland), Mississippi (James Valentine, Individually and as Representative for Daniel Valentine), Tennessee (Ezra Thomas and Rickey Bonner, Individually and as Representative for Debbie Bonner), Louisiana (John Morgan), Kentucky (Randall Goff), Georgia (Billy Lee, Individually and as Representative for Wilma Jean Lee), Virginia (Sharon Baker, Individually and as Representative for Eugene Baker), Indiana (Nathaniel Terrell), and Ohio (Lawrence Evans) (Doc. 1 at 5).

In addition, defendants state the intention to seek the inclusion of this action in MDL Proceeding No. 2592,² captioned *In re: Xarelto (Rivaroxaban) Products Liability Litigation*, in the Eastern District of Louisiana. For relief, defendants request this Court defer to the overseeing MDL Court's procedures concerning nationwide Xarelto litigation; sever non-resident plaintiffs' claims for lack of personal jurisdiction, and exercise subject matter jurisdiction over claims of the Illinois resident (*Id.* at 6-8).

On June 8, 2017, plaintiffs filed a Motion to Remand (Doc. 15) pursuant to 28 U.S.C. § 1447(c) arguing that this Court lacks subject matter jurisdiction; as there is no diversity jurisdiction because: (1) plaintiff John Luddy and defendants Janssen Pharmaceuticals, Inc., Bayer HealthCare Pharmaceuticals Inc., Bayer Corporation, and Bayer HealthCare LLC are citizens of the State of New Jersey; (2) plaintiffs Norman Carl, Germaine Carey and her decedent, William Carey, and defendants Janssen Research & Development, LLC, Janssen Pharmaceuticals, Inc., and Bayer HealthCare LLC are citizens of the State of Pennsylvania; and (3) plaintiff Nathaniel Terrell and Defendant Bayer Corporation are citizens of the State of Indiana (Doc. 16). As a result, plaintiffs proclaim lack of complete diversity of citizenship and further request the Court remand the matter back to state court for further proceedings (*Id.* at 2).

In response, defendants argue this matter—in actuality—is 14 distinct cases filed by citizens of Illinois, New Jersey, Pennsylvania, Arkansas, Mississippi,

² On December 12, 2014, the Judicial Panel on Multidistrict Litigation issued an order establishing MDL Proceeding No. 2592 for federal actions involving allegations of severe bleeding or other injuries as a result of using Xarelto.

Tennessee, Louisiana, Kentucky, Georgia, Virginia, Indiana and Ohio; and is a deliberate attempt to trounce removal rights, avoid jurisdiction of this Court, and inappropriately prohibit transfer to MDL No. 2592 (Doc. 19). Specifically, defendants maintain complete diversity as to the Illinois plaintiff, as no defendants are organized or incorporated under the laws of Illinois, and there is no personal jurisdiction in Illinois over the claims of New Jersey, Pennsylvania, Arkansas, Mississippi, Tennessee, Louisiana, Kentucky, Georgia, Virginia, Indiana or Ohio non-resident plaintiffs who used Xarelto in their home states, and whose claims do not arise out of defendants' conduct in Illinois (*Id.*). As the motion to remand is ripe, the Court will now address the merits of the motion.

II. ANALYSIS

A civil action may be removed to federal court if the district court has original jurisdiction. *See* 28 U.S.C. § 1441. Courts have original jurisdiction of civil actions if there is complete diversity between the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs. Complete diversity means “none of the parties on either side of the litigation may be a citizen of the state of which a party on the other side is a citizen.” *Howell by Goerdts v. Tribune Entm't Co.*, 106 F.3d 215, 217 (7th Cir. 1997) (citations omitted). The removal statute is construed narrowly and any doubts regarding jurisdiction are resolved in favor remand. *See Schur v. L.A. Weight Loss Ctrs., Inc.*, 577 F.3d 753, 758 (7th Cir. 2009); *Doe v. Allied-Signal, Inc.*, 985 F.2d 908, 911 (7th Cir. 1993). If the district court lacks subject matter jurisdiction, the action must be remanded

to state court pursuant to 28 U.S.C. § 1447(c). The burden of establishing federal jurisdiction falls on the party seeking removal. *See Doe*, 985 F.2d at 911.

Here, there is no dispute that plaintiff John Luddy and defendants Janssen Pharmaceuticals, Inc., Bayer HealthCare Pharmaceuticals Inc., Bayer Corporation, and Bayer HealthCare LLC are citizens of the State of New Jersey; plaintiffs Normal Carl, Germaine Carey and her decedent, William Carey, and defendants Janssen Research & Development, LLC, Janssen Pharmaceuticals, Inc., and Bayer HealthCare LLC are citizens of the State of Pennsylvania; and plaintiff Nathaniel Terrell and Defendant Bayer Corporation are citizens of the State of Indiana.³ Consequently, complete diversity does not exist on the face of the complaint. Rather, defendants contend that non-resident plaintiffs' claims should be dismissed for lack of personal jurisdiction in that non-resident plaintiffs were improperly joined with other claims to defeat diversity jurisdiction.

This doctrine is called “procedural misjoinder,” also known as “fraudulent misjoinder,” and was first recognized in *Tapscott v. MS Dealer Serv. Corp.*, 77 F.3d 1353, 1360 (11th Cir. 1996). This doctrine has been rejected repeatedly by this Court and several other District Judges in this Judicial District. *See Sabo v. Dennis Techs., LLC*, 2007 WL 1958591 (S.D. Ill. July 2, 2007) (Herndon, J.); *In re Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, 779 F.Supp.2d 846, 853 (S.D. Ill. 2001) (Herndon, C.J.); *Abel v. SmithKline Beecham Corp.*, 2013 WL 5835404 (S.D. Ill. October 30, 2013) (Herndon, C.J.) (compiling cases and reaffirming the Court’s previous decisions

³ Monetary threshold is also undisputed.

on fraudulent misjoinder); *In re Pradaxa (Dabigatran Etexilate) Products Liability Litigation*, 2014 WL 257831 (S.D. Ill. January 23, 2014) (Herndon, C.J.); see e.g. *Rutherford v. Merck Co.*, 482 F.Supp.2d 842, 851 (S.D. Ill. 2006) (Murphy, J.); *Aranda v. Walgreen Co.*, 2011 WL 3793648 (S.D. Ill. Aug. 24, 2011) (Gilbert, J.); *Rios v. Bayer Corp., et al.*, 2016 WL 5929246 (S.D. Ill. October 12, 2016) (Yandle, J.).

Fraudulent joinder, which the Seventh Circuit has recognized, “occurs either when there is no possibility that a plaintiff can state a cause of action against nondiverse defendants in state court, or where there has been outright fraud in the pleading.” *Gottlieb v. Westin Hotel Co.*, 990 F.2d 323, 327 (7th Cir. 1993). “In determining whether there is diversity of citizenship, parties fraudulently joined are disregarded.” *Id.* In contrast, procedural misjoinder, which the Seventh Circuit has not had the occasion to discuss, typically invokes a defendant’s argument that a plaintiff’s complaint has egregiously misjoined unrelated, non-fraudulent claims of nondiverse plaintiffs, in an attempt to avoid federal court. See *Tapscott*, at 1360. Therefore, the doctrine of procedural misjoinder requires a court to evaluate the applicable permissive joinder rules.

The Court has discussed extensively its reasoning in respectfully declining to recognize the doctrine of procedural misjoinder. See *Sabo*, 2007 WL 1958591 at *6-8; *In re Yasmin*, 779 F.Supp.2d at 853-857; *Abel*, 2013 WL 5835404 at *2; *In re Pradaxa*, 2014 WL 257831 at *2-3. Based on the foregoing, the Court does not have diversity jurisdiction over plaintiff’s complaint. Further, the Court need

not determine the existence of personal jurisdiction. *See Meyers v. Oneida Tribe of Indians of Wis.*, 836 F.3d 818, 821 (7th Cir. 2016) (federal court has leeway to choose among threshold grounds for denying audience to case on merits); *see also Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584-85 (1999) (district court does not contravene Article III limits in declining jurisdiction of state law claims on discretionary grounds without determining whether said claims fall under subject matter jurisdiction).

III. CONCLUSION

Accordingly, the Court **GRANTS** the motion to remand (Doc. 15) for lack of subject matter jurisdiction. Pursuant to 28 U.S.C. § 1447(c), this matter is **REMANDED** to the St. Clair County, Illinois Circuit Court.

IT IS SO ORDERED.

Signed this 18th day July, 2017.

 Digitally signed by
Judge David R.
Herndon
Date: 2017.07.18
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UNITED STATES DISTRICT JUDGE