

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

JOHN OSSIM, )  
KRISTEN OSSIM, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
ANULEX TECHNOLOGIES, INC., )  
ABC INC., )  
JOHN DOE, M.D., )  
 )  
Defendants. )

Case No. 1:14-cv-00254-TWP-DKL

**ENTRY ON PLAINTIFFS’ MOTION FOR LEAVE**

This matter is before the Court on Plaintiffs’, John Ossim and Kristen Ossim (“the Ossims”), Motion for Leave to File Documents Identifying Defendants ABC, Inc., and John Doe, MD, Under Seal ([Filing No. 26](#)). In essence, this is a motion to reconsider the Court’s decision to retain jurisdiction over the case, and it will be treated as such. For the reasons set forth below, the Motion for Leave and accompanying request to reconsider remand is **DENIED**.

**I. BACKGROUND**

The following background was set forth in the Court’s Entry on the Ossims’ motion for remand. The Ossims’ claims arise out of a surgery performed by an anonymous doctor at an anonymous hospital. The surgery involved the use of Anulex’s product, the Xclose Tissue Repair System. Indiana’s Medical Malpractice Act, I.C. § 34-18-8-4, provides that a court action cannot be filed against qualified medical care providers in their own names until a Medical Review Panel issues an opinion in accordance with the Indiana Medical Malpractice Act (“the Act”). However, the Act permits filing a lawsuit under the condition that the plaintiff’s “complaint filed in court

may not contain any information that would allow a third party to identify the [healthcare] defendant.” Ind. Code § 34-18-8-7. Thus, simultaneously to filing the action before the Medical Review Panel, the Ossims filed their lawsuit in state court. Thereafter, Anulex filed a notice of removal ([Filing No. 1](#)). The identities of the anonymous doctor and hospital are known to the Ossims, Anulex, and the Medical Review Panel, but have not been made known to the Court.

On June 24, 2014 the Court denied the Motion to Remand finding that “[r]emand is not appropriate here where the identities are not known on the record and the medical review panel outcome is uncertain.” [Filing No. 22, at ECF p. 3](#). The Ossims have filed the current motion seeking to name the anonymous defendants under seal, and urge the Court to remand the case to state court.

## **II. DISCUSSION**

The Ossims wish to file documents, including admissions of Defendant Anulex, identifying the anonymous defendants as Indiana citizens, thus defeating diversity jurisdiction and requiring remand. The Court declines to allow the Ossims to file their documents under seal. In *Miller v. Anonymous Corp.*, No. 1:12-cv-562-TWP-DML, 2012 WL 3236304, at \*2 (S.D. Ind. Aug. 7, 2012), the Court found that when “a healthcare provider defendant who was named ‘anonymous’ in the complaint only because of the Act but whose identity becomes known (and is indeed disclosed in public filings with the court) is not ‘fictitious’ and its citizenship cannot be disregarded.” The Court acknowledges that the Ossims have let the “cat out of the bag,” [Filing No. 33, at ECF p. 2](#), but they have ignored a crucial distinction of *Miller*. In that case, the healthcare defendants identified themselves and actively participated in the case by filing public documents. The current situation of plaintiffs filing identifying documents under seal is a

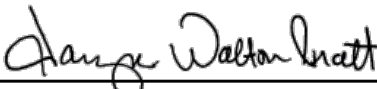
compelling distinction in that the anonymous Defendants' have not identified themselves in public filings or otherwise. With that backdrop in mind, the Court must **DENY** the Ossims' motion.

### **III. CONCLUSION**

As stated above, the Plaintiffs' Motion for Leave to File Documents Identifying Defendants ABC, Inc. and John Doe, MD, under Seal ([Filing No. 26](#)) is **DENIED**. Accordingly, Filing No. 34, the proposed exhibit filed under seal, is stricken. The Plaintiffs' response to the pending motion to dismiss is due no later than September 23, 2014. Defendants' reply (if any) is due no later than September 29, 2014.

SO ORDERED.

Date: 9/9/2014

  
\_\_\_\_\_  
Hon. Tanya Walton Pratt, Judge  
United States District Court  
Southern District of Indiana

Distribution:

Robert Thomas Dassow  
HOVDE DASSOW & DEETS LLC  
rdassow@hovdelaw.com

Dina M. Cox  
LEWIS & WAGNER  
dcox@lewiswagner.com

Janelle P. Kilies  
LEWIS WAGNER LLP  
jkilies@lewiswagner.com