

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

SANDRA CORTEZ

CIVIL ACTION

VERSUS

JOHNSON & JOHNSON ET AL.

NO.: 19-232-BAJ-RLB

RULING AND ORDER

Before the Court is the **Motion (Doc. 9)** of Sandra Cortez to remand this action to the 19th Judicial District Court for the Parish of East Baton Rouge. For the reasons that follow, the **Motion (Doc. 9)** is **GRANTED**.

I. BACKGROUND

At issue in this products-liability action is bankruptcy jurisdiction over the Louisiana-law claims a terminally ill Louisiana citizen asserted against J&J¹ in a Louisiana court. J&J seeks to compel that citizen to litigate her claims in Delaware based on tenuous ties to a bankruptcy petition filed by one of J&J's cosmetic-talc suppliers. The Court finds the equities dispositive and orders remand under 28 U.S.C. § 1452(b).

¹ The Court refers to Johnson & Johnson and Johnson & Johnson Consumer Companies Inc. collectively as "J&J."

In November 2018, Sandra Cortez sued J&J, Imerys Talc America, Inc., and K&B Louisiana Corporation in the 19th Judicial District Court for the Parish of East Baton Rouge. (Doc. 1 at p. 21). She alleges that she developed ovarian cancer because she regularly used cosmetic-talc products these companies manufactured, marketed, or sold. (*Id.* at pp. 21–33). She alleges negligence, redhibition, and civil-conspiracy claims under Louisiana law. (*Id.*).

In April 2019, J&J removed the claims² against it to this Court under the bankruptcy removal statute, 28 U.S.C. § 1452(a). (Doc. 1). J&J asserts that the Court has jurisdiction under 28 U.S.C. § 1334(b) because this case is “related to” a bankruptcy petition filed by one of its talc suppliers, Imerys Talc America, Inc., in the United States Bankruptcy Court for the District of Delaware. (*Id.*). This case is related to that one, J&J asserts, because (1) Imerys Talc America, Inc. may have a duty to indemnify J&J against Cortez’s claims, (2) Imerys Talc America, Inc. and J&J share insurance, and (3) Imerys Talc America, Inc. and J&J share an “identity of interest.” (*Id.*).

Cortez’s claims are serious but not unique. Thousands of plaintiffs across the nation have sued J&J on a similar theory: the use of J&J cosmetic-talc products causes the user to develop cancer. J&J’s basis for removal is not unique, either. J&J has removed thousands of state-court talc suits based on an alleged link to the Imerys Talc America, Inc. bankruptcy. In the Middle District of Louisiana alone, J&J has

² J&J’s claims against K&B Louisiana Corporation are pending in state court. *Compare* 28 U.S.C. § 1452(a) (allowing a party to remove a “claim” or “cause of action”) *with* 28 U.S.C. § 1441(a) (allowing a “defendant” to remove a “civil action”).

removed at least nine suits. *See* Civil Action Nos. 19-230-SDD-EWD, 19-231-BAJ-EWD, 19-233-JWD-EWD, 19-234-SDD-RLB, 19-240-SDD-EWD, 19-242-SDD-EWD, 19-250-BAJ-JW, 19-253-JWD-EWD, 19-255-SDD-RLB.

Meanwhile, in Delaware, J&J has invoked 28 U.S.C. § 157(b)(5) and moved the United States District Court for the District of Delaware to “fix” venue for all similar talc suits. (Doc. 1 at ¶¶ 7–8). J&J’s motion is fully briefed.³ *See In re Imerys Talc America, Inc.*, No. 1-19-MC-103-MN (D. Del. 2019).

Now, Cortez moves to remand. (Doc. 9). She argues that the Court lacks related-to jurisdiction and the equities favor remand. (*Id.*). She emphasizes her poor prognosis and her right to an expedited trial in state court. (*Id.*). J&J opposes remand and urges the Court to await the United States District Court for the District of Delaware’s ruling on its venue motion. (Doc. 14).

II. LEGAL STANDARD

This Court is a court of limited jurisdiction. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). It “may not exercise that jurisdiction absent a statutory basis[.]” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005). Because J&J removed this case, J&J “bears the burden of showing that federal jurisdiction exists and that removal was proper.” *Barker v. Hercules Offshore*,

³ The District of Delaware denied J&J’s motion to provisionally fix venue—styled an “Emergency Provisional Transfer Motion”—and observed that J&J sought the “transfer of essentially every talc case pending against it, irrespective of the facts.” Docket entry 34, *In re Imerys Talc America, Inc.*, No. 1-19-MC-103-MN (D. Del. May 9, 2019).

Inc., 713 F.3d 208, 212 (5th Cir. 2013) (quoting *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 722, 723 (5th Cir. 2002)).

III. DISCUSSION

The parties filed lengthy briefs on the timeliness of removal, mandatory abstention, and related-to jurisdiction. (Docs. 9, 14). But this Court, like hundreds of others, finds the equities dispositive. *See, e.g., In re State Court Talc Actions*, __ F. Supp. 3d __, 2019 WL 2497856, at *4 (S.D.N.Y. June 4, 2019); *Wiman v. Triangle Enters., Inc.*, No. 5:19-CV-59-GNS, 2019 WL 2341671, at *2 (W.D. Ky. June 3, 2019); *In re Removed State Court Talc Actions*, No. 19-CV-3076-CJC, 2019 WL 2191808, at *4 (C.D. Cal. May 21, 2019). The Court therefore assumes that removal was timely and related-to jurisdiction is present.

The Court may remand claims removed under 28 U.S.C. § 1452(a) “on any equitable ground.” 28 U.S.C. § 1452(b). Section 1452(b) grants the Court “broad discretion” to remand; any of the following grounds will suffice:

- (1) Forum non conveniens;
- (2) A holding that, if the civil action has been bifurcated by removal, the entire action should be tried in the same court;
- (3) A holding that a state court is better able to respond to questions involving state law;
- (4) Expertise of the particular court;
- (5) Duplicative and uneconomic effort of judicial resources in two forums;
- (6) Prejudice to the involuntarily removed parties;
- (7) Comity considerations; and
- (8) A lessened possibility of an inconsistent result.

See Browning v. Navarro, 743 F.2d 1069, 1076 n.21 (5th Cir. 1984). The Court finds equitable remand appropriate on at least two grounds. *See* 28 U.S.C. § 1452(b).

The first is prejudice. Cortez is a terminally ill Louisiana resident who sued J&J on state-law claims in state court. Her claims had been pending for almost six months at the time J&J removed them; had J&J not done so, Cortez would have received an expedited trial setting. *See* LA. CODE CIV. PROC. art. 1573. Compelling her to litigate her Louisiana-law claims in a Delaware court based on attenuated links to a non-party's bankruptcy would prove unduly prejudicial.

The second is comity. This is a case between non-diverse parties involving the application of Louisiana tort law. A Louisiana court should adjudicate it. *See, e.g., Younger v. Harris*, 401 U.S. 37, 44 (1971) (“[T]he National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.”).

* * *

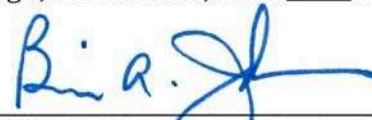
J&J has not convinced the Court that it should exercise jurisdiction over the Louisiana-law claims of a Louisiana-citizen plaintiff based on a non-party's Delaware bankruptcy.

IV. CONCLUSION

Accordingly,

IT IS ORDERED that the **Motion to Remand (Doc. 9)** is **GRANTED**. A separate Order of Remand shall issue.

Baton Rouge, Louisiana, this 20th day of June, 2019.



JUDGE BRIAN A. JACKSON
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA