IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DEBORAH STREETER et al. *
*
v. * Civil Action WMN-09-CV-01022
*
SSOE SYSTEMS et al. *

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MEMORANDUM

Before the Court are the following motions: Plaintiffs' Motion for Remand, Paper No. 23, Defendants' Joint Motion for Leave to File Amended Notice of Removal, Paper No. 34, Defendant Engineered Crane Systems of America's Motion to Quash Purported Service, Paper No. 20, and Nucor Defendants' Motion to Dismiss or for More Definite Statement, Paper No. 21. The motions are fully briefed. Upon review of the pleadings and the applicable case law, the Court determines that no hearing is necessary (Local Rule 105.6) and that the Motion for Remand will be denied, the Motion to Amend will be granted, the Motion to Quash will be denied as moot, and the Motion to Dismiss or in the Alternative for a More Definite Statement will be denied as set forth below.

I. BACKGROUND

This action arises out of the death of Jimmy Wayne Streeter on March 14, 2006. Mr. Streeter died when the maintenance truck in which he was sitting was struck by a 64-foot-long portion of

a calciner start-up stack that broke off of the roof of the W.R. Grace FCC plant in Curtis Bay Maryland. Plaintiffs allege that the Defendants negligently designed, manufactured, and erected the stack.

Plaintiffs filed their complaint against Defendants, SSOE Systems, Inc. and SSOE, Inc. ("SSOE Defendants"); Warren Environment, Inc.; Engineered Crane Systems of America ("ECSA"); Cianbro Corporation; Cianbro Equipment, LLC; Cianbro Fabrication and Coating Corporation ("Cianbro Defendants"); Nucor Corporation; Nucor Environmental Services, Inc.; Nucor Properties, LLC; Nucor Building Systems Sales Corporation; and Nucor-Yamato Steel Sales Corporation ("Nucor Defendants") in the Circuit Court for Baltimore City, Maryland on March 13, 2009. Streeter v. SSOE Systems, Inc. et al., Case No. 24-C-09-001879. The Complaint alleged for all Defendants other than Cianbro Corporation that Defendants were organized under the laws of states other than Maryland and that their principal places of business were states other than the State of Maryland. Compl. ¶8-18. Plaintiffs alleged, however, that Cianbro Corporation, while organized under the laws of a state other than Maryland, had its principal place of business in Baltimore, Maryland. Id. at ¶9. The Complaint asserts seven causes of action including negligence, strict liability, and wrongful death.

Plaintiffs served Defendants with a summons and complaint on the following dates: SSOE Defendants on or about March 27, 2009; Cianbro Defendants on or about March 23, 2009; Warren Environment on or about March 26, 2009; Nucor Corporation on or about March 25, 2009; and the other Nucor Defendants on or about March 24, 2009.[1] Plaintiffs initially filed an affidavit of service showing service on Defendant ECSA on March 27, 2009. Paper 20, Ex. A. Subsequently, Defendant ECSA filed a motion to quash with this Court on May 18, 2009. In response Plaintiffs withdrew their affidavit of service on ECSA. Simultaneously, they sent to ECSA, pursuant to Fed. R. Civ. P 4(d), a notice of lawsuit and a request to waive service of a summons on June 4, 2009, by certified mail. Plaintiffs' actions relating to service on ECSA thus render ECSA's Motion to Quash moot.

On April 22, 2009, Defendants Cianbro Corporation and Nucor Corporation filed a notice of removal. They alleged diversity of citizenship, 28 U.S.C.§ 1332, as grounds for removal. Cianbro Corporation and Nucor Corporation explained in the Notice that Cianbro Corporation's principal place of business as stated in Plaintiff's Complaint was incorrectly identified as Maryland.

[1] Plaintiffs note in their Motion for Remand discrepancies in the dates of service for the Cianbro and Nucor defendants as listed on the Notice of Removal and the Joint Response to Standing Order Concerning Removal. The dates used here reflect the dates of service as listed on the Joint Response to Standing Order Concerning Removal. Paper No. 19.

Notice of Removal at ¶2-3. Rather, they alleged that Cianbro Corporation's principal place of business is Maine. Id. at ¶3. In support of their allegation, they attached to the Notice an affidavit of Thomas E. Stone, Executive Vice President & Corporate Secretary of Cianbro Corporation ("Stone Affidavit"). Id., Exh. B. The Stone Affidavit affirmed various factors relevant to establishing that Cianbro Corporation's principal place of business is Maine. Id.

According to the affidavit of Robert L. Ferguson, Jr., counsel for the Cianbro Defendants, he received the Stone Affidavit from Cianbro Corporation on April 17, 2009. Ferguson Aff. at ¶3. He provided it to the Nucor Defendants the same day. Id. at ¶ 4. Mr. Ferguson also affirmed that he did not provide the affidavit to any of the other Defendants until it was served electronically as Exhibit B to the Notice of Removal on April 23, 2009. Id. at ¶ 5.

The Notice of Removal represented that all Defendants consented to the removal. Paper 1 at ¶9. The Notice only named specifically, however, Cianbro Corporation and Nucor Corporation and only their attorneys signed it.

The ECSA and SSOE Defendants filed joinders in the notice of removal on April 27, 2009 and Warren Environment filed its joinder on April 28, 2009. Papers 12-14. The Cianbro subsidiary Defendants and the Nucor affiliate Defendants explicitly

expressed their intent to join in the Notice of Removal in the Joint Response to Standing Order Concerning Removal filed on May 7, 2009. Paper No. 19, ¶5.

The day before filing the Notice of Removal, on April 21, 2009, the Cianbro Defendants filed an answer to Plaintiffs' Complaint in the Circuit Court for Baltimore City that was signed by their shared attorney. Paper No. 4. These same defendants also filed contemporaneously with the Notice of Removal on April 22, 2009 the Disclosure statement required by Fed. R. Civ. P. 7.1 and Local Rule 103.3 stating that Cianbro Equipment, LLC and Cianbro Fabrication and Coating Corporation are subsidiaries of Cianbro Corporation. Paper No. at ¶1. The Disclosure Statement was also signed by joint counsel for the Cianbro Defendants.

II. MOTION FOR REMAND

A. Legal Standard for Remand

The removal jurisdiction of the federal courts is "scrupulously confine[d]," Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 109 (1941), and the burden of proving federal jurisdiction is borne by the party seeking to invoke it. Maryland Stadium Authority v. Ellerbe Becket, Inc., 407 F.3d 255, 260 (4th Cir. 2005) (citing Mulcahey v. Columbia Organic Chems. Co., 29 F.3d 148, 151 (4th Cir. 1994)). Moreover, the removal statute is to be strictly construed and if federal

jurisdiction is doubtful the case is to be remanded. Id. Such a strict policy against removal and for remand protects the sovereignty of state governments and state judicial power. Shamrock, 313 U.S. at 108-09.

Pursuant to 28 U.S.C. § 1441(a), where original jurisdiction in a district court exists, a defendant may remove an action from state court to that district court. The procedures for removal are set forth in 28 U.S.C. § 1446 and require the filing of a Notice of Removal "containing a short and plain statement of the grounds of removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action."

B. Discussion

Plaintiffs raise two arguments in favor of remand. First, they argue that Defendants have not met their burden of showing that diversity jurisdiction exists. Second, they argue that, although Cianbro Corporation and Nucor Corporation filed a timely notice of removal, the additional defendants did not timely join that notice. Both arguments are without merit as discussed below.

1. Diversity of Citizenship

a. Plaintiffs' Citizenship

Pursuant to 28 U.S.C. § 1332(a)(1), a United States District Court possesses original subject matter jurisdiction if

"the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs," and the matter "is between citizens of different states." In Plaintiff's opening motion they argue that Defendants have not met their burden of proving diversity jurisdiction in the Notice of Removal because Defendants do not allege that Plaintiffs are citizens of Maryland, but, rather, allege that Defendants are residents of Maryland. Moreover, they argue that such an error is not amenable to amendment because it is an "additional allegation of substance" rather than a mere technicality or minor error. Plaintiffs' reliance on Johnson v. Nutrex Research, Inc. in support of this contention in this case is misplaced, however. 429 F. Supp. 2d 723 (D. Md. 2006).

In Johnson, Judge Titus remanded a case where only the residency of the plaintiff had been alleged rather than the citizenship. Id. at 725. Judge Titus held that citizenship and residence are not interchangeable for purposes of establishing diversity jurisdiction. Id. Important to his decision to remand, however, was that the defendants conceded that they could not prove the plaintiff's citizenship. Id. at 726. Judge Titus emphasized this point the next day in Molnar-Szilasi v. Sears Roebuck and Co. when he allowed the defendant to amend its pleading to reflect the plaintiff's citizenship rather than her

residency finding that it was merely a technical defect amenable to correction. 429 F. Supp. 2d 728, 730-31 (D. Md. 2006).

Judge Titus explained that removal was proper in Molnar-Szilasi, but not in Johnson, because in Molnar Szilasi there were no serious questions about the plaintiff's Maryland citizenship. Id. at 731. The Court noted that Molnar-Szilasi's complaint stated: 1) she resided in Montgomery Village in Montgomery County, Maryland; 2) her boyfriend purchased the product at issue in the litigation in Montgomery County, Maryland; and 3) Molnar-Szilasi was injured while operating the product in Montgomery County, Maryland. Id. Judge Titus also indicated that the defendants in Johnson "did not even attempt to amend their removal petition to clearly articulate the grounds for diversity jurisdiction, whereas [in Molnar-Szilasi the defendant] filed a Motion to Amend its Notice of Removal to cure any technical defects of its initial notice. Id.

As in Molnar-Szilasi, the Complaint here demonstrates that Plaintiffs reside at 215 Cherry Hill Road, Street, Maryland, and that the accident that resulted in the death of Plaintiffs' decedent husband and father occurred at the W.R. Grace Curtis Bay FCC Plant in Columbia, Maryland, where the decedent worked "at all relevant times." Compl. at ¶¶4, 5, 7. The record demonstrates that Plaintiffs are citizens of Maryland, the Notice of Removal identifies diversity of citizenship as the

basis of removal, and Plaintiffs have filed a motion to amend to address the technical deficiency of using the word "resident" instead of "citizen." Therefore following the reasoning of Molnar-Szilasi, Defendants' Motion to Amend the Notice of Removal will be granted.

b. Defendant Cianbro Corporation's Citizenship

Plaintiffs belatedly contend in their reply brief that they "do not concede" that Cianbro Corporation's principal place of business is in Maine. Rather, they maintain that it is in Maryland, which would defeat diversity jurisdiction.[2]

Corporate citizenship for diversity purposes under § 1332 is determined both by the State in which the corporation has been incorporated and by the State where it has its principal place of business. 28 U.S.C. § 1332(c)(1). The Fourth Circuit recognizes two tests to determine a corporation's principal place of business: the "nerve center test" and the "place of operations test." Athena Automotive, Inc. v. DiGregorio, 166 F.3d 288, 290 (4th Cir. 1999) (citing Peterson v. Cooley, 142 F.3d 181, 184 (4th Cir. 1998)).

The "nerve center test" is used "when a corporation engages primarily in the ownership and management of geographically

[2] Although the Court notes that diversity jurisdiction would only be defeated by Cianbro Corporation's citizenship in Maryland if Plaintiffs' citizenship is also in Maryland, which Plaintiffs have also evidently not conceded.

diverse investment assets," id., such as a holding company or a passive investment vehicle. Peterson v. Cooley, 142 F.3d 181, 184 (4th Cir. 1998). The "nerve center test" establishes the corporation's principal place of business as that "place where the corporation's officers direct, control, and coordinate its activities. Id.

The "place of operations test", on the other hand, applies when the corporation has "multiple centers of manufacturing, purchasing, or sales." Id. The "place of operations test" focuses on where "the bulk of corporate activity takes place." Id. Relevant considerations under the "place of operations" test include the location(s) of the corporation's offices, personnel and tangible assets, the locus of its day-to-day operations, where the corporation considers its headquarters, and location(s) where meetings are held, taxes are paid, and corporate records are kept. Trans/Air Manufacturing Corp. v. Merson, 524 F. Supp. 2d 718, 722 (D. Md. 2007) (internal citations omitted).

Here, Cianbro Corporation provides construction and construction management services. It is neither a holding company nor a passive investment vehicle. Thus, the appropriate test to apply is the "place of operations test," although in this case either test would lead to the same result.

Relying upon the Stone Affidavit, the principal place of business of Cianbro Corporation for diversity purposes is in Maine. The Stone Affidavit indicates that the activities conducted on behalf of Cianbro Corporation in Maryland are controlled and directed by the corporate officers in Maine. Stone Aff. at ¶ 9. The amount of tangible assets of Cianbro Corporation located in the state of Maine is more than 2.3 times the amount of tangible assets owned by Cianbro Corporation in the State of Maryland. Id. at ¶ 11. Likewise, the number of personnel who are employed by Cianbro Corporation in the State of Maine is more than 2.4 times the number of personnel who are employed by Cianbro in Maryland. Id. at ¶ 12. Corporate meetings are held in the State of Maine, and the corporate books and records are maintained in the State of Maine. Id. at ¶ 7. Of the thirteen corporate officers of Cianbro Corporation, twelve are domiciled in the State of Maine including, but not limited to, the CEO, COO, CFO, president, treasurer, and corporate secretary. Id. at ¶ 5. Of the six members of the board of directors for Cianbro Corporation, four are domiciled in Maine, including the Chairman of the Board, and two are domiciled in Florida. Id. at ¶ 6. The principal place of business identified in the corporate charter for Cianbro Corporation is Pittsfield, Maine, id. at ¶ 4, and Cianbro Corporation uses the address of its corporate headquarters in

Maine in connection with its formal tax filings with the State of Maryland. Id. at ¶ 10.

Notwithstanding this evidence, Plaintiffs assert that Cianbro Corporation's principal place of business is in Baltimore, Maryland. In support of their argument, Plaintiffs presented various filings by Cianbro Corporation with the Maryland Department of Assessments and Taxation ("SDAT") in which Cianbro Corporation has stated that its principal office is located in Baltimore, Maryland. Pls. Reply to Opp'n to Mot. to Remand, Exh. I-IX. Without more, Plaintiffs' evidence is unpersuasive and does no more than establish that Cianbro Corporation has an office in Maryland – a fact that Cianbro Corporation itself concedes in stating that it has more assets and employees in Maine than in Maryland. Maryland law provides for foreign corporations to certify a principal office within the state of Maryland, "which may be a business office of the corporation." Md. Code Ann., Corps. & Ass'ns § 7-205. But there is nothing within the law that would indicate that the principal office in Maryland is the same as the Corporation's principal place of business for diversity purposes. Thus, Defendants have sufficiently established that Defendant Cianbro Corporation's principal place of business is in Maine.

Because the evidence establishes that Plaintiffs' citizenship for purposes of diversity jurisdiction is Maryland

and that Defendant Cianbro Corporation's principal place of business is Maine, Defendants have met their burden of persuasion in establishing the factors of diversity jurisdiction.

2. Timely Notice of Removal and Joinder

Plaintiffs next argue that this case should be remanded because not all Defendants manifested their consent to removal in a timely manner. They argue first that the Cianbro subsidiary Defendants and Nucor affiliate Defendants never formally consented to the removal of this action. Plaintiffs next maintain that Warren Environment, Inc. did not file its notice of consent to removal until more than thirty days after it was served with the Complaint. Finally, Plaintiffs contend that ECSA has not established that its consent to remove this matter was timely since it is unclear when it first "received" the Complaint.

Procedurally, pursuant to 28 U.S.C. § 1446(b), a defendant must file "the notice of removal of a civil action . . . within thirty days after the defendant receives a copy of the initial pleading or within thirty days after the service of summons upon the defendant, whichever period is shorter." Anne Arundel County, Md. v. United Pac. Ins. Co., 905 F. Supp. 277, 278 (D. Md. 1995). Where there are multiple defendants served on different days, each defendant has thirty days from the date

s/he is served with process or with the complaint to join an otherwise valid petition for removal to federal court. McKinney v. Bd. Of Trustees of Maryland Com. Col., 955 F.2d 924, 928 (4th Cir. 1992). Defendants are not required to all sign the same notice of removal under 28 U.S.C. § 1446, but they are required to "'file a notice of removal, either independently or by unambiguously joining in or consenting to another defendant's notice, within the thirty-day period following service of process.'" Anne Arundel County, 905 F. Supp. at 278 (quoting Creekmore v. Food Lion, Inc., 797 F. Supp. 505, 508 (E.D. Va. 1992)).

Where the initial pleading is not removable, however, "a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order, or other paper from which it may first be ascertained that the case is one which is or has become removable . . . ." 28 U.S.C. § 1446(b). In examining this statutory language, the Fourth Circuit concluded that, where the grounds for removal do not appear on the face of the initial pleading, be it due to obfuscation, omission, or mistake, "the defendant will have 30 days from the revelation of grounds for removal in an amended pleading, motion, order or other paper to file its notice of removal." Lovern v. General Motors Corp., 121 F.3d 160, 162 (4th Cir. 1997). The court

noted that "the statute expressly encompasses the case in which the actual facts supporting federal jurisdiction remain unaltered from the initial pleading, but their existence has been manifested only by later papers, revealing the grounds for removal for the first time." Id. (emphasis in original). The extension of the removal period should not apply, however, to "cover strategic delay interposed by a defendant in an effort to determine the state court's receptivity to his litigating position." Lovern, 121 F.3d at 163.

Here, Defendants contend, and this Court agrees, that the Complaint failed to reveal diversity jurisdiction on its face because it indicated that Cianbro Corporation's principal place of business was Maryland. Thus, Defendants argue that while Cianbro Corporation itself knew that there were grounds for removal – and timely filed its notice of removal along with Nucor Corporation, the other defendants did not have notice of it until they received Mr. Stone's affidavit, which first revealed to them the grounds for removal. Thus, under the Defendants' reasoning, the thirty day period for joining in the notice of removal did not start for the Defendants other than Cianbro Corporation until the day that they received the Stone Affidavit.

Plaintiffs, on the other hand, contend that Defendant Cianbro Corporation's knowledge as to its correct principal

place of business precludes it and the other Defendants from tolling the removal period despite the Complaint not providing grounds for removal on its face. Plaintiffs cite to two cases that indicated that where "the defendant is able to determine from a fair reading of the complaint or other papers filed that the [grounds for removal] exist[]," the defendant cannot "sit idly by while the thirty day statutory period runs" solely because the complaint does not set forth the grounds for removal. Keller v. Carr, 534 F. Supp. 100, 102-103 (W.D. Ark. 1981)(holding that where the complaint stated that the defendant was a resident of Missouri or Arkansas and the defendant knew that he was a citizen of Missouri, the defendant filing a motion in state court to establish his citizenship as did not toll the thirty-day removal period). See also Nicholas v. Macneille, 492 F. Supp. 1046, 1047-8 (D.SC. 1980) (holding that an affidavit prepared by the defendant containing facts solely within her knowledge submitted to her own attorney did not serve to toll the removal period where the complaint contained sufficient jurisdictional allegations for the defendant to know at the time of receipt that diversity of citizenship existed). Both cases, however, involved only one defendant with the requisite knowledge and do not provide any guidance as to how to attribute that knowledge to co-defendants. Thus, Plaintiffs are correct that the removal period for Defendant Cianbro Corporation

commenced from the time that it received the Complaint, but Cianbro Corporation has not argued differently and timely filed its motion. The cases do not support, however, the idea that Cianbro Corporations' knowledge can be attributed to its co-Defendants nor does § 1446(b) create such a presumption.

Plaintiffs also argue that the Stone Affidavit does not qualify as an "other paper" kicking off the thirty-day removal period because it was not the product of a voluntary act of the Plaintiff. Plaintiffs' reading of the cases to which they cite for this proposition is overly restrictive, however, and would add an element to § 1446(b) that is not present. In both cases, it was not just voluntary acts of the plaintiff that could result in an "other paper," but also "other acts or events not the product of the removing defendant's activity." Potter v. Carvel Stores of New York, Inc., 203 F. Supp. 462, 467 (D. Md. 1962). [3] See also Kurt Orban v. Universal Shipping Corp., 301 F.

[3] In Potter, the plaintiff filed an action in the federal district court against the defendants alleging violations of federal anti-trust laws. 203 F. Supp. at 463. The defendants subsequently filed a state court action against the defendant for failure to pay rent. Id. at 464. The plaintiff filed a motion to dismiss in the state court or in the alternative to stay the proceedings pending the outcome of the plaintiff's federal case. Id. Upon denial of his motion, the defendant filed a petition for removal. The Court in Potter found that there had never been jurisdiction to remove the state court proceedings based on the original pleading and it did not become removable by an issue that "he interjected into the state proceedings" by filing his motion to dismiss. Id. at 467. The Court held that the "amended pleading, motion, order or other

Supp. 694, 699 (D. Md. 1969).[4] These holdings are consistent with the Fourth Circuit's holding in Lovern. Moreover, the Fourth Circuit has concluded that "[t]he 'motion, order or other paper' requirement is broad enough to include any information received by the defendant, 'whether communicated in a formal or informal manner.'" Yarnevic v. Brink's, Inc., 102 F.3d 753, 755 (4th Cir. 1996) (quoting Broderick v. Dellasandro, 859 F. Supp. 176, 178 (E.D. Pa. 1994)).

Were this Court to follow Plaintiffs' argument that an "other paper" could only be the result of a voluntary act of the

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paper must emanate from either the voluntary act of the plaintiff in the state court or other acts or events not the product of the removing defendant's activity." Id. at 467 (emphasis added) (internal citations omitted).

[4] In Kurt Orban, the case was removable on its face, but rather than remove it, the defendant filed a motion in state court arguing that the dispute could only be heard in the federal district courts of the United States. 301 F. Supp. at 699. Only after the state court denied the motion did the defendant petition the court for removal arguing that the pendency of the motions in the Circuit Court "tolled" the removability of the case. Id. The Court pointed out that the filing of the motion to dismiss demonstrated that the defendant knew that the case had been removable from the outset. Id. Moreover, the complaint had not been "amended or changed in any particular by anyone – plaintiff, defendants, or the State court judge" that would create grounds for removal not previously present. Id. at 700. The court discussed the "voluntary-involuntary rule and quoted from Potter and indicated that the defendant's act of filing a motion to dismiss could not result in an extension of the deadline for filing a removal petition. Id. But its ruling turned principally on the fact that the pleading had provided grounds for removal on its face and nothing that any party involved with the case had done had changed it in a way that would result in an extension of the filing deadline. Id.

Plaintiffs, it would result in a situation whereby the removal period for the non-Cianbro defendants had not yet begun – despite the fact that there is clear evidence that they know about the grounds for removal. The question is simply when they learned about the grounds of removal. This Court does not believe that limiting the interpretation of "other paper" only to those situations where it is the result of the voluntary acts of the plaintiff is a correct interpretation of § 1446(b) nor does the jurisprudence support such a restrictive interpretation.

Thus, while the notice of removal period may not be extended for Defendant Cianbro Corporation on the basis of its affidavit, it is extended as to the other Defendants who did not share Cianbro Corporation's knowledge as to its principal place of business at the time that they received the Complaint. While it is conceivable that Cianbro Corporation verbally shared its knowledge of its principal place of business before the other Defendants received the Stone Affidavit, the Fourth Court in Lovern held that it is not necessary to "inquire into the subjective knowledge of the defendant, an inquiry that could degenerate into a mini-trial regarding who knew what and when." 121 F.3d at 162. Rather, the courts can "rely on the face of the initial pleading and on the documents exchanged in the case by the parties to determine when the defendant had notice of the

grounds for removal, requiring that those grounds be apparent within the four corners of the initial pleading or subsequent paper." Id. Thus, the thirty-day removal period for the non-Cianbro Defendants began when they first received the Stone Affidavit.

Here the original pleading mistakenly stated that Cianbro Corporation's principal place of business was Maryland indicating to all Defendants other than Cianbro Corporation and possibly its subsidiaries that there was no diversity of citizenship. The Nucor Defendants had their first written notice of Cianbro Corporation's residency on April 17, 2009, when it received the Stone Affidavit from Cianbro's counsel. Defendants SSOE Systems, Inc. SSOE, Inc.; Warren Environment, Inc.; and ECSA had their first written notice of Cianbro Corporation's principal place of business on April 23, 2009 when they received notice of the filing of the Notice of Removal. Thus, all of these parties either joined in the Notice of Removal or expressed unambiguous consent to the notice of removal within 30 days of their first written notice of Cianbro Corporation's principal place of business creating grounds for removal.

Whether this holding applies equally to the Cianbro subsidiary Defendants is an open question. Whether Cianbro Corporation's knowledge could be attributed to the subsidiaries

on the basis of their relationship, particularly where they were represented by the same counsel is not one addressed by the parties nor is it necessary to the outcome of this motion for remand as this Court holds that the Cianbro subsidiary Defendants properly provided consent in the original Notice of Removal.

Plaintiffs argue that because the initial Notice of Removal named only Nucor Corporation and Cianbro Corporation that it did not include their affiliated companies. Defendants argue that the Cianbro subsidiaries were included in the initial Notice of Removal by virtue of the statement "[a]ll other Defendants in this action fully consent to Removal of this action . . . ," Notice of Removal at ¶9, and the fact that the Notice of Removal was signed by counsel shared by all of the Cianbro defendants. In response, Plaintiffs cite to Anne Arundel for the proposition that one party may not give its consent through another party's attorney. 905 F. Supp. at 278-79. Instead, Plaintiffs argue Anne Arundel establishes that each Defendant was required to individually file something written within the applicable timeframe. Id.

What Plaintiffs fail to note, however, is that the Court in Anne Arundel does not say that an attorney for multiple parties cannot give consent for all of the parties that it represents. So, while under Anne Arundel, Cianbro Corporation's attorney

cannot consent on behalf of Warren Environment and other non-Cianbro Defendants, left open is the question whether Cianbro Corporation's attorney, which represents the Cianbro subsidiary Defendants as well, can give their consent without specifically naming each of them. This Court holds that it can.

Ruling in a similar situation, this Court in McCauley v. Doe held that the unnamed defendants in a notice of removal provided sufficient evidence of their intent to join the removal petition where the named and unnamed defendants were represented by the same counsel and additional filings made on the same date or thereafter made it clear that the defendants consented to and joined in the removal. 2002 WL 32325676, at *3 (D. Md. 2002). In McCauley, the Notice of Removal only referenced one defendant, A.R. Caho, but all of the defendants were represented by the same counsel. The additional documents filed demonstrating the defendants consent included 1) the Civil Cover sheet listing all of the defendants filed on the same date as the notice of removal; 2) the motion to dismiss also filed on the same date as the notice of removal containing the names of all of the defendants; 3) the removing parties' response to standing order concerning removal filed after the notice was filed by all of the defendants and paragraph 5 of that response stating that "[a]ll of the Defendants, by their filing a

responsive pleading in this Court [the motion to dismiss], have formally joined in the action's removal." Id.

This Court's decision in McCauley is consistent with that of other jurisdictions that have also ruled on this issue. See e.g., Cook v. Randolph County, 573 F.3d 1143, 1150-51 (11th Cir. 2009) (holding that a statement in the notice of removal that all defendants consented to removal was sufficient to create unanimous consent where the notice was signed by the defendants shared counsel because the attorney was authorized to represent the defendants' position to the court such that her signature bound them to the representation of consent; requiring further formality would "add pointless burden," particularly where no one was alleging that any of the defendants did not want the case removed); Lewis v. City of Fresno, 627 F. Supp. 2d 1179, 1185-86 (E.D. Cal. 2008) ("This court has previously determined that where the pleadings demonstrated defendants were all represented by the same counsel, the failure of one defendant to formally join the removal does not negate its validity."); Mitchell v. Paws Up Ranch, LLC, 597 F.Supp.2d 1132, 1141-42 (D. Mont. 2009) (holding that a defendant's filing of an answer through the removing defendants' counsel unambiguously manifested consent to removal); Roybal v. City of Albuquerque No. CIV 08-181, 2008 WL 5991063, at *8 (D.N.M. Sept. 24, 2008 (unpublished) (noting that concerns surrounding the

representations of consent for other parties "is all but eliminated when [counsel makes a written representation] on behalf of his or her clients, rather than on behalf of parties who are represented by different attorneys"); Esposito v. Home Depot, 436 F. Supp. 2d 343, 346-47 (D.R.I. 2006) (holding that although defendant Home Depot did not formally join defendants Black & Decker and Dewalt's removal petition or at least explicitly state its consent to removal in its answer, the plaintiff was put on notice, within the thirty-day period, of Home Depot's consent to removal when it filed its answer in the federal district court and notified the court that it was represented by the same attorney as the other defendants).

Through the filing of the Answer in the state court, the Cianbro Defendants put Plaintiffs on notice that they were represented by the same counsel. In the Notice of Removal, counsel for the Cianbro Defendants, who was authorized to act upon their behalf, represented that "[a]ll other Defendants in this action fully consent to Removal of this action . . . ." Notice of Removal ¶ 9. Contemporaneously filed with the Notice of Removal on April 22, 2009, counsel filed on behalf of all Cianbro Defendants the Disclosure Statement pursuant to Fed. R. Civ. P. 7.1 and L.R. 103.3 again putting the plaintiff on notice that the Cianbro Defendants were represented by the same counsel. On May 7, 2009, the Cianbro Defendants reaafirmed

their consent to removal through the same counsel in the filing of the Joint Response to Standing Order Concerning Removal. These documents and representations were sufficient to evidence Cianbro Equipment, LLC, and Cianbro Fabrication and Coating Corporation's intent to join in the removal petition of April 22, 2009.

Therefore, the Defendants have sufficiently established diversity jurisdiction and shown unanimous consent in removal in a timely manner. For these reasons the motion to remand will be denied.

III. MOTION TO DISMISS OR IN THE ALTERNATIVE FOR A MORE DEFINITE STATEMENT

A. Legal Standard

To survive a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, . . . , to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 129 S. Ct. at 1949 (citing Twombly, 550 U.S. at 556). "Detailed factual allegations" are not required, but allegations must be more than "labels and conclusions," or "a formulaic recitation

of the elements of a cause of action[.]" Iqbal, 129 S. Ct. at 1949 (quoting Twombly, 550 U.S. at 555). "[O]nce a claim has been stated adequately," however, "it may be supported by showing any set of facts consistent with the allegations in the complaint." Twombly, 550 U.S. at 563. In considering such a motion, the court is required to accept as true all well-pled allegations in the Complaint, and to construe the facts and reasonable inferences from those facts in the light most favorable to the plaintiff. Ibarra v. United States, 120 F.3d 472, 474 (4th Cir. 1997) (citing Little v. Federal Bureau of Investigation, 1F.3d 255, 256 (4th Cir. 1993).

Unlike a Rule 12(b)(6) motion, which alleges that a complaint fails to state a sufficient claim to relief, a Rule 12(e) motion "allows a defendant to move for a more definite statement if the complaint 'is so vague or ambiguous that [he] cannot reasonably be required to frame a responsive pleading.'" Hodgson v. Virginia Baptist Hospital, Inc. 482 F.2d 821, 822-23 (4th Cir. 1995). Thus, "[w]here a party has enough information to frame an adequate answer, a court should deny the Rule 12(e) motion and avoid delay in maturing the case." Doe v. Bayer Corp., 367 F. Supp. 2d 904, 917 (M.D.N.C. 2005) (citing Hodgson, 482 F.2d at 822).

B. Discussion

Nucor Defendants co-mingle their Rule 12(b)(6) arguments with their Rule 12(e) arguments extensively. Whereas Rule 12(b)(6) tests whether the allegations support a claim, Rule 12(e) tests whether a responsive pleading can be drafted. Here, Plaintiffs have provided adequate facts to ascertain that a plausible claim exists. Moreover, there is sufficient information for Nucor Defendants to frame an adequate answer.

Here, Plaintiffs have alleged that on March 14, 2006, a 64-foot-long portion of the calciner exhaust start-up stack attached to the FCC Plant at W.R. Grace in Curtis Bay, Maryland, broke loose and fell on a maintenance truck in which Jimmy Wayne Streeter was sitting, crushing him to death. Compl. at ¶21-22. Plaintiffs further allege that the Nucor Defendants designed, developed, fabricated, manufactured, modified, and installed the calciner stack and its constituent parts. Complaint at ¶25. Plaintiffs also allege that as the Defendants did these acts improperly, the calciner stack became detached from the FCC Plant, causing it to fall. Compl. at § 26. Nucor Defendants should not have any problem admitting or denying these allegations. Thus, it cannot be said that they are vague or conclusory.

Nucor Defendants' only allegation that the elements of the various claims raised by Plaintiffs have not been met is that the Complaint did not establish that Nucor Defendants had a duty

to Plaintiffs. As companies that designed, developed, fabricated, manufactured, modified, and installed the calciner stack that fell from the W.R. Grace plant, however, Defendants had a duty to produce a non-defective calciner stack and to avoid creating a calciner stack that would fall off the roof and harm someone. See American Laundry Machinery Industries, Inc. v. Horan, 412 A.2d 407, 411 (Md. Ct. Sp. App. 1980) (discussing that suits have been allowed against manufacturers for defective design and negligent production because manufacturers have a duty to produce a safe product just as each person has a duty to avoid unreasonable risk of harm to others).

Finally, Nucor alleges that it cannot ascertain whether it has any affirmative defenses based on statutes of limitations or repose because Plaintiffs failed to provide a timeline of the events. Plaintiffs provided the date upon which the death occurred, and, as a wrongful death action, the date upon which the cause of action arose, March 14, 2006, that is sufficient.

As it appears that the Nucor Defendants' demands for further information would be more appropriately addressed during discovery, Nucor Defendants' Motion to Dismiss or in the Alternative for More Definite Statement will be denied.

IV. Conclusion

For the foregoing reasons, the Plaintiffs' Motion for Remand will be denied, the Defendants' Motion to Amend will be

granted, the Defendant ECSA's Motion to Quash will be denied as moot, and the Nucor Defendants' Motion to Dismiss or in the Alternative for a More Definite Statement will be denied. A separate order will issue.

9/29/09

/s/
William M. Nickerson
Senior United States District Judge