

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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| Gregory G. White, |) | CASE NO. 1:14 CV 2236 |
| |) | |
| Plaintiff, |) | JUDGE PATRICIA A. GAUGHAN |
| |) | |
| vs. |) | |
| |) | |
| Rishi K. Goel, M.D., et al., |) | <u>Memorandum of Opinion and Order</u> |
| |) | |
| Defendants. |) | |

This matter is before the Court upon plaintiff’s Motion to Remand and for Costs and Fees (Doc. 4). For the following reasons, the motion is denied as to the DePuy defendants and the claims against defendant Rishi Goel, M.D. are severed and remanded to the Cuyahoga County Common Pleas Court.

Plaintiff filed this Complaint against defendants Rishi Goel, M.D., DePuy Orthopaedics, Inc, DePuy Synthes, Inc., DePuy Spine, LLC, and Ethicon, Inc. (the latter four defendants are referred to as the DePuy defendants). A malpractice claim was asserted against Goel and products liability claims were asserted against the DePuy defendants. The matter was removed to this Court by the DePuy defendants on the basis of diversity of citizenship. Plaintiff sought

remand arguing that Goel did not consent to removal and there is no complete diversity since Goel is an Ohio citizen.

The DePuy defendants then filed an Amended Notice of Removal with Goel's consent to the removal. In opposing the Motion to Remand, these defendants request that claims against Goel, the non-diverse party, be severed and remanded to state court as he is a dispensable party. Plaintiff did not file a reply brief.

Courts in this district have held that product liability claims can be severed from malpractice claims to establish diversity of citizenship. *See Kelly v. Altman Physician Center*, 2013 WL 2358583 (N.D. Ohio May 29, 2013) (The court may retain jurisdiction over the diverse defendants against whom products liability claims are asserted and sever and remand the claims against the non-diverse defendants against whom medical malpractice claims are asserted.); (*DiGidio v. Centocor, Inc.*, 2009 WL 1867676 (N.D. Ohio June 29, 2009) (The court severed the claims against the non-diverse healthcare defendants who were dispensable parties and retained the claims against the diverse defendants.)

As in *Kelly* and *DiGidio*, the medical malpractice claims against Goel are neither necessary nor indispensable because resolution of those claims would not resolve the products liability claims against the DePuy defendants, and vice versa. The Court need not address whether Goel was fraudulently joined. Accordingly, this Court remands the claims against Goel to the Cuyahoga County Common Pleas Court. Plaintiff's request for costs and fees is denied.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Dated: 11/19/14