

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VARIOUS PLAINTIFFS	:	CONSOLIDATED UNDER
	:	MDL 875
	:	
v.	:	
	:	CIVIL ACTION
VARIOUS DEFENDANTS ("Oil Field Cases")	:	NO. 09-MC-103
	:	
	:	

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

DECEMBER 10, 2009

The instant motion to remand was filed on behalf of 444 plaintiffs ("plaintiffs") arguing that this Court must remand their actions to Mississippi state court for lack of subject matter jurisdiction. Defendants<sup>1</sup> have filed timely responses. For the reasons set forth herein, plaintiffs' motion to remand will be granted in part and denied in part.

I. BACKGROUND

These cases originated in Mississippi state court and were removed to federal court by defendants Union Carbide and ConocoPhillips. The basis for removal was the allegedly fraudulent joinder of two non-diverse defendants, Oilfield Service & Supply, Inc. ("Oilfield Service") and Mississippi Mud, Inc. ("Mississippi Mud"). In addition, twenty-five of these

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<sup>1</sup> Union Carbide Corp. filed a response in opposition to this motion to remand, which was joined by co-defendants ConocoPhillips and Montello, Inc. Oilfield Service & Supply, Inc. filed an individual response opposing the motion.

cases were removed under the theory that plaintiffs were entitled to assert federal jurisdiction under the Outer Continental Shelf Lands Act ("OCSLA").

After removal, plaintiffs filed motions to remand, on the same grounds considered here, in the Southern District of Mississippi. After considering these motions, United States District Judge Walter Gex remanded five of these cases to Mississippi state court. Before Judge Gex was able to rule on the remaining motions, the cases were transferred to the Eastern District of Pennsylvania and consolidated as part of MDL-875 by the Judicial Panel on Multidistrict Litigation. The remand motions remaining on the docket at the time of the consolidation with MDL-875 were denied by the MDL court without prejudice. (MDL-875 Administrative Order no. 11 at 3, doc no. 5936, 01-md-875.) Plaintiffs have renewed their request for remand in the 444 cases and this renewed motions is now before the Court.

Based on their procedural histories, these cases fall into three categories. Plaintiffs' motion to remand will be considered under the facts of each category individually.

a.) Category 1: This category consists of 354 plaintiffs whose cases were initiated in 2004. Originally filed as a multi-plaintiff action, these plaintiffs had their cases severed into individual actions in Mississippi state court in 2006. After severance, each plaintiff filed an individual

amended complaint. Defendants subsequently removed these cases as a group to federal court on Sept. 26, 2008. (Defs.' Notice of Removal Ex. "D", doc. no. 58, 09-mc-103.) The basis for removal in these cases is the alleged fraudulent joinder of non-diverse parties Oilfield Service and Mississippi Mud.

b.) Category II: This category consists of 65 cases which were filed in 2004, but were dismissed in Mississippi state court because they were filed in an improper venue. Plaintiffs re-filed these cases on Sept. 28, 2007, and defendants removed these cases as a group to federal court on Sept. 26, 2008, within one year of the date of re-filing. (Defs.' Notice of Removal Ex. "D", doc. no. 58, 09-mc-103.) As in Category I, the basis for removal in these cases is the alleged fraudulent joinder of non-diverse parties Oilfield Service and Mississippi Mud.

c.) Category III: This category consists of 25 cases which were removed based on federal question jurisdiction. The defendants aver that plaintiffs' claims are governed by OCSLA. As an alternative basis of federal jurisdiction, defendants also assert the fraudulent joinder of Oilfield Service and Mississippi Mud.

After removal, the cases in all three categories were grouped by the Court for settlement purposes, pursuant to MDL-875

procedures.<sup>2</sup> See MDL-875 Website, Settlement Conference Procedures, available at [www.paed.uscourts.gov/mdl875.asp](http://www.paed.uscourts.gov/mdl875.asp). After attending several settlement conferences with defendants and Magistrate Judge Strawbridge, plaintiffs filed the instant motion to remand.

## II. LEGAL STANDARD

A district court considering a motion to remand “must focus on the plaintiff’s complaint at the time the petition for removal was filed . . . [and] must assume as true all factual allegations of the complaint.” In re Briscoe, 448 F.3d 201, 218 (3d Cir. 2006). The “party who urges jurisdiction on a federal court bears the burden of proving that jurisdiction exists . . .”

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<sup>2</sup> Defendants, in their response, note that the Court has discouraged the filing of mass motions that apply to many plaintiffs in MDL-875. While this point is noted, plaintiffs affected by the instant motion have been referred to Magistrate Judge David R. Strawbridge as a group. Additionally, each of the plaintiffs in each of the four categories is identified by name in exhibit “A” of the motion to remand. Denying plaintiffs’ motion on the grounds of MDL-875 policy would simply result in the filing of an identical motion in each of 444 cases.

The defendants’ argument takes the Court’s policy too far in this instance. Previous opinions of the Court have discouraged motions attempting to change case-wide policy (i.e., mass dismissals for failure to comply with administrative orders or mass remands because the MDL is “not working”). See In re Asbestos Prods. Liab. Litig., 614 F.Supp.2d 550, 554 (E.D. Pa. 2009); In re Asbestos Prods. Liab. Litig., 254 F.R.D. 266, 268 (E.D. Pa. 2008). The instant motion is based on fairly specific facts with regard to a discrete set of plaintiffs. The plaintiffs are represented by one law firm and fall neatly into three categories. The utility of dealing with these cases as one group outweighs the policy considerations of an overly strict “one-plaintiff, one-motion” program.

Boyer v. Snap-on Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990); see also Steel Valley Auth. v. Union Switch & Signal Div., 809 F.2d 1006, 1010 (3d Cir. 1987), cert. dismissed sub nom. American Standard v. Steel Valley Auth., 484 U.S. 1021 (1988) ("It remains the defendant's burden to show the existence and continuance of federal jurisdiction."). Because the removal of an action from the state court to a federal forum implicates comity and federalism, it is said that "removal statutes are to be strictly construed against removal and all doubts should be resolved in favor of remand." Steel Valley Auth., 809 F.2d at 1010 (citing Abels v. State Farm Fire & Cas. Co., 770 F.2d 26, 29 (3d Cir. 1985)); accord Brown v. Francis, 75 F.3d 860, 865 (3d Cir. 1996); Boyer, 913 F.2d at 111.

The practical application of this "all doubts" standard is to place upon a defendant "a heavy burden of persuasion" when contending that a non-diverse party has been fraudulently joined. Boyer, 913 F.2d at 111. To prevail, the removing party must show that there is "no reasonable basis in fact or colorable ground supporting the claim against the joined defendant, or no real intention in good faith to prosecute the action against the defendants . . ." In re Briscoe, 448 F.3d at 218.

Title 28 U.S.C. § 1446(b) governs the timing of removal, specifying that "a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than

1 year after commencement of the action.” Additionally, “notice of removal of a civil action . . . shall be filed within thirty days after the receipt by the defendant . . . of the initial pleading setting forth the claim for relief . . . .” 28 U.S.C. § 1446(b). Where it is not evident from the initial pleading whether the case is removable, “a notice of removal may be filed within thirty days after receipt by the defendant . . . 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 . . . .” Id.

### III. APPLICABLE LAW

As the MDL transferee court, the Court must first determine which jurisdiction’s law to apply to the substantive and procedural issues in these cases.

#### A. Procedural Law

On matters of procedure, the transferee court must apply federal law as interpreted by the court of the district where the transferee court sits. See In re Diet Drugs Prods. Liab. Litig., 294 F.Supp.2d 667, 672 (E.D. Pa. 2003). Issues involving the timeliness of remand implicate federal procedural law. See In re Avandia Mktg., Sales Practices and Prods. Liab. Litig., 624 F.Supp.2d 396, 408-9 n.15 (E.D. Pa. 2009).

As noted above, after the cases were removed to federal

court but before they were consolidated into MDL-875, the plaintiffs filed motions to remand in 449 individual cases. Judge Gex of the Southern District of Mississippi, in the only rulings that were made prior to the transfer to MDL-875, granted five of these motions. The remaining motions were pending upon transfer to the Eastern District of Pennsylvania and consolidation under MDL-875. As to the five motions ruled on by Judge Gex, "there is nothing in the text [of § 1407] that authorizes a transferee judge to vacate or modify an order of a transferor judge," In re Pharmacy Benefit Managers Antitrust Litig., Civ. No. 07-1151, - F.3d -, 2009 WL 3030370, at \*6 (3d Cir. Sept. 24, 2009), unless it is warranted after application of law of the case principles. Id. at \*7; see also, In re Ford Motor Co., 580 F.3d 308, 312 (5th Cir. Aug. 21, 2009). Under the circumstances of this case, the orders entered by Judge Gex on any motions to remand are binding on this Court.

There were, however, 444 motions to remand pending, but not yet acted upon by Judge Gex at the time the cases were transferred and consolidated under MDL-875. As described above, these motions were denied without prejudice after being transferred to the Eastern District of Pennsylvania, but have been renewed and are now before the Court. As to these cases, the Court will "adjudicate [these] transferred cases no differently than cases originally filed before it." In re Korean

Air Lines Disaster, 829 F.2d 1171, 1178 (D.C. Cir. 1987).

Therefore, as to the pending motion to remand, the Court will apply federal procedural law, as interpreted by the Third Circuit, the circuit where the transferee court sits.

B. Substantive Law

In applying substantive law, the transferee court must distinguish between matters of federal and state law. In matters requiring the interpretation of the Constitution, a federal law or a federal rule of procedure, a transferee court applies the law of the circuit where it sits. Therefore, in cases where jurisdiction is based on federal question, this Court, as the transferee court, will apply federal law as interpreted by the Third Circuit.<sup>3</sup>

In matters where the Court has jurisdiction under 28 U.S.C. § 1332 based upon diversity of citizenship, the transferee court applies state substantive law as determined by the choice

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<sup>3</sup> See, e.g., In re New England Mut. Life Ins. Co. Sales Practices Litig., 324 F.Supp.2d 288, 297 (D. Mass. 2004) ("In the ordinary course, questions of federal law in MDL-transferred cases are governed by the law of the transferee circuit."); In re Nat'l Century Fin. Enters., Inc., Inv. Litig. 323 F.Supp.2d 861, 876 (S.D. Ohio 2004) ("Thus, the rule in multidistrict litigation is that the transferee court, in interpreting federal law, should apply the law of its own circuit rather than the law of the transferor court's circuit"); In re Methyl Tertiary Butyl Ether ("MTBE") Prods. Liab. Litig., No. 1:00-1898, 2005 WL 106936, at \*5 (S.D.N.Y. Jan. 18, 2005) (holding that in interpreting and applying "the federal constitution, any federal statute, or the Federal Rules of Civil Procedure" the court was bound "only by the opinions of the Supreme Court and Second Circuit.").

of law analysis required by the state in which the action was filed. Therefore, in the instant cases, this Court will apply the state substantive law as determined by the choice of law rules of Mississippi, the state in which the cases were filed.<sup>4</sup>

#### IV. DISCUSSION

##### A. Category I

The Category I cases refer to the 354 plaintiffs who originally filed their cases in Mississippi state court in 2004, yet removal was not effected until 2008. (Pls.' Mot. Remand 1-2, doc. no. 44, 09-mc-103.)

Plaintiffs argue that the Category I cases should be remanded for two reasons. First, because they were removed beyond the time limitations on removal found in § 1446(b); and second because the plaintiffs have valid claims against two non-diverse defendants, Oilfield Service and Mississippi Mud, destroying diversity of citizenship and leaving the defendants no basis for invoking federal jurisdiction. (Pls.' Memo. Supp. Mot. Remand 15, doc. no. 45, 09-mc-103.)

In response, the defendants present a two part argument

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<sup>4</sup> See Van Dusen v. Barrack, 376 U.S. 612, 639 (1967) (evaluating applicable law after change of venue under 28 U.S.C. § 1404(a)); see also In re Dow Sarabond Prods. Liab. Litig., 666 F.Supp. 1466, 1468 (D. Colo. 1987) (citing In re Agent Orange Prod. Liab. Litig., 580 F.Supp. 690, 695 (E.D.N.Y. 1984)) (evaluating applicable law after change of venue under 28 U.S.C. § 1407).

against remand. First, they contend that they are entitled to an "equitable exception," allowing for effective removal after one year has passed from the commencement of the action. (Defs.' Resp. in Opp'n to Remand 12, doc. no. 58, 09-mc-103.) The defendants contend that, because the plaintiffs engaged in "forum manipulation," equity requires the Court to allow the removal of these cases. (Id. at 13.) Second, if the Court applies an equitable exception, defendants argue that Oilfield Service and Mississippi Mud are fraudulently joined, and thus, are not proper forum defendants.

1. Equitable Exception

Section 1446(b) imposes a strict one year limitation on the length of time that a party has available for removal after the commencement of the action. As described above, the petition for removal in the Category I cases was not filed until more than four years after these cases were originally commenced in state court.<sup>5</sup> (Defs.' Resp. in Opp'n Mot. to Remand at Ex. D, doc. no. 58, 09-mc-103.)

While § 1446(b) does not explicitly detail any

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<sup>5</sup> The Court notes that the actions commenced in 2004 were massive multi-plaintiff actions. The Mississippi state court severed these plaintiffs and required each to file amended complaints. Each plaintiff filed an amended complaint in 2006. Even if the Court calculates the one year time period from the date that each amended complaint was filed, the petition for removal was not filed until well after the one year limitation had passed. (Pls.' Mot. Remand 15, doc. no. 44, 09-mc-103.)

exception to the one year limitation, the Third Circuit has held that the one year limit on removal is a procedural bar, not a jurisdictional one. Ariel Land Owners, Inc. v. Dring, 351 F.3d 611, 616 (3d Cir. 2003).<sup>6</sup> The practical effect of this holding is to open the door to an examination of equitable considerations in deciding whether to allow exceptions to the one year limitation on removal.

In determining whether the equitable exception applies, courts have looked at the balance of the equities. In balancing the equities, courts have considered three factors: first, how vigorously the plaintiff prosecuted the action in state court; second, whether the defendants were complicit in any delay in removal of the case; and third, whether or not plaintiffs' joining of the non-diverse defendants amounted to "flagrant forum manipulation." See Namey v. Malcolm, 534 F.Supp.2d 494, 498 (M.D. Pa. 2008) (holding that because defendants were partly responsible for the delay in state court, application of an equitable exception was inappropriate); Lee v. Carter-Reed Co., 06-1173, 2006 WL 3511160, at \*5 (D.N.J. Dec. 5, 2006) (holding that defendants did not allege facts sufficient to show that plaintiff's conduct amounted to forum manipulation); In re Diet

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<sup>6</sup> In support of this holding, the Third Circuit cited to Tedford v. Warner-Lambert Co., 327 F.3d 423, 426-7 (5th Cir. 2003), which is the case most heavily relied on by defendants in support of an equitable exception.

Drugs Prods. Liab. Litig., 03-20376, 2004 WL 1535806 at \*4 (E.D. Pa. June 18, 2004) (holding that defendants met the burden of showing fraudulent joinder where there was no possibility for recovery against the in-state defendants).

Balancing the equities in the Category I cases, the first two factors are particularly relevant here. In essence, they ask how diligently the parties pursued the litigation in state court prior to the untimely removal. See Lee, 2006 WL 3511160 at \*5; see also Namey, 534 F.Supp.2d at 498.

Arguing in favor of the application of an equitable exception, the defendants contend that they diligently pursued the litigation in state court but were frustrated by plaintiffs' forum manipulation. Defendants claim that they participated in all pretrial fact discovery, but that Oilfield Service was purposely never pursued by plaintiffs in an effort to keep them in the case as a nominal forum defendant. (Defs.' Resp. in Opp'n to Mot. Remand Ex. D, doc. no. 58, 09-mc-103.) As a result, defendants claim that they had no way of uncovering plaintiffs' forum manipulation until Oilfield Service filed a motion for summary judgment. (Id.) Having timely filed their notice of removal within thirty days of receipt of Oilfield Service's summary judgment motion, an "other paper" for purposes of § 1446(b), defendants claim they are entitled to an equitable exception which would allow them to satisfy both of the timing

requirements found in § 1446. Id. at 16.<sup>7</sup>

Arguing against the application of an equitable exception, plaintiffs counter that while they actively conducted litigation for more than four years in Mississippi state court, defendants were content to let the cases languish. Plaintiffs submit that they completed individual written fact sheets for each defendant and conducted some eighty-eight depositions. (Pls.' Memo. Supp. of Mot. Remand 21, doc. no. 45, 09-mc-103.) Although plaintiffs never made any attempt to hide the fact that Oilfield Service and Mississippi Mud were the only non-diverse parties to the litigation, defendants never questioned or attempted to investigate the legitimacy of their joinder between 2004 and late 2008. (Id.) Plaintiffs further submit that they were continuing to develop this case against all defendants, including Oilfield Service and Mississippi Mud, when the cases were improperly removed to federal court. (See Pls.' Memo. Supp. of Mot. Remand 20-22, doc. no. 45, 09-mc-103.)

The Court concludes that the defendants were content to let the cases languish in state court, failing to "use all procedural devices available to facilitate compliance with the

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<sup>7</sup> Although the plaintiffs assert that Oilfield Service's motion for summary judgment is not an "other paper" that would trigger the 30 day window for removal in § 1446(b), they do not make the argument in their motion to remand that removal was not effected within the statutorily mandated 30 days. See (Defs.' Resp. in Opp'n to Remand 16 n.10, doc. no. 58, 09-mc-103.) The Court, therefore, will treat this issue as uncontested.

one year requirement of § 1446(b).” 534 F.Supp.2d at 498. First, defendants apparently never sought discovery which would have established that the two non-diverse defendants were fraudulently joined. Second, despite the exchange of written discovery and the taking of numerous depositions, defendants never examined the basis for liability against the non-diverse defendants. (Pls.’ Memo. Supp. of Mot. Remand 21, doc. no. 45, 09-mc-103.) In fact, in a case where the defendants argue that Oilfield Service and Mississippi Mud are so clearly absolved from liability that their joinder constitutes fraud, neither defendant filed a dispositive motion until August of 2008, four years after the cases were commenced. Under the circumstances, it is clear that, at least through lack of diligence, the defendants are partly responsible for the delay in proceedings in state court. Namey, 534 F.Supp.2d at 498.

On balance, the defendants have failed to show that the equities tilt in their favor, and application of an equitable exception is not appropriate.

## 2. Fraudulent Joinder

Since the Court will not apply an equitable exception to § 1446(b), an evaluation of whether Oilfield Service and/or Mississippi Mud are fraudulently joined is not necessary in the

Category I cases.<sup>8</sup> Therefore, as to the 354 cases in Category I, plaintiffs motion to remand is granted.

B. Category II

The sixty-five plaintiffs in Category II originally filed their cases in 2004 as part of the same multi-plaintiff action as the plaintiffs in Category I. (Pls.' Memo. Supp. of Mot. Remand 2, doc. no. 45, 09-mc-103.) Under Mississippi law, however, these sixty-five plaintiffs were dismissed from the action for improper venue. (Id.) These sixty-five cases were then re-filed by plaintiffs in September of 2007, this time in a proper Mississippi venue. The cases were then removed within the one year time limitation after they were refiled. (Id.)

As in Category I, removal under § 1332 was based on an allegation of fraudulent joinder of non-diverse parties. In their motion to remand, the plaintiffs argue that there is no basis for a finding of fraudulent joinder because Oilfield Service and Mississippi Mud are proper forum defendants and plaintiffs have asserted colorable claims against them.

1. Fraudulent Joinder

Whether a party was fraudulently joined to defeat

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<sup>8</sup> Given that the Court has found that Oilfield Service is not fraudulently joined, see infra, even if the defendants could show diligence, they would be unable to show "flagrant forum manipulation" by plaintiffs. See Namey, 534 F.Supp.2d at 498; see also Lee, 2006 WL 3511160, at \*5.

diversity is a procedural issue. Because the issue of fraudulent joinder is a procedural issue, it is a matter of federal law as interpreted by the Third Circuit.

Fraudulent joinder may be found on either factual or legal grounds. In re Avandia, 624 F.Supp.2d at 411. The Third Circuit test for fraudulent joinder requires a finding that "there is no reasonable basis in fact or colorable ground supporting the claim against the joined defendant, or no real intention in good faith to prosecute the action against the defendant or seek a joint judgment." Abels, 770 F.2d at 32 (quotation omitted).

In assessing the factual basis of a claim, a court may engage in a limited piercing of the pleadings to discover any fraudulent joinder. Boyer, 913 F.2d at 112. The extent of a court's inquiry, however, is "less probing than the factual review a district court conducts in deciding a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)." In re Avandia, 624 F.Supp.2d at 412 (citing Batoff v. State Farm Ins. Co., 977 F.2d 848, 852 (3d Cir. 1992)). Therefore, a court could remand the case to state court even though "the claim against that party [may] ultimately [be] dismissed [by the state court] for failure to state a claim upon which relief may be granted." In re Briscoe, 448 F.3d at 217 (quoting Batoff, 977 F.2d at 852).

After piercing the pleadings, the federal court must determine that a claim is colorable if it is not “wholly insubstantial or frivolous.” Batoff, 977 F.3d at 852. Here, the Court will address each non-diverse defendant in turn to determine whether each was fraudulently joined solely to avoid federal jurisdiction.

## 2. Mississippi Mud

In opposition to the instant motion to remand, defendants argue that Mississippi Mud was fraudulently joined because they were never properly served, and therefore, they were intended to be a nominal forum defendant joined solely to defeat federal jurisdiction. (Defs.’ Memo. in Opp’n to Pls.’ Mot. Remand 21, doc. no. 58, 09-mc-103.) Additionally, defendants argue that the plaintiffs failed to pursue the proper successor in interest to Mississippi Mud, which is GEO Drilling Fluids, a diverse entity incorporated in Delaware and with a principal place of business in Connecticut. (Id. at 20.)

Plaintiffs admit that they were unable to timely serve Mississippi Mud, but submit that it was due to confusing public records related to Mississippi Mud’s corporate history. (Pls.’ Memo. Supp. of Mot. Remand 28, doc. no. 45, 09-mc-103.) Plaintiffs do not address the fact that GEO Drilling Fluids is the proper successor in interest to Mississippi Mud and would be a diverse defendant. Plaintiffs claim that, once they “learned

more about [Mississippi Mud's] corporate history, service was attempted, although it was [attempted] after 120 days." (Id. at 28-9.)

Because service was never effected on Mississippi Mud and never attempted on its successor, plaintiffs have not shown a "real intention in good faith to prosecute the action" against Mississippi Mud or its successor. Abels, 770 F.2d at 32. Therefore, a finding of fraudulent joinder as to Mississippi Mud is appropriate.

### 3. Oilfield Service

Unlike Mississippi Mud, Oilfield Service was timely served by the plaintiffs. In opposing remand, the defendants argue that the Court should find that Oilfield Service was fraudulently joined for three reasons. First, they contend that plaintiffs never made a good faith effort to pursue claims against Oilfield Service because plaintiffs never deposed the corporate representative, never required Oilfield Service to respond to interrogatories, and never required Oilfield Service to respond to written requests for document production. (Defs.' Memo. in Opp'n to Pls.' Mot. Remand 18, doc. no. 58, 09-mc-103.) Second, defendants argue that there is no factual basis for plaintiffs' claims against Oilfield Service because Oilfield Service never sold asbestos containing products. (Id.) Third, defendants claim that even if Oilfield Service did sell asbestos

products, under Mississippi law, Oilfield Service is absolved of liability by the “innocent seller” doctrine. (Id. at 18.) Under this theory, there would be no legal basis for plaintiffs’ claims.<sup>9</sup>

a. Plaintiffs’ Good Faith Effort to Pursue Claims

As to the first issue, the Court must determine whether plaintiffs made a good faith effort to pursue their claims against Oilfield Service in these cases. Plaintiffs state that they conducted fact discovery with witnesses and plaintiffs’ co-workers regarding Oilfield Service. (Pls.’ Memo. Supp. of Mot. Remand 21, doc. no. 45, 09-mc-103.) Furthermore, plaintiffs engaged in settlement conferences and significant pre-trial litigation in federal court in front of Magistrate Judge David R. Strawbridge. Plaintiffs also responded to motions for summary judgment filed by Oilfield Service both before and after the cases were removed to federal court. (See Pls.’ Resp. Mot. Summ. J., doc. no. 67, 09-mc-103.)

Taking all the circumstances together, it appears that plaintiffs have actively conducted litigation against Oilfield Service. Despite the lack of formal discovery requests,

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<sup>9</sup> Judge Gex, in the five motions to remand that were ruled on before transfer to the MDL, rejected defendants’ fraudulent joinder argument. While the instant plaintiffs’ cases were not expressly considered by Judge Gex, it is notable that Judge Gex found that Oilfield Service was not fraudulently joined in five similar cases.

plaintiffs have shown that they attempted to develop their claim against Oilfield Service, at least through informal means. Under these circumstances, defendants have failed to show that the plaintiffs' joinder of Oilfield Service was in bad faith or clearly fraudulent.

b. Factual Basis for Plaintiffs' Claims

As to the second issue, the Court must determine whether there is a factual basis for plaintiffs' claims against Oilfield Service. On this issue, there are competing affidavits going to the nature of Oilfield Service's asbestos business. The defendants have produced affidavits of the owners of Oilfield Service, Mr. Robert Stone, Sr. and Mr. Robert Stone, Jr. These affidavits state that, to their knowledge, Oilfield Service "never operated as a mud company or mud contractor" which would have sold or supplied asbestos containing drilling additives. (Def. Oilfield Service's Memo. in Opp'n to Pls.' Mot. Remand 7, doc. no. 57, 09-mc-103.) Defendants argue that the Stones' averments negate any factual basis for plaintiffs' claims against Oilfield Service.

In response, the plaintiffs call into question the reliability of these affidavits. Plaintiffs point out that, during the relevant period of potential exposure for all plaintiffs (1966-1980), Mr. Stone, Sr. was not the manager of Oilfield Service; Frank Stone, his uncle, was. (Pls.' Memo.

Supp. of Mot. Remand 8-9, doc. no. 45, 09-mc-103.) Mr. Stone, Sr. did not take over the day-to-day operations of Oilfield Service until 1980, and had limited knowledge of the business before that. (Id.) Furthermore, plaintiffs state that Mr. Stone, Jr. was between the ages of nine and twenty-two during the relevant time period, and did not even begin full-time work at Oilfield Service until 1981. (Id. at 11.)

Plaintiffs also produced the affidavit of John Lee Brown, who worked for Oilfield Service in 1968 and from 1972-1974. (Pls.' Memo. Supp. of Mot. Remand 3, doc. no. 45, 09-mc-103.) Mr. Brown avers that Oilfield Service loaded, unloaded and delivered asbestos-containing products like gaskets, pump packings, and brakes. (Id. at 4.) In refuting the contents of this affidavit, the defendants point out that Mr. Brown is a plaintiff in a pending asbestos personal injury action with Oilfield Service as a defendant. (Def. Oilfield Service's Memo. in Opp'n to Pls.' Mot. Remand 3, doc. no. 57, 09-mc-103.)

Considering these competing affidavits, the Court finds that they cancel each other out. The burden of proving that there is no factual basis for the plaintiffs' claims remains, however, with the defendants. Given that the proofs offered negate each other, the Court finds that the defendants have failed to carry the burden of showing that there is no factual basis for plaintiffs' claims against Oilfield Service.

c. Legal Basis for Plaintiffs' Claims

As to the third issue, the Court must determine whether, under Mississippi law, there is a legal basis for the claims against Oilfield Service. Under Mississippi products liability law, an "innocent seller" is a company that acts as a mere conduit of a product. Miss. Code Ann. § 11-1-63 (2004).

The plaintiffs in this case assert both failure to warn and design defect claims against numerous defendants in their original complaint. (See Compl. ¶ V.) With regard to Oilfield Service, as a distributor of the allegedly asbestos-containing mud, the most relevant claims are the failure to warn actions. Mississippi's innocent seller doctrine states that in a products liability claim for failure to warn:

"the manufacturer or seller shall not be liable if the claimant does not prove by the preponderance of the evidence that at the time the product left the control of the manufacturer or seller, the manufacturer or seller knew, or in light of reasonably available knowledge should have known about the danger that caused the damage for which recovery is sought and that the ordinary user or consumer would not realize its dangerous condition."

Miss. Code Ann. § 11-1-63(c) (i) (emphasis added).

Succinctly put, the statute requires the party asserting the defense to show that the manufacturer or seller did not know, and could not have known, about the danger that these asbestos products posed to the consumer. Furthermore, the party asserting the defense must also show that the ordinary consumer

or user of these asbestos products would have known that the products contained asbestos, and that the asbestos could have harmful health effects.

The defendants argue that they are immunized from liability by this statute because they did not have actual or constructive knowledge of the dangers posed by asbestos. (Def. Oilfield Service's Opp'n to Mot. Remand 13, doc. no. 57, 09-mc-103.) Therefore, since they had no knowledge, they could not be responsible for warning the user or consumer, regardless of whether such user knew of the dangers or not. (Id.)

To rebut Oilfield Service's assertions, plaintiffs point to contemporary literature showing that knowledge of the dangerous health effects of asbestos was widespread in the 1970s, and that there are even studies on the health consequences of asbestos dating back to 1898. (Pls.' Resp. Mot. Summ. J. Ex. 9, doc. no. 67, 09-mc-103.) Therefore, plaintiffs argue that a company like Oilfield Service, which was involved in an industry that used asbestos heavily, would have known of the negative health effects posed by asbestos. (Id.)

Furthermore, the plaintiffs rely on this same literature to bolster their argument that the average worker did not know the consequences of asbestos exposure during the relevant time period (1968-1980). (Id.) The plaintiffs further state that they are in the process of gathering more information

about warnings that were placed on any products delivered by Oilfield Service, as well as plaintiffs' general knowledge of the dangers of asbestos.

Relying on this literature and the testimony of Mr. Brown, plaintiffs aver that it is far from clear that Oilfield Service is entitled to the protections of § 11-1-63 of the Mississippi statutes. According to plaintiffs, under the limited inquiry permitted in a fraudulent joinder analysis, they have produced enough evidence to show that plaintiffs' cause of action against Oilfield Service is not "wholly insubstantial or frivolous." See Batoff, 977 F.2d at 852.

The Court agrees with the plaintiffs. The defendants have failed to show that either the factual or legal basis of plaintiffs claims are "wholly insubstantial or frivolous." See Batoff, 977 F.2d at 852. This Court is permitted to make only a very limited inquiry beyond the four corners of the complaint, and must apply a standard more deferential to the plaintiff than the standard used in deciding a motion to dismiss. In re Briscoe, 448 F.3d at 218. Applying this standard, the Court determines that the plaintiffs have put forward enough evidence to demonstrate that there is some factual and legal basis for their claims against Oilfield Service.

Consequently, the Court finds that the cases in Category II include Oilfield Service as a proper forum defendant.

As a result, there is no diversity of citizenship, rendering federal jurisdiction under § 1332 unavailable to defendants. Plaintiffs' motion to remand is granted as to the plaintiffs in Category II.

C. Category III

The twenty-five plaintiffs in Category III were removed based on federal question jurisdiction under OCSLA. In their motion to remand, plaintiffs make two arguments. First, that the only OCSLA-related claims that these plaintiffs have are intertwined with valid Jones Act claims. Therefore, since a Jones Act case that is properly brought in state court is not removable under federal question jurisdiction, these cases must be remanded. (Pls.' Memo. Supp. of Mot. Remand 35, doc. no. 45, 09-mc-103.) Second, plaintiffs contend that the two defendants who originally asserted federal question jurisdiction, Pool Offshore and Nabors, have been dismissed from the case and have withdrawn their removal petitions. (Id.)

As to plaintiffs' first argument, defendants counter that these workers, who worked on oil rigs, do not have valid Jones Act claims and therefore, the cases fall squarely within the grant of federal jurisdiction found in OCSLA. (Defs.' Memo. in Opp'n to Pls.' Mot. Remand 24, doc. no. 58, 09-mc-103.) Since the cases do not implicate the Jones Act, the grant of federal jurisdiction found in OCSLA entitles defendants to a federal

forum.

As to plaintiffs' second argument, defendants argue that federal question jurisdiction is based on plaintiffs' claims, not the status of any defendant, and therefore the fact that Pool Offshore and Nabors have withdrawn their removal petitions is irrelevant. (Id. at 25.) Finally, as an alternative basis for federal jurisdiction, defendants state that even if the Court finds that there is no OCSLA federal question jurisdiction in the Category III cases, there is fraudulent joinder of Mississippi Mud and Oilfield Service, entitling the defendants to § 1332 diversity jurisdiction under the arguments above. (Id. at 25-26.)

1. Applicability of Jones Act to Plaintiffs' Claims

The Court agrees with the defendants that OCSLA grants federal jurisdiction over "all cases and controversies arising out of, or in connection with . . . any operation conducted on the outer Continental Shelf which involves exploration, development, or production of the minerals, of the subsoil and seabed of the outer Continental Shelf." 43 U.S.C. § 1349(b). OCSLA defines the term "outer Continental Shelf" as "all submerged lands lying seaward and outside of the area of lands beneath navigable waters . . ." 43 U.S.C. § 1301(a). Whether these oil rigs were involved in operations governed by OCSLA, and whether these operations are governed by the Jones Act, is a

matter of federal substantive law. Since there is no Third Circuit precedent on these issues, the Court will look to other circuits for guidance on this issue.

Plaintiffs' claims seem to fall directly within the grant of authority in OCSLA, since they are based on injuries sustained while working on oil rigs - exploring, developing or producing oil in the subsoil and seabed of the continental shelf. See 43 U.S.C. § 1349(b). The Fifth Circuit has held that when a case or controversy arises out of activity that occurred on a rig "affixed" to the Outer Continental Shelf, it is within the proper jurisdiction of the federal courts. Tennessee Gas Pipeline v. Houston Casualty Ins. Co., 87 F.3d 150, 154 (5th Cir. 1996). The oil rigs in question fit within this definition.

Additionally, workers on fixed drilling rigs are not on vessels, and therefore do not fall within the jurisdiction of the Jones Act. D.C. Thompson v. Crown Petroleum Corp., 418 F.2d 239, 240 (5th Cir. 1969). In D.C. Thompson, the Fifth Circuit ruled that "the law is well-settled that a stationary, fixed platform, even though erected in coastal water, is not a vessel, and consequently plaintiff was in no sense of the word a seaman when he was injured." Id. at 240. Therefore, under Fifth Circuit law, which the Court finds persuasive, the activities of these plaintiffs do not qualify them as seamen entitled to the Jones Act protections.

## 2. Dismissal of Original Removing Defendants

The Court also agrees that federal subject matter jurisdiction is not destroyed because both defendants who initiated removal have since been dismissed. A case arises under federal law if, at the time of removal, the success of the plaintiff's claim depends on the application of federal law. See Small v. Kansas City Title and Trust, Co., 255 U.S. 180, 199 (1921); see also Bell v. Hood, 327 U.S. 678, 681-2 (1946).

In this case, each defendant consented to the petition for removal filed by Nabors and Pool Offshore. (Defs.' Memo. in Opp'n to Pls.' Mot. Remand 24, doc. no. 58, 09-mc-103.) Whether fewer than all the removing defendants are no longer in the case makes no difference, so long as one of the remaining defendants opposes the motion to remand. Therefore, the fact that the removing defendants are no longer parties to the action does not disturb federal jurisdiction over plaintiffs' OCSLA claims in this instance.<sup>10</sup>

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<sup>10</sup> See Growth Horizons, Inc. v. Delaware County, 983 F.2d 1277, 1281 (3d Cir. 1993) ("A district court has federal question jurisdiction in any case where a plaintiff with standing makes a non-frivolous allegation that he or she is entitled to relief because the defendant's conduct violated a federal statute."). Therefore, federal subject matter jurisdiction is not based on which parties remain in the case, rather, it is based on the claims asserted by a plaintiff. Since the claims of the 25 plaintiffs in Category III fall squarely within the grant of jurisdiction conveyed in OCSLA, and the defendants timely opposed plaintiffs' motion to remand, the exercise of federal jurisdiction is appropriate.

This Court finds that plaintiffs' claims properly invoke OCSLA jurisdiction and do not fit within the purview of the Jones Act. Therefore, the motion to remand is denied with respect to the Category III plaintiffs.

#### V. CONCLUSION

For the reasons stated above, the motion to remand is granted in the cases in Categories I and II. These cases will be remanded to the appropriate Mississippi state court, because the defendants have failed to show that they are entitled to have their claims adjudicated in a federal forum. The motion to remand in the cases in Category III is denied, as federal question jurisdiction, under OCSLA, is appropriate.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VARIOUS PLAINTIFFS	:	CONSOLIDATED UNDER
	:	MDL 875
	:	
v.	:	
	:	CIVIL ACTION
VARIOUS DEFENDANTS	:	NO. 09-MC-103
("Oil Field Cases")	:	
	:	

**O R D E R**

**AND NOW**, this **10th** day of **December 2009**, it is hereby **ORDERED** that plaintiffs' motion to remand (doc. no. 45) is **GRANTED** in part and **DENIED** in part. It is **GRANTED** as to the 354 cases in Category I and as to the 65 cases in Category II listed in Exhibit "B", attached. It is **DENIED** as to the 25 cases in Category III, listed in Exhibit "C", attached.

**AND IT IS SO ORDERED.**

S/ Eduardo C. Robreno

**EDUARDO C. ROBRENO, J.**

Exhibit "A"

<b>Last Name</b>	<b>First Name</b>	<b>Mississippi District Court County</b>	<b>Mississippi State District Court Cause No.</b>	<b>Pennsylvania Civil Action No.</b>
Aaron	Robert E.	Jones	2006-141-CV3	09-cv-63215
Adcock	Winford L.	Smith	2006-76	09-cv-63581
Alexander	Lloyd G.	Smith	2006-78	09-cv-63582
Allen, Sr.	Donald	Jones	2006-140-CV3	09-cv-63217
Allred	Wayne H.	Jones	2006-135-CV3	09-cv-63218
Anderson	Melvin	Jefferson	2006-18	09-cv-63583
Anding	Maxie Ray	Jasper	16-0027	09-cv-63584
Ard	Willie Glean	Jones	2006-511-CV11	09-cv-63220
Arrington	Milton L.	Jasper	16-0029	09-cv-63586
Arrington	J.C.	Jasper	16-0028	09-cv-63585
Aultman	Carlton	Smith	2006-182	09-cv-63587
Baggett	David Wayne	Jasper	16-0026	09-cv-63588
Bailey, Jr.	Lee Owen	Jones	2006-515-CV11	09-cv-63203
Ballard	Jerry D.	Jones	2006-134-CV3	09-cv-63206
Banks	Daniel M.	Jasper	16-0030	09-cv-63589
Banks	Johnny C.	Jones	2006-144-CV3	09-cv-63205
Barnes, Jr.	Tommy E.	Smith	2006-221	09-cv-63590
Beard	Julius R.	Jones	2006-517-CV11	09-cv-63213
Beasley	Earnest	Smith	2006-104	09-cv-63591

Berry, Individually and as Representative of the Estate of Fred Berry, Deceased	Fredna	Jones	2006-228-CV3	09-cv-63012
Biglan	Terry Lee	Jones	2006-143-CV3	09-cv-63196
Bishop	James Johnny	Jones	2006-142-CV3	09-cv-63191
Boler, Jr.	Cleveland D.	Jones	2006-373-CV11	09-cv-63214
Bond	Louis L.	Smith	2006-152	09-cv-63592
Bounds	George	Jones	2006-102-CV3	09-cv-63194
Boykin	Bobby G.	Smith	2006-156	09-cv-63593
Boyles	Buren Dale	Jefferson	2006-13	09-cv-63595
Boyte	James	Jones	2006-132-CV3	09-cv-63209
Boyte	George W.	Smith	2006-179	09-cv-63596
Brady, Individually and as Representative of the Estate of Willie Douglas Hancock, Deceased	Kelly	Jones	2006-424-CV11	09-cv-63013
Breland	Hiram Jesse	Jones	2006-495-CV11	09-cv-63210
Brewer	Donnie C.	Smith	2006-129	09-cv-63598
Brister	David	Smith	2006-115	09-cv-63599
Broadhead	Thomas L.	Smith	2006-70	09-cv-63600
Brown	Isaac	Smith	2006-71	09-cv-63291
Brown	James Lavern	Jones	2006-146-CV3	09-cv-63211
Brown	Kenneth M.	Jones	2006-122-CV3	09-cv-63207
Brown	Randy K.	Smith	2006-175	09-cv-63292
Brown	Billy G.	Smith	2006-207	09-cv-63693

Brown, Individually and as Representative of the Estate of Claude Brown, Jr., Deceased	Estelle Ruth	Smith	2006-117	09-cv-63601
Brown, Jr.	Thomas	Smith	2006-196	09-cv-63567
Bryant	Harmon J.	Jones	2006-194-CV3	09-cv-63204
Buckley	Herbert	Jones	2006-80-CV3	09-cv-63195
Burkhalter	James Donald	Smith	2006-118	09-cv-63568
Burrow	Daniel G.	Smith	2006-214	09-cv-63570
Bustin	Michael	Smith	2006-105	09-cv-63571
Butler	Dale	Jones	2006-124-CV3	09-cv-63189
Byrd	Gary R.	Smith	2006-65	09-cv-63572
Byrd	Randy	Jones	2006-408-CV11	09-cv-63188
Byrd	Rex B.	Jones	2006-96-CV3	09-cv-63190
Campbell	Charles R.	Jefferson	2006-34	09-cv-63573
Campbell	Jon	Jones	2006-497-CV11	09-cv-63146
Campbell	Douglas E.	Jefferson	2006-15	09-cv-63574
Carney	Paul	Jones	2006-117-CV3	09-cv-63144
Carr	Henry S.	Jones	2006-83-CV3	09-cv-63145
Carruth	John Howard	Smith	2006-119	09-cv-63575
Carter	Audley	Smith	2006-120	09-cv-63576
Carter, Individually and as Representative of the Estate of Jessie L. Carter, Deceased	Ollie Mae	Smith	2006-121	09-cv-63694
Cavin	Jerry W.	Jones	2006-196-CV3	09-cv-63139

Clanan	Tim	Jones	2006-385-CV11	09-cv-63136
Clark	Braxton	Smith	2006-69	09-cv-63577
Clark	Robert W.	Smith	2006-103	09-cv-63579
Clark	Thomas A.	Smith	2006-208	09-cv-63580
Clark	Colin R.	Smith	2006-97	09-cv-63578
Collins	George B.	Jasper	16-0033	09-cv-63278
Collins	Roderick Wayne	Smith	2006-122	09-cv-63279
Conn	Danny	Jones	2006-184-CV3	09-cv-63131
Cooley	Thomas	Smith	2006-64	09-cv-63280
Cooper, Jr.	Henry S.	Jones	2006-524-CV11	09-cv-63134
Cothorn	Jerry L.	Smith	2006-174	09-cv-63281
Coulter	Charles L.	Jones	2006-148-CV3	09-cv-63133
Cowart	Robert L.	Jones	2006-422-CV11	09-cv-63137
Crager	Larry	Smith	2006-142	09-cv-63282
Cummings, Individually and as Representative of the Estate of John Cummings, Deceased	Henrietta	Jasper	16-0034	09-cv-63283
Cupit	James Edward	Jones	2006-223-CV3	09-cv-63135
Curtis	Wilmer E.	Smith	2006-191	09-cv-63284
Curtis, III	Concie	Jones	2006-97-CV3	09-cv-63138
Daley	David	Jones	2006-224-CV3	09-cv-63173
Darty, Individually and as Representative of the Estate of Charles Edward Darty, Deceased	Teresa	Smith	2006-155	09-cv-63690

Davis	Terry W.	Smith	2006-107	09-cv-63285
Dearman	James	Jasper	16-0057	09-cv-63286
Dearman	Kenneth L.	Smith	2006-172	09-cv-63287
Delk	Garner	Smith	2006-93	09-cv-63288
Doggett	Willie E.	Smith	2006-123	09-cv-63289
Donald	Newt	Smith	2006-96	09-cv-63264
Donald	Willard	Smith	2006-150	09-cv-63265
Donald	James	Smith	2006-106	09-cv-63290
Donaldson	Dale	Jones	2006-188-CV3	09-cv-63172
DuBose	Kenneth A.	Smith	2006-72	09-cv-63266
Dunigan	Darrius P.	Smith	2006-44	09-cv-63267
Dunigan	Jerry L.	Jones	2006-150-CV3	09-cv-63176
Dunn	James Lowrey	Smith	2006-124	09-cv-63268
Dunn	Vandiver	Jones	2006-527-CV11	09-cv-63174
Durr	Helen	Smith	2006-209	09-cv-63686
Dvorak	Eugene F.	Jones	2006-529-CV11	09-cv-63175
Easterling	Ernie L.	Smith	2006-128	09-cv-63269
Echols	Douglas	Jones	2006-375-CV11	09-cv-63154
Ellzey	Rickey	Smith	2006-74	09-cv-63270
Emler, Sr.	Robert W.	Smith	2006-125	09-cv-63271
Eubanks	John	Smith	2006-151	09-cv-63272
Evans	Donnie E.	Jones	2006-203-CV3	09-cv-63155

Evans	Bennie Jake	Jones	2006-151-CV3	09-cv-63156
Evans, Jr.	Joseph C.	Jefferson	2006-16	09-cv-63273
Ezell, Individually and as Representative of the Estate of Elbert C. Ezell, Deceased	Shirley A.	Jones	2006-152-CV3	09-cv-63017
Fairchild	Kenneth	Jones	2006-98-CV3	09-cv-63160
Fairley	Bill	Jones	2006-153-CV3	09-cv-63159
Farmer	Lee	Smith	2006-85	09-cv-63274
Fedrick, Sr.	Charles	Smith	2006-43	09-cv-63275
Floyd	Kendall	Jasper	16-0036	09-cv-63277
Floyd	Turner	Jones	2006-88-CV3	09-cv-63161
Ford, Jr.	Ernest	Jefferson	2006-25	09-cv-63253
Fountain	Miles D.	Jones	2006-116-CV3	09-cv-63163
Fountain Sr.	Michael V.	Jones	2006-154-CV3	09-cv-63162
Foxworth	Sidney R.	Jasper	16-0037	09-cv-63252
Freeman	Larry M.	Jasper	16-0017	09-cv-63251
Gardner	Charles	Jones	2006-99-CV3	09-cv-63050
Gardner	Ralph	Jones	2006-533-CV11	09-cv-63040
Gardner	Robert Wayne	Jasper	16-0038	09-cv-63250
Garner, Individually and as Representative of the Estate of Hubert Garner, Deceased	James R.	Jones	2006-235-CV3	09-cv-63008
Gatlin	Richard G.	Smith	2006-126	09-cv-63249
Gibson	Bobby L.	Jones	2006-387-CV11	09-cv-63049
Gilmore	Authur	Jones	2006-155-CV3	09-cv-63048

Goldman	Grover Audell	Jones	2006-157-CV3	09-cv-63046
Goldman, Individually and as Representative of the Estate of William Clarence Goldman, Deceased	Patricia	Smith	2006-161	09-cv-63687
Goode	Stanley L.	Smith	2006-178	09-cv-63248
Graham	Kenneth	Jones	2006-114-CV3	09-cv-63045
Grantham	David	Jones	2006-115-CV3	09-cv-63044
Graves	Ted Justin	Jones	2006-159-CV3	09-cv-63043
Green	Billy R.	Smith	2006-49	09-cv-63247
Green	Gregory	Smith	2006-198	09-cv-63246
Green	Robert E.	Jasper	16-0039	09-cv-63245
Greene	Stephen C.	Jasper	16-0040	09-cv-63244
Gregory	Paul	Smith	2006-177	09-cv-63243
Hall	Ansler Dale	Jones	2006-192-CV3	09-cv-63069
Hall	Quincy L.	Smith	2006-165	09-cv-63242
Hargon	James	Jasper	16-0059	09-cv-63241
Harris	James E.	Jones	2006-376-CV11	09-cv-63067
Harris	Ricky Wayne	Jones	2006-161-CV3	09-cv-63066
Harris	Willie James	Smith	2006-197	09-cv-63239
Harris	Curtis	Smith	2006-159	09-cv-63240
Harvey	Thad	Jones	2006-534-CV11	09-cv-63064
Hayles	Jerry W.	Jefferson	2006-26	09-cv-63233
Haynes	Isaac	Jones	2006-84-CV3	09-cv-63063

Heathcock	Cecil	Smith	2006-102	09-cv-63232
Heathcock	Nolan	Smith	2006-199	09-cv-63688
Heidel	John	Jones	2006-160-CV3	09-cv-63061
Henderson	George	Jasper	16-0041	09-cv-63231
Herrington	Don F.	Smith	2006-189	09-cv-63230
Herrington	James V.	Smith	2006-94	09-cv-63229
Herrington	Tony	Smith	2006-176	09-cv-63228
Higginbotham	Katie	Jones	2006-113-CV3	09-cv-63062
Hitson	Thurman R.	Smith	2006-127	09-cv-63263
Hodge	W.C.	Smith	2006-160	09-cv-63262
Holifield	Charles Edward	Jones	2006-163-CV3	09-cv-63059
Hollingshead	James	Jasper	16-0042	09-cv-63261
Hollingsworth	Billy R.	Smith	2006-170	09-cv-63260
Hollingsworth	Melvin	Smith	2006-213	09-cv-63259
Hollomon	George H.	Smith	2006-59	09-cv-63258
Holloway	William L.	Jones	2006-162-CV3	09-cv-63058
Holmes	Donald W.	Jones	2006-537-CV11	09-cv-63057
Hoover	Charles	Smith	2006-171	09-cv-63257
Howse	Malcolm Paul	Jones	2006-538-CV11	09-cv-63056
Huff	Douglas	Smith	2006-95	09-cv-63256
Hunt	Randy R.	Jones	2006-539-CV11	09-cv-63053
Hutto	Ernest Wayne	Jones	2006-411-CV11	09-cv-63052

Hutto	Thomas E.	Smith	2006-73	09-cv-63255
Hutto	Thomas Larry	Smith	2006-60	09-cv-63254
Jackson	Larry E.	Smith	2006-210	09-cv-63224
Jackson	Leroy	Jasper	16-0043	09-cv-63225
Jefcoat	Jackson P.	Smith	2006-101	09-cv-63226
Jernigan	Jimmy D.	Jasper	16-0062	09-cv-63227
Johnson	Dan Wilson	Smith	2006-111	09-cv-63238
Johnson	Paul Bedford	Jones	2006-540-CV11	09-cv-63180
Johnson, Jr.	Roland	Smith	2006-166	09-cv-63237
Jones	James B.	Jasper	16-0045	09-cv-63235
Jones	Anthony E.	Smith	2006-112	09-cv-63236
Jordan	James	Jasper	16-0025	09-cv-63234
Jordan	Robert E.	Jones	2006-425-CV11	09-cv-63182
Jordan	Michael H.	Jasper	16-0046	09-cv-63602
Keyes	John E.	Smith	2006-157	09-cv-63603
Keyes	Joe	Jones	2006-165-CV3	09-cv-63202
Kirk	Jerry	Smith	2006-86	09-cv-63604
Kirkendall, Sr.	Kenneth	Smith	2006-100	09-cv-63605
Kirkley	Dewayne	Smith	2006-216	09-cv-63606
Kittrell	Plummer	Jones	2006-498-CV11	09-cv-63179
Knight	Billy Ray	Smith	2006-173	09-cv-63607
Knotts, Sr.	Tommy J.	Jones	2006-104-CV3	09-cv-63200

Lambert	Howard	Smith	2006-67	09-cv-63689
Lambert	Ralph W.	Jefferson	2006-19	09-cv-63608
Landrum	Henry E.	Smith	2006-217	09-cv-63609
Langley	Willis F.	Jones	2006-168-CV3	09-cv-63165
Lee	Michael R.	Jones	2006-400-CV11	09-cv-63166
Leggett	Edward J.	Smith	2006-92	09-cv-63610
Leggett	Kenneth D.	Jones	2006-167-CV3	09-cv-63167
Leonard, Jr.	Colon R.	Jones	2006-211-CV3	09-cv-63168
Lewis, Sr.	William	Jasper	16-0060	09-cv-63611
Lindsey, Individually and as Representative of the Estate of Curtis William Lindsey, Deceased	Vanessa	Jasper	16-0047	09-cv-63691
Lines	David W.	Jones	2006-545-CV11	09-cv-63169
Lofton	Robert Junior	Jones	2006-166-CV3	09-cv-63170
Magee	James G.	Jones	2006-547-CV11	09-cv-63089
Maples	Bobby F.	Jefferson	2006-35	09-cv-63613
Mashburn, Jr.	William W.	Smith	2006-116	09-cv-63614
Mason	Keith	Jones	2006-191-CV3	09-cv-63088
McAllister	Ecclus	Jones	2006-551-CV11	09-cv-63085
McCaffrey	Lucious	Smith	2006-131	09-cv-63615
McCaffrey	Roger W.	Smith	2006-200	09-cv-63616
McCarty	Daniel	Smith	2006-42	09-cv-63617
McDonald	Alfred	Smith	2006-201	09-cv-63618

McDonald	Ben F.	Jones	2006-172-CV3	09-cv-63084
McFarland	John W.	Jones	2006-136-CV3	09-cv-63083
McGee	Charles	Smith	2006-218	09-cv-63619
McGill	Ronnie	Jones	2006-209-CV3	09-cv-63081
McGraw	William R.	Jefferson	2006-22	09-cv-63620
McKenzie	Thomas A.	Jones	2006-427-CV11	09-cv-63080
McKinney	Delton Alford	Jefferson	2006-17	09-cv-63621
McLain	Charles Irvin	Smith	2006-89	09-cv-63622
McLain	Clifford	Jones	2006-553-CV11	09-cv-63079
McLain	Jake W.	Jones	2006-125-CV3	09-cv-63109
McLain	Robert D.	Jones	2006-171-CV3	09-cv-63078
McManus	James Ray	Jefferson	2006-20	09-cv-63623
Miller	Loranzie	Jones	2006-428-CV11	09-cv-63077
Miller	Michael D.	Jones	2006-554-CV11	09-cv-63076
Mills	Bobby R.	Jones	2006-170-CV3	09-cv-63075
Mills	Owen L.	Smith	2006-149	09-cv-63624
Moak	Glen	Smith	2006-183	09-cv-63625
Moore	William Leon	Smith	2006-87	09-cv-63626
Moore	Willie E.	Jones	2006-190-CV3	09-cv-63072
Morgan	Otis L.	Jasper	16-0048	09-cv-63627
Morris	Robert E.	Jones	2006-110-CV3	09-cv-63110
Mosley, Individually and as Representative of Lee George Mosley, Deceased	Neena	Smith	2006-90	09-cv-63692

Mullins	Hugh W.	Jones	2006-556-CV11	09-cv-63070
Nations	Jimmy L.	Jones	2006-558-CV11	09-cv-63183
Neely, Sr.	Michael K.	Smith	2006-169	09-cv-63629
Nelson	James	Jones	2006-133-CV3	09-cv-63184
Newell	Isaac	Jones	2006-560-CV11	09-cv-63185
Nichols	Billy D.	Smith	2006-188	09-cv-63630
Nickey	Cecil J.	Jones	2006-173-CV3	09-cv-63186
Nugent	Shelby	Claiborne	2006-34	09-cv-63631
Odom	Gary L.	Jones	2006-378-CV11	09-cv-63187
Oliver	Rickey L.	Smith	2006-180	09-cv-63632
Pacey	Gene W.	Smith	2006-211	09-cv-63633
Palmer	Joe L.	Jones	2006-561-CV11	09-cv-63149
Palmer	Morgan T.	Jones	2006-200-CV3	09-cv-63148
Parker	Jeffrey B.	Smith	2006-181	09-cv-63634
Parnell	Phillip Lynn	Jasper	16-0015	09-cv-63635
Peak	William H.	Jones	2006-430-CV11	09-cv-63100
Perkins	Clifton A.	Smith	2006-148	09-cv-63636
Phillips	Frazier M.	Jones	2006-121-CV3	09-cv-63099
Pittman	Alfred J.	Smith	2006-61	09-cv-63637
Pitts	Michael C.	Smith	2006-47	09-cv-63638
Pitts	Luther	Jones	2006-176-CV3	09-cv-63098
Pitts	Sam	Smith	2006-141	09-cv-63639

Pitts	Vandol Wayne "V.W."	Jasper	16-0049	09-cv-63640
Pitts, Individually and as Representative of the Estate of Homer Earl Pitts, Deceased	Patricia Gayle	Jones	2006-174-CV3	09-cv-63009
Plumer	Ernest	Jones	2006-449-CV11	09-cv-63097
Porter	Carl O.	Jasper	16-0050	09-cv-63641
Powell	Herbert K.	Jones	2006-108-CV3	09-cv-63096
Powell	William Hinton	Jones	2006-177-CV3	09-cv-63095
Presley, Individually and as Representative of the Estate of William Pressley, Deceased	Alice	Jones	2006-501-CV11	09-cv-63006
Preston	Albert	Jones	2006-416-CV11	09-cv-63093
Price	Gary L.	Jefferson	2006-21	09-cv-63642
Price	George R.	Jones	2006-502-CV11	09-cv-63092
Price	Mark	Jones	2006-562-CV11	09-cv-63091
Prine	Charlie W.	Smith	2006-40	09-cv-63696
Quick	Billy	Jones	2006-403-CV11	09-cv-63201
Ratliff	Jason C.	Jones	2006-563-CV11	09-cv-63108
Reed	William Steve	Jefferson	2006-29	09-cv-63643
Reid	James D.	Jones	2006-179-CV3	09-cv-63106
Rigney, Jr.	Charles L.	Smith	2006-45	09-cv-63645
Robbins	Pearl Lavern	Jones	2006-418-CV11	09-cv-63105
Robbins, Sr.	Donald	Smith	2006-185	09-cv-63646
Roberts	Johnny W.	Jasper	16-0051	09-cv-63648

Rodgers	Julius E.	Jefferson	2006-27	09-cv-63649
Rollins	David Clinton	Jasper	16-0024	09-cv-63650
Rollins	Tommy	Jones	2006-565-CV11	09-cv-63103
Runnels	Carl A.	Jones	2006-482-CV11	09-cv-63102
Russell	James Lowery	Jones	2006-112-CV3	09-cv-63151
Russell	Larry	Jones	2006-199-CV3	09-cv-63150
Russell	William H.	Smith	2006-140	09-cv-63651
Russell	David P.	Jones	2006-178-CV3	09-cv-63152
Rutland	Billy Joe	Smith	2006-139	09-cv-63652
Sanders	Charles David	Jones	2006-567-CV11	09-cv-63039
Saul	J.M.	Jones	2006-181-CV3	09-cv-63037
Saul, Jr.	Tom M.	Jones	2006-120-CV3	09-cv-63036
Sauls, Individually and as Representative of the Estate of Kenneth L. Sauls, Deceased	Betty	Jones	2006-419-CV11	09-cv-63004
Scarbrough	Arthur L.	Jasper	16-0065	09-cv-63653
Short	Jesse James	Jones	2006-225-CV3	09-cv-63035
Simmons	Thomas E.	Jones	2006-405-CV11	09-cv-63034
Sims	Charles R.	Jones	2006-89-CV3	09-cv-63033
Sims	Gary B.	Jefferson	2006-30	09-cv-63654
Sims, Sr.	John W.	Jasper	16-0052	09-cv-63655
Smith	Charles	Jones	2006-389-CV11	09-cv-63032
Smith	Ervin	Smith	2006-219	09-cv-63656

Smith	Willis T.	Smith	2006-80	09-cv-63659
Smith	Charles R.	Jones	2006-231-CV3	09-cv-63030
Smith	Elmer H.	Smith	2006-66	09-cv-63697
Smith	Kelcie Dale	Jones	2006-138-CV3	09-cv-63029
Smith	Vince Edward	Jasper	16-0023	09-cv-63658
Smith, Jr.	Joe	Jones	2006-379-CV11	09-cv-63028
Smith, Sr.	Darrell D.	Jones	2006-210-CV3	09-cv-63027
Speights	James C.	Smith	2006-168	09-cv-63660
Spence	George Ross	Jones	2006-406-CV11	09-cv-63026
Spiars	Bobby	Smith	2006-215	09-cv-63661
Spiars	Joseph	Jones	2006-505-CV11	09-cv-63025
Spradley	Joseph	Jones	2006-119-CV3	09-cv-63024
Spradley	Stephen V.	Jasper	16-0016	09-cv-63662
Stampley	Charlie A.	Jefferson	2006-32	09-cv-63663
Stanley	David Foster	Jefferson	2006-33	09-cv-63664
Stewart, Individually and as Representative of the Estate of Floyd L. Nettles, Deceased	Frances	Jones	2006-559-CV11	09-cv-63015
Stinson	Walter E.	Jones	2006-396-CV11	09-cv-63021
Street	William J.	Smith	2006-62	09-cv-63665
Strickland	Melton L.	Smith	2006-138	09-cv-63666
Sullivan	Corbit	Jones	2006-198-CV3	09-cv-63020
Sykes	Dodd Mitchell	Jones	2006-180-CV3	09-cv-63019

Tageant	Louis	Jefferson	2006-09	09-cv-63667
Tanner	Daryl Ray	Jones	2006-506-CV11	09-cv-63116
Tanner, Jr.	Edward	Smith	2006-195	09-cv-63668
Tatum	William A.	Jones	2006-380-CV11	09-cv-63117
Taylor, Individually and as Representative of the Estate of Clarence Kelly, Sr., Deceased	Lisa	Jones	2006-543-CV11	09-cv-63014
Teachey	Jerry L.	Jones	2006-571-CV11	09-cv-63115
Terrell	Leroy	Jones	2006-572-CV11	09-cv-63114
Thompson	Joe R.	Jones	2006-489-CV11	09-cv-63113
Thompson, Individually and as Representative of the Estate of Marvin Thompson, Deceased	Dimple I.	Jones	2006-381-CV11	09-cv-63003
Toney	Lester Leroy	Jones	2006-577-CV11	09-cv-63112
Townsend	Larry W.	Smith	2006-130	09-cv-63670
Tucker	William Clyde	Smith	2006-79	09-cv-63671
Turner	James M.	Jones	2006-197-CV3	09-cv-63111
Upshaw	Dewey Wayne	Smith	2006-99	09-cv-63672
Upshaw	Jerry	Smith	2006-98	09-cv-63673
Upton	Joel P.	Jones	2006-578-CV11	09-cv-63199
Wade	Robert Earl	Smith	2006-110	09-cv-63674
Wagley	Billy J.	Smith	2006-109	09-cv-63675
Wallace	James C.	Jones	2006-86-CV3	09-cv-63129
Waller	Pauline	Jones	2006-397-CV11	09-cv-63128

Walley	James R.	Jones	2006-91-CV3	09-cv-63126
Ward, Jr.	Henry	Jones	2006-382-CV11	09-cv-63127
Watts	James E.	Jones	2006-508-CV11	09-cv-63123
Weeks	Johnny R.	Jasper	16-0055	09-cv-63676
Weir, Jr.	Freddie	Smith	2006-220	09-cv-63677
Wells, Sr.	Bobby G.	Smith	2006-137	09-cv-63678
West	Charlie E.	Jasper	16-0053	09-cv-63679
West	Dalton L.	Smith	2006-41	09-cv-63680
West	Phillip	Jones	2006-383-CV11	09-cv-63122
West	Thomas E.	Jasper	16-0054	09-cv-63681
Westerfield	Earl	Jasper	16-0022	09-cv-63682
White	Larry James	Smith	2006-108	09-cv-63683
White	Randy J.	Jones	2006-390-CV11	09-cv-63121
White, Jr.	J.B.	Jones	2006-92-CV3	09-cv-63120
White, Sr.	James E.	Smith	2006-136	09-cv-69684
Wilkinson	Reba N.	Smith	2006-158	09-cv-69685
Williams	David Griffin	Jones	2006-579-CV11	09-cv-63119
Williams	Mathyngale "Buck"	Jones	2006-26-CV3	09-cv-63118
Wise	Peter	Smith	2006-82	09-cv-63698
Yelverton, Jr.	John D.	Jones	2006-93-CV3	09-cv-63197

Exhibit "B"

<b>Last Name</b>	<b>First Name</b>	<b>Mississippi District Court County</b>	<b>Mississippi State District Court Cause No.</b>	<b>Pennsylvania Civil Action No.</b>
Adcock	David	Jones	2007-102-CV9	09-cv-63216
Ard	Robert E.	Jones	2007-104-CV9	09-cv-63219
Atwood	Gene B.	Jones	2007-105-CV9	09-cv-63221
Aultman, Sr.	Mozell	Jones	2007-106-CV9	09-cv-63222
Bacon	Edward	Jones	2007-110-CV9	09-cv-63223
Beard	William M.	Jones	2007-115-CV9	09-cv-63208
Bevis	Jimmie L.	Jones	2007-116-CV9	09-cv-63193
Boleware	David	Jones	2007-117-CV9	09-cv-63192
Boykin	C.N.	Jefferson	2007-101	09-cv-63594
Brent	Fred	Jefferson	2007-98	09-cv-63597
Brownell	William E.	Jones	2007-119-CV9	09-cv-63011
Burrell	Vernon	Smith	2007-259	09-cv-63569
Chapman	Alford B.	Jones	2007-125-CV9	09-cv-63141
Chipmon	David	Jones	2007-126-CV9	09-cv-63140
Collins	Herman	Jones	2007-129-CV9	09-cv-63143
Collins	Larry	Jones	2007-130-CV9	09-cv-63130
Cook	Charles T.	Jones	2007-131-CV9	09-cv-63132
Davis, Individually and as Representative of the Estate of Don M. Davis, Deceased	Stephanie	Jones	2007-136-CV9	09-cv-63016

Easterling	Sherman	Jones	2007-140-CV9	09-cv-63153
Echols	Charles	Jones	2007-141-CV9	09-cv-63157
Evans	Jacob	Jones	2007-142-CV9	09-cv-63158
Feduccia	Joe	Jones	2007-144-CV9	09-cv-63276
Butler, Individually and as Representative of the Estate of Bennie Floyd, Deceased	Krysten Lambert	Jones	2007-145-CV9	09-cv-63018
Foster	Leonard W.	Jones	2007-146-CV9	09-cv-63164
Gaines, Jr.	Eddie Lee	Jones	2007-147-CV9	09-cv-63051
Glass	Melvin R.	Jones	2007-149-CV9	09-cv-63047
Gregory	Rudolph	Jones	2007-151-CV9	09-cv-63042
Gunter	Jerrell J.	Jones	2007-152-CV9	09-cv-63041
Hamrick, Sr.	Charles	Jones	2007-155-CV9	09-cv-63068
Harrison	Ex Earl	Jones	2007-157-CV9	09-cv-63065
Hodges	Richard	Jones	2007-161-CV9	09-cv-63060
Howard	Johnny	Jones	2007-162-CV9	09-cv-63055
Hudson, III	Ompy L.	Jones	2007-163-CV9	09-cv-63054
Ingle, Individually and as Representative of the Estate of W.C. Ingle, Deceased	Audrey Nell	Jefferson	2007-100	09-cv-63695
Richardson, Individually and as Representative of the Estate of Troyce Johnson, Deceased	Judith	Jones	2007-165-CV9	09-cv-63005
Jordan	Johnny	Jones	2007-166-CV9	09-cv-63181

Kennedy	Ross A.	Jones	2007-167-CV9	09-cv-63177
Kerben, Jr.	Sidney L.	Jones	2007-168-CV9	09-cv-63178
Lofton	Robert	Jasper	17-0065	09-cv-63612
Madison	Winston	Jones	2007-171-CV9	09-cv-63090
Mahaffey, Jr.	Alton J.	Jones	2007-172-CV9	09-cv-63087
Mayhugh, Jr.	Kenneth	Jones	2007-175-CV9	09-cv-63086
McFarland	Mark	Jones	2007-177-CV9	09-cv-63082
McNair, Individually and as Representative of the Estate of L.B. McNair, Deceased	Betty	Jones	2007-178-CV9	09-cv-63010
Mire, Sr.	Bobby W.	Jones	2007-179-CV9	09-cv-63074
Moak	Dennis G.	Jones	2007-180-CV9	09-cv-63073
Motley	Vincent	Jones	2007-184-CV9	09-cv-63071
Murray, Sr.	Bobby	Claiborne	2007-165	09-cv-63628
Patton	J.E.	Jones	2007-188-CV9	09-cv-63147
Pevey, Individually and as Representative of the Estate of James E. Pevey, Deceased	Chrystelle	Jones	2007-189-CV9	09-cv-63007
Prather	Daniel L.	Jones	2007-192-CV9	09-cv-63094
Ramage	Jackie D.	Jones	2007-197-CV9	09-cv-63107
Revette, Jr.	Harvey Richard	Smith	2007-260	09-cv-63644
Roberts	Jimmy	Jasper	17-0064	09-cv-63647
Rollins	Larry Jessie	Jones	2007-200-CV9	09-cv-63104

Rushing	Mitchell R.	Jones	2007-201-CV9	09-cv-63101
Sasser, Jr.	Aaron	Jones	2007-203-CV9	09-cv-63038
Smith	Charles C.	Jones	2007-205-CV9	09-cv-63031
Smith	Mark	Jefferson	2007-104	09-cv-63657
Stephens	Joe	Jones	2007-209-CV9	09-cv-63023
Stewart	Timothy L.	Jones	2007-210-CV9	09-cv-63022
Thornton	Harold D.	Jefferson	2007-103	09-cv-63669
Usry	Kenneth	Jones	2007-217-CV9	09-cv-63198
Warnock	Jerry L.	Jones	2007-219-CV9	09-cv-63125
Watkins	Ted	Jones	2007-220-CV9	09-cv-63124

Exhibit "C"

Last Name	First Name	Mississippi District Court County	Mississippi State District Court Cause No.	Pennsylvania Civil Action No.
Brady	Clinton L.	Jones	2006-407-CV11	5:08-cv-87071-ER
Broom	Harvey E.	Jones	2006-519-CV11	5:08-cv-87069-ER
Bullock	Deloice	Jones	2006-520-CV11	5:08-cv-87072-ER
Crawford	Joseph	Jones	2006-394-CV11	5:08-cv-87080-ER
Curd	Patrick	Jones	2006-525-CV11	5:08-cv-87083-ER
Daniels	Willie Lee	Jones	2006-409-CV11	5:08-cv-87068-ER
Daughdrill	Dan Mack	Jones	2006-526-CV11	5:08-cv-87081-ER
Dearman	Rolland	Jones	2006-410-CV11	5:08-cv-87070-ER
Dixon	George D.	Jones	2006-374-CV11	5:08-cv-87077-ER
Emler	Louie T.	Jones	2006-464-CV11	5:08-cv-87084-ER
Faust	Johnny W.	Jones	2006-90-CV3	5:08-cv-85894-ER
Herring (deceased)	Henry A.	Jones	2006-468-CV11	5:08-cv-87079-ER
Livingston	Daniel	Jones	2006-94-CV3	5:08-cv-85987-ER
Lord, Sr.	Archie A.	Smith	16-0056	5:08-cv-87030-ER
McPhail	Ralph T.	Jones	2006-345-CV9	5:08-cv-87048-ER
Mounteer, Sr.	Eliel K.	Jones	2006-555-CV11	5:08-cv-87073-ER
Newsom	Joseph	Jones	16-0018	5:08-cv-87076-ER
Newsom	Lonnie	Jones	2006-414-CV11	5:08-cv-87031-ER
Piner	Ted L.	Jones	2006-415-CV11	5:08-cv-87078-ER
Polk	Brandon Kaye	Jones	2006-206-CV3	5:08-cv-85986-ER
Polk	Dale F.	Jones	2006-85-CV3	5:08-cv-85985-ER
Rawls	Ray C.	Jones	2006-417-CV11	5:08-cv-87075-ER
Smith (deceased)	Cleophus	Jones	2006-75	5:08-cv-87032-ER
Thomas	Tony N.	Jones	2006-573-CV11	5:08-cv-87082-ER
Wallace	Terry	Jones	2006-491-CV11	5:08-cv-87074-ER