

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

VILINDA ELIZABETH DESVIGNES,

Plaintiff,

v.

Civil Action No. 2:12-cv-06032

ETHICON, INC., et al.,

Defendants,

MEMORANDUM OPINION AND ORDER

Pending are (1) Cook's 12(b)(6) and 12(b)(3) Motion to Dismiss, filed October 4, 2012 [ECF 14]; and (2) the plaintiff's Motion for Leave to File First Amended Complaint, filed October 10, 2012 [ECF 19]. Cook Biotech Incorporated, Cook Medical Incorporated and Cook Group Incorporated (collectively referred to as the "Cook defendants") filed their motion, followed by the plaintiff's motion for leave to file an amended complaint. The Cook defendants have not responded formally to the plaintiff's motion seeking leave to amend.

The Cook defendants' motion, filed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, seeks dismissal based on *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), and because venue is improper under Rule 12(b)(3).

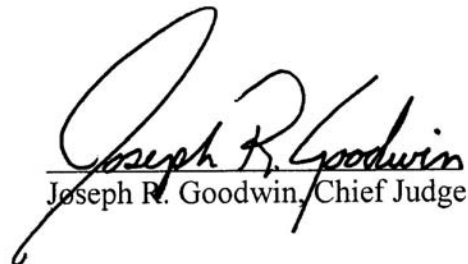
The plaintiff did not respond to the motion to dismiss, but instead, filed a motion for leave to file a first amended complaint on October 10, 2012. No defendant in this action has objected to the motion for leave to file an amended complaint. The court contacted the Cook defendants' counsel by email, and she indicated no objection to the plaintiff's motion.

I find, pursuant to Rule 15(a)(1)(b) and (a)(2) of the Federal Rules of Civil Procedure, that the plaintiff's Motion for Leave to File First Amended Complaint should be granted. The plaintiff filed her motion within twenty one (21) days after the Cook defendants filed their motion to dismiss, making the filing of an amended pleading as a matter of course appropriate based on Rule 15(a)(1)(b). Furthermore, leave should be given freely when justice so requires, as I find that it does in this instance. Fed. R. Civ. P. 15(a)(2).

Based on the above, it is **ORDERED** that the plaintiff's Motion for Leave to File First Amended Complaint is **GRANTED**. The Clerk is instructed to file the plaintiff's Amended Complaint on this date. It is further **ORDERED** that Cook's 12(b)(6) and 12(b)(3) Motion to Dismiss is **DENIED** without prejudice.

The court **DIRECTS** the Clerk to file a copy of this Memorandum Opinion and Order and to send a copy to counsel of record and any unrepresented party.

ENTER: November 27, 2012


Joseph R. Goodwin, Chief Judge