

Removal of Eliquis Cases Was Proper Under Forum Defendant Rule, N.Y. Federal Judge Rules

NEW YORK — The New York federal judge overseeing the Eliquis multidistrict litigation has dismissed four cases that were originally filed in Delaware state court, ruling that removal was proper under the forum defendant rule because it occurred before defendants were properly served.

In an Oct. 12 order, Judge Denise Cote of the U.S. District Court for the Southern District of New York dismissed the complaints, finding plaintiffs failed to present any developed argument against dismissal.

Plaintiffs in the four actions accused Bristol-Myers Squibb Co. and Pfizer Inc. of failing to adequately warn of the risks posed by Eliquis, a blood thinner used to treat nonvalvular atrial fibrillation and to reduce the risk of stroke and systemic embolism.

On Nov. 21, 2016, the parties several related Eliquis actions filed in the Southern District of New York were given the opportunity to identify one or two actions to proceed with early motion practice. On December 2, the parties agreed to proceed with a motion to dismiss in *Utts v. Bristol-Myers Squibb Co. & Pfizer Inc.*

On Dec. 23, Judge Cote dismissed the Utts complaint with leave to amend most of plaintiffs' claims (*Utts I*).

The Judicial Panel on Multidistrict Litigation created an MDL docket for all federal Eliquis actions on Feb. 7 and transferred them to the Southern District of New York. The parties agreed to have the MDL court decide defendants' renewed motion to dismiss in *Utts* and, if that motion were granted, to give all other actions in the MDL one final opportunity to amend in light of the analysis that would be forthcoming in *Utts*.

The District Court dismissed the second amended complaint on May 8, holding that the failure-to-warn and design defect claims are preempted and fail to satisfy the pleading standards of Federal Rules of Procedure 8(a) and 9(b) (*Utts II*).

On May 9, in light of *Utts II*, all remaining plaintiffs in the actions pending before the District Court were granted leave to file an amended complaint and were ordered to show cause why their complaints should not be dismissed based on the analyses in *Utts I* and *Utts II*.

In response to the decision dismissing the *Utts* action, Salim-Beasley voluntarily dismissed 33 Eliquis actions that were pending in federal court and refiled them in Delaware state court. Defendants removed those actions to Delaware federal court, and in June, the U.S. District Court for the District of Delaware denied motions to remand the 33 cases. The District Court that the removal was properly based on diversity jurisdiction despite the defendants' citizenship in Delaware.

The Natchitoches, La., law firm of Salim-Beasley filed additional Eliquis actions in Delaware state court, including the four at issue. Defendants removed the actions to federal court before the plaintiffs could serve the defendants. The actions were then transferred to the Eliquis MDL.

Plaintiffs moved to remand the cases to Delaware state court.

Judge Cote held that because defendants removed the cases before they were properly served, removal was proper under the forum defendant rule, 28 U.S.C. Section 1441(b). The plain language of Section 1441(b) clearly states that its prohibition on removal applies only where a defendant who has been "properly joined and served" is a resident of the forum state, the judge explained.

"Ignoring the plain terms of the statute to determine in an individual case when a plaintiff had a meaningful opportunity to serve each defendant and to investigate the plaintiff's motives in filing in a particular venue and the defendant's reasons for removing the action to federal court, would add expense, delay, and uncertainty to the litigation," Judge Cote held. "In cases like the ones at issue here, the investigation is complicated and points in several directions. While the defendants no doubt removed the actions swiftly to combine the four cases with the Eliquis MDL litigation and sweep them under the *Utts* umbrella, a ruling in favor of the plaintiffs on the issue of removal would reward a different kind of gamesmanship altogether."

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