

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SHERANGELIA MCCLAIN, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 4:17CV1534 JCH
)	
BAYER CORPORATION, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on Defendants’ Motion to Sever (ECF No. 7); Plaintiffs’ Motion to Remand (ECF No. 15); Plaintiffs’ Motion to Stay (ECF No. 17); Defendants’ Motion to Dismiss (ECF No. 44); Plaintiffs’ Motion to Allow Jurisdictional Discovery (ECF No. 47); and Plaintiffs’ Motion for an Extension of Time (ECF No. 49). Plaintiffs’ motions are fully briefed by the parties. Plaintiffs elected not to respond to Defendants’ Motion to Sever and Motion to Dismiss, however, instead choosing to file a motion to stay, a motion for an extension of time to respond to Defendants’ motions, and a motion for leave to conduct jurisdictional discovery.

By way of background, the ninety-eight Plaintiffs in this matter originally filed their action in Missouri state court, claiming personal injuries resulting from the promotion, sale, and distribution of the medical device for permanent birth control known as Essure. Plaintiffs are residents of twenty-nine states and the U.S. Virgin Islands. Of those Plaintiffs, two are residents of Missouri, one is a resident of Illinois who claims to have been implanted with Essure

in Missouri¹, and one is a resident of Nevada who claims to have been implanted with Essure in Missouri.²

Defendant Bayer Corporation is a citizen of Indiana and New Jersey. Defendant Bayer HealthCare LLC is a citizen of Delaware, New Jersey, Pennsylvania, Germany and the Netherlands. Defendant Bayer Essure, Inc. is a citizen of Delaware and New Jersey. Defendant Bayer HealthCare Pharmaceuticals, Inc. is a citizen of Delaware and New Jersey.

Defendants removed the case to this Court on May 18, 2017, based in part on diversity jurisdiction under 28 U.S.C. § 1332(a). (ECF No. 1). That same day, Defendants filed a Motion to Dismiss³ and a Motion to Sever. (ECF Nos. 4, 7). On May 25, 2017, Plaintiffs filed a Motion to Remand, arguing that the Court lacks subject matter jurisdiction over this action because there is no complete diversity of citizenship, the Class Action Fairness Act does not provide the Court with jurisdiction, and the Court does not have federal question jurisdiction. (ECF No. 15). Plaintiffs also filed a Motion to Stay the briefing on Defendants' motions. (ECF No. 17). On July 13, 2017, Plaintiffs filed a Second Amended Complaint, in which they added allegations regarding the Court's alleged ability to exercise personal jurisdiction over the non-Missouri Plaintiffs' claims against Defendants.⁴ (ECF No. 33). Defendants then filed a Motion to Dismiss with respect to the Second Amended Complaint on August 1, 2017, asserting the Court should first evaluate personal jurisdiction as to the non-Missouri Plaintiffs, and dismiss their claims for

¹ Plaintiff Sherangelia McClain claims to have been implanted with Essure in Missouri.

² Plaintiff Betty Killy claims to have been implanted with Essure in Missouri.

³ Defendants' original motion to dismiss was denied upon Plaintiffs' filing of a Second Amended Complaint.

⁴ Specifically, the Second Amended Complaint added allegations that Defendants used St. Louis as a center to develop, create a marketing strategy for, label, and/or work on the regulatory approval of Essure; that several pre-market clinical studies for Essure's pre-market approval occurred in Missouri hospitals; and that St. Louis was key to Defendants' national marketing plan.

lack of personal jurisdiction; that all of Plaintiffs' claims are preempted; and that Plaintiffs fail to plead a plausible claim for relief. (ECF No. 44). Rather than respond to Defendants' Motion to Dismiss, Plaintiffs filed a Motion to Allow Jurisdictional Discovery and a Motion for an Extension of Time to Respond to Defendants' motions on August 8, 2017. (ECF Nos. 47, 49).

Within the past month, the legal issues presented in the pending motions have been presented and ruled by two separate Judges in this Court. (*See Dyson v. Bayer Corp.*, No. 4:17CV2584 SNLJ, 2018 WL 534375 (E.D. Mo. Jan. 24, 2018), and *Jordan v. Bayer Corp.*, No. 4:17CV865 AGF, 2018 WL 837700 (E.D. Mo. Feb. 13, 2018)). This Court agrees with the disposition in those cases and the reasoning and rationale used in arriving at that disposition, and therefore adopts the same.

Accordingly,

IT IS HEREBY ORDERED that Defendants' Motion to Sever (ECF No. 7) is **DENIED** as moot.

IT IS FURTHER ORDERED that Plaintiffs' Motion to Remand (ECF No. 15) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiffs' Motion to Stay (ECF No. 17) is **DENIED**.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss (ECF No. 44) is **GRANTED** in part, with respect to personal jurisdiction. The claims of the non-Missouri Plaintiffs, with the exception of Plaintiffs McClain and Killy, are dismissed for lack of personal jurisdiction.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss (ECF No. 44) is **HELD IN ABEYANCE** to the extent it raises grounds other than personal jurisdiction. Plaintiffs shall have until **March 12, 2018**, to respond to the Motion to Dismiss.

IT IS FURTHER ORDERED that Plaintiffs' Motion to Allow Jurisdictional Discovery (ECF No. 47) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiffs' Motion for an Extension of Time (ECF No. 49) is **DENIED**.

Dated this 20th Day of February, 2018.

\s/ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE