

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

IN RE: DIET DRUGS (Phentermine/
Fenfluramine/Dexfenfluramine) : MDL DOCKET NO. 1203
PRODUCTS LIABILITY LITIGATION :
: :
THIS DOCUMENT RELATES TO: :
----- :
CATHY MCCARTY :
v. : CIVIL ACTION NO. 03-20306
WYETH, et al. :

MEMORANDUM AND PRETRIAL ORDER NO. 5026

Bartle, J.

April 20, 2005

Before the court are the motions defendant Paul N. Selvadurai, M.D. ("Dr. Selvadurai") to dismiss and for summary judgment on the grounds that he is fraudulently joined as a defendant. The motions are before the undersigned as transferee judge in Multi-District Litigation ("MDL") 1203, the mass tort litigation involving Pondimin and Redux.

Plaintiff is a citizen of Missouri. She has sued Wyeth, the manufacturer of Pondimin and Redux, and Dr. Selvadurai, a physician who allegedly prescribed Pondimin and/or Redux for her. Wyeth is of diverse citizenship from plaintiff, while Dr. Selvadurai is not.

Plaintiff's complaint was originally filed in a Missouri state court in March, 2003, more than five years after the diet drugs were withdrawn from the market in September, 1997. Wyeth removed the action to the United States District Court for the Eastern District of Missouri on the basis that Dr. Selvadurai

was fraudulently joined in an effort to defeat federal diversity jurisdiction. See 28 U.S.C. § 1332.

Dr. Selvadurai contends that we should dismiss plaintiff's claims against him because these claims are barred by the applicable statute of limitations. In response, plaintiff appears to argue that the doctrines of fraudulent concealment and continuing care operate to toll the statute of limitations on her claims against Dr. Selvadurai, who is therefore properly joined as a defendant in this action.

We previously addressed the fraudulent joinder of non-diverse physicians in Memorandum and Pretrial Order ("PTO") No. 3207 in Ross v. Wyeth, et al., CIV.A. No. 03-20362 (E.D. Pa. Jan. 13, 2004) and in Memorandum and PTO No. 3213 in Savage v. Wyeth, et al., CIV.A. No. 03-20254 (E.D. Pa. Jan. 14, 2004). In that case, we found that the non-diverse defendant physician was fraudulently joined and dismissed the claims against him. For the same reasons set forth in Ross and Savage, we find "no reasonable basis in fact or colorable ground" supporting plaintiff's claims against Dr. Selvadurai. Boyer v. Snap-on Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990).

As discussed in greater detail in Ross, plaintiff's claims against Dr. Selvadurai are time barred because her complaint was clearly filed outside the two-year statute of limitations. See MO. ANN. STAT. § 516.105 (West 2003). For the same reasons set forth in Ross, plaintiff in this action cannot use the doctrines of fraudulent concealment or continuing care to

toll the statute of limitations. Accordingly, we find and conclude that Dr. Selvadurai is fraudulently joined to avoid federal subject matter jurisdiction. We will grant his motion to dismiss.

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

IN RE: DIET DRUGS (Phentermine/ Fenfluramine/Dexfenfluramine) PRODUCTS LIABILITY LITIGATION	:	MDL DOCKET NO. 1203
THIS DOCUMENT RELATES TO:	:	
-----	:	
CATHY MCCARTY	:	
v.	:	CIVIL ACTION NO. 03-20306
WYETH, et al.	:	

PRETRIAL ORDER NO. 5026

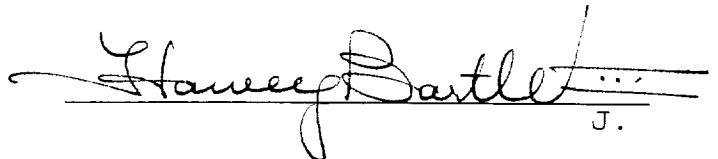
AND NOW, this 20th day of April, 2005, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

(1) the motion of defendant Paul N. Selvadurai, M.D. to dismiss (Doc. #2) is GRANTED;

(2) all claims against defendant Paul N. Selvadurai, M.D. are dismissed; and

(3) the motion of defendant Paul N. Selvadurai, M.D. for summary judgment (Doc. #7) is DENIED as moot.

BY THE COURT:


J.