

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS
LIABILITY LITIGATION

MDL No. 2741

Case No. 16-md-02741-VC

This document relates to:

Bryant v. Monsanto Co., 19-cv-6395

**PRETRIAL ORDER NO. 197:
DENYING MOTION TO REMAND**

Re: Dkt. No. 7056

Monsanto removed this case under 28 U.S.C. § 1441(b), despite the absence of complete diversity, on the ground that Roger and Judy Bryant fraudulently joined two West Virginia defendants, Monsanto Management Club-Nitro Plant and Flexsys America Limited. The Bryants' motion to remand is denied because Flexsys America Limited is not a citizen of West Virginia and because they fraudulently joined Monsanto Management Club-Nitro Plant.

1. Except for corporations, an entity's citizenship is determined by its members' citizenship. *Americold Realty Trust v. Conagra Foods, Inc.*, 136 S. Ct. 1012, 1015 (2016); *see Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (applying this rule to partnerships and limited liability companies). Flexsys America Limited is a general partnership whose lone general partner is Flexsys America L.P. *See* Dkt. No. 7056-3. Flexsys America L.P., in turn, is a limited partnership whose sole general partner is Flexsys America, LLC and whose sole limited partner is Solutia Inc. *See* Woodmansee Decl. ¶ 4, No. 19-cv-6395, Dkt. No. 1-2. And finally, Flexsys America, LLC is a wholly owned subsidiary of Solutia. *See id.*

Following that chain of members, Flexsys America Limited's citizenship is determined by Solutia. That's because (i) Flexsys America, LLC's citizenship matches its only stockholder

(Solutia), (ii) Flexsys America L.P.’s citizenship matches its two partners (Flexsys America, LLC and Solutia), and (iii) Flexsys America Limited’s citizenship matches its lone partner (Flexsys America L.P.). As a corporation, Solutia is a citizen of its state of incorporation and the state where its principal place business—typically the corporate headquarters, or “nerve center”—is located. *Hertz Corp. v. Friend*, 559 U.S. 77, 92–93 (2010); *see* 28 U.S.C. § 1332(c)(1). Solutia was incorporated in Delaware. Solutia’s nominal headquarters is in St. Louis, Missouri, where the company’s president is located; the director and secretary work in Kingsport, Tennessee; and the vice president works in Springfield, Massachusetts. *See* Ex. A, Dkt. No. 7489-1; Ex. I, Dkt. No. 7700-9. Whether the nerve center is in Missouri, Tennessee, or Massachusetts, nothing in the record suggests that Solutia is a citizen of West Virginia.

2. A non-diverse defendant is fraudulently joined if there is no possibility that the state court would hold that defendant liable. *See Grancare, LLC v. Thrower by and through Mills*, 889 F.3d 543, 548 (9th Cir. 2018). As the Ninth Circuit recently clarified, the party asserting fraudulent joinder must satisfy “the ‘wholly insubstantial and frivolous’ standard for dismissing claims under” Federal Rule of Civil Procedure 12(b)(1). *Id.* at 549 (quoting *Bell v. Hood*, 327 U.S. 678, 682–83 (1946)).

There is no possibility that the state court would hold the Monsanto Management Club-Nitro Plant liable for the Bryants’ injuries. The Club was “a non-profit organization” created “to promote unity in management by educational and social activities for its members.” Drescher Decl., Articles of Incorporation 1–2, No. 19-cv-6395, Dkt. No. 1-3. The Club’s members comprised management, skilled workers, and engineers at Monsanto’s Nitro Plant. The Club, which planned dances, dinners, and cook-outs for its members, has no real connection with this controversy. *See* Drescher Decl. ¶ 8. Not only does common sense dictate that a non-profit corporation incorporated by Monsanto’s employees did not run the Nitro Plant, but Monsanto has also produced undisputed evidence that Monsanto operated its own plant. *See id.* ¶¶ 11–12. It strains credulity to claim, as the Bryants do, that the Club could be held liable for failure to warn if upper management discussed the risks of Roundup at one of the Club’s gatherings, and the

Bryants have produced no authority in support of this unlikely proposition of West Virginia tort law.¹

IT IS SO ORDERED.

Dated: December 16, 2019



VINCE CHHABRIA
United States District Judge

¹ The Court would also conclude that Flexsys America Limited was fraudulently joined if it were a citizen of West Virginia. The Flexsys entities acquired the Nitro Plant from Monsanto to manufacture rubber chemicals and tire additives. *See* Woodmansee Decl. ¶¶ 5–6. Flexsys America Limited’s presence in this suit is a sham to defeat diversity jurisdiction—albeit an ill-conceived one, because it’s not a citizen of West Virginia.