

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

LOUIS M. RIZZO, JR. : CIVIL ACTION
 :
 v. :
 :
 DOYLESTOWN HOSPITAL, et al. : NO. 09-cv-00012-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

March 16, 2009

This case was originally filed in the Court of Common Pleas of Bucks County, Pennsylvania. Plaintiff is suing a hospital, a doctor, and the manufacturer of a medical device, for injuries allegedly sustained because the device was defective and had been recalled earlier. The defendant Davol Inc., the manufacturer of the medical device, removed the action to this Court. Plaintiff has filed a motion to remand.

Plaintiff and both the hospital and doctor defendants are citizens of Pennsylvania. Plaintiff's motion for remand points out this lack of complete diversity. In response, movant Davol argues that the doctor and hospital were fraudulently joined, hence removal was proper.

The record does not supply any significant basis for concluding that the joinder of the non-diverse defendants was fraudulent. Plaintiff alleges that both the hospital and the doctor should have known that the medical device in question had been recalled, and that they were negligent either in failing to learn that fact, or in using the device anyway. The movant

contends, however, that the particular batch of the equipment used in plaintiff's operation was not covered by the original recall, and was not recalled until after the surgery. In short, movant apparently contends that, because the other two defendants may have valid defenses against plaintiff's contention that they were negligent, they should not have been named as defendants in this action, and their citizenship should be ignored because they were fraudulently joined. To state that argument is to refute it.

Plaintiff's motion for remand will be granted. An Order follows.

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ORDER

AND NOW, this 16th day of March 2009, IT IS ORDERED:

1. Plaintiff's motion to remand is GRANTED.
2. This action is REMANDED to the Court of Common Pleas of Bucks County, Pennsylvania.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.