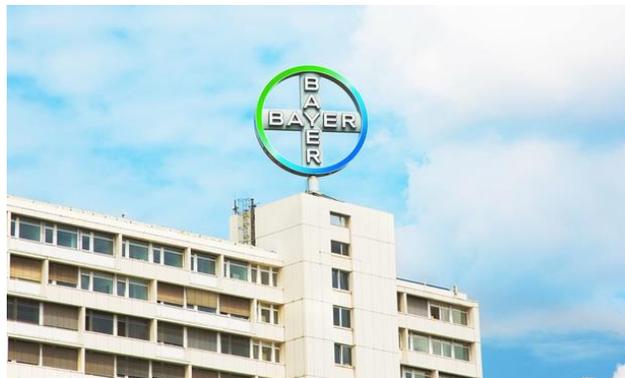


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Birth Control Device Plaintiffs Fight to Remand Cases to State Court

A small group of Essure birth control users is pushing to reverse Bayer's move switching their lawsuits from state to federal court.



More than a dozen plaintiffs suing Bayer over its birth control device Essure are fighting to have their cases remanded to state court.

Fifteen plaintiffs alleging the company negligently misrepresented the safety of the intrauterine device and failed to warn about its risks filed a motion Monday contending their cases needed to be sent back to the Philadelphia Court of Common Pleas where they were originally filed.

Keeping the cases in the U.S. District Court for the Eastern District of Pennsylvania, where they are currently being litigated, could spell the end for some of the plaintiffs' claims since **the district court** has already determined some claims in similar Essure cases are pre-empted by federal law.

The latest filing before U.S. District Judge Michael Baylson contends there is no substantial dispute of federal law that would give rise to federal jurisdiction and notes that several claims already have been remanded to state courts in California, Illinois, Kentucky and Missouri.

“Essure cases are not confined only to this court,” Pensacola attorney James Barger of Aylstock, Witkin, Kreis & Overholtz, who is representing the plaintiffs, said in the filing. “A number of federal courts throughout the country — including the Eastern District of Kentucky, the Eastern District of Missouri, the Southern District of Illinois and the Northern District of California — have not only heard Essure cases that were removed to federal court but have explicitly granted motions to remand those cases to state court.”

Essure consists of metal coils placed by a doctor in a woman's fallopian tubes to prevent pregnancy. Some users claim the devices have migrated from the tubes and perforated organs, corroded or broke into pieces, causing problems ranging from severe pain and migraines to autoimmune disorders, ectopic pregnancy and blood clots. The plaintiffs contend, along with failing to warn about the risks, that Bayer negligently failed to train doctors on how to insert the device.

Although a cluster of five Essure cases was filed in Philadelphia state court in 2014 and about a dozen additional cases were filed directly in the Eastern District, the 15 now fighting for remand were all filed earlier this year. Bayer removed the cases to federal court in March.

The plaintiffs filed a motion to send them back to state court in early April, arguing that, although they raise claims that are paralleled by federal regulatory requirements, including the Food, Drug and Cosmetic Act and the Medical Device Amendment, the plaintiffs are not diverse and raise only state law claims. The plaintiffs also contend there is no dispute regarding federal law.

“Because plaintiffs claims do not fall into the narrow ‘special and small category’ of cases in which the federal issues has been deemed ‘substantial’ by the higher courts, and because all doubts as to jurisdiction must be resolved in favor of remand, the court should remand plaintiffs cases to state court,” the April 4 filing said.

Bayer responded April 18, saying that “by definition” the plaintiffs’ claims are based on federal law.

“Plaintiffs claim that Bayer failed to provide federally mandated information to the FDA and failed to comply with FDA requirements,” Dechert attorney Robert Heim said in Bayer’s response. “The claims depend on the construction of federal statutes and regulations, which presents ‘important issues of federal law that sensibly belong in a federal court.’”

Heim declined to comment, and Barger did not return a message seeking comment.

The plaintiffs’ reply, filed Monday, comes more than a year after Eastern District Judge John Padova shaved several theories from the consolidated Essure cases he is presiding over, finding that express pre-emption applied.

Padova named Marcus Susen lead counsel for the plaintiffs committee handling about 10,000 Essure cases, and Justin Parafinczuk was appointed

discovery chair. Both attorneys, partners with Koch Parafinczuk Wolf Susen in Fort Lauderdale, have pushed the Food and Drug Administration to take Essure IUDs off the market.

“From the standpoint of the federal cases, it doesn’t really affect our cases,” Susen said Wednesday of the Philadelphia remand motion. “My personal opinion is that they’re going to be remanded back down.”