

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

CASSANDRA WOODS and
PAUL WOODS

PLAINTIFFS

v. NO. 4:13CV00286 JLH

CLARIS LIFESCIENCES LIMITED;
CLARIS LIFESCIENCES, INC.; and
PFIZER, INC.

DEFENDANTS

ROYCE BRINKER and
TED BRINKER

PLAINTIFFS

v. NO. 4:13CV00302 JLH

CLARIS LIFESCIENCES LIMITED;
CLARIS LIFESCIENCES, INC.; and
PFIZER, INC.

DEFENDANTS

OPINION AND ORDER

Identical complaints were filed by Cassandra Woods and Paul Woods, on the one hand, and Royce Brinker and Ted Brinker, on the other, against Claris Lifesciences Limited, Claris Lifesciences, Inc.,¹ and Pfizer, Inc., under the Arkansas Products Liability Act² for injuries sustained as a result of the use of metronidazole by Cassandra and Royce. The Claris defendants have filed motions to dismiss the claims against them in the two actions, contending that they are not subject to the personal jurisdiction of the courts in the State of Arkansas. Because the issues and arguments in the two cases are identical, this opinion will address the motions in both actions. For the reasons stated below, the motions to dismiss are granted.

¹ Claris Lifesciences Limited and Claris Lifesciences, Inc., were incorrectly named in the complaint as Claris Lifescience Limited and Claris Lifescience, Inc.

² Ark. Code Ann. § 16-116-102 et seq.

I.

Claris Lifesciences Limited (“Claris India”) is a business entity formed under the laws of India with its principal place of business in India. It manufactures pharmaceuticals, some of which are marketed under the Claris label and some of which are sold to other pharmaceutical companies and marketed by those companies as their products. Claris India manufactured metronidazole in India for sale to Pfizer under a supply agreement. Pfizer sold the drug as its own product while reflecting that it was manufactured at Claris India’s facility. Under the supply agreement, Pfizer took possession of the drug at Claris India’s facility and distributed it to Australia, Canada, New Zealand, the United States, and 29 countries in Europe.³

Claris Lifesciences, Inc. (“Claris USA”), a wholly-owned subsidiary of Claris India, is a corporation organized under the laws of New Jersey with its principal place of business in New Jersey. Claris USA was not a party to Claris India’s supply agreement with Pfizer and did not participate in the manufacture or distribution of the metronidazole used by Cassandra and Royce.

The plaintiffs allege that the defendants learned that the metronidazole manufactured by Claris India and distributed by Pfizer was contaminated with mold but that the defendants delayed recalling it. According to the complaint, contaminated metronidazole was administered to Cassandra and Royce, and they suffered injuries as a result.⁴

³ The briefing indicates that the drug passed from Pfizer through another independent distributor before reaching the facility where it was administered.

⁴ The plaintiffs plead few other facts, but they did attached several exhibits to their responses to the defendant’s motions to dismiss. These include an FDA Establishment Inspection Report dated June 1-7, 2010; an FDA letter to Claris India dated November 1, 2010; the Claris USA website welcome page; an FDA letter to Claris USA dated November 22, 2010; a letter from Claris USA to the FDA dated August 19, 2011; and a letter from Claris USA to the FDA dated July 7, 2011. Other than the printout of the Claris USA website, the exhibits relate specifically to the recall of the

II.

When personal jurisdiction is contested, the party asserting jurisdiction must make a prima facie showing of jurisdiction, and the court must view the evidence in the light most favorable to that party. *Viasystems, Inc. v. EBM-Papst St. Georgen GmbH & Co., KG*, 646 F.3d 589, 592 (8th Cir. 2011). “Nevertheless, [t]he party seeking to establish the court's in personam jurisdiction carries the burden of proof, and the burden does not shift to the party challenging jurisdiction.” *Id.* (quoting *Epps v. Stewart Info. Servs. Corp.*, 327 F.3d 642, 647 (8th Cir. 2003)) (alteration in *Viasystems*).

In a diversity suit, a federal court may exercise jurisdiction over a nonresident defendant only if the requirements of the forum state's long-arm statute are met and the exercise of jurisdiction comports with due process. Arkansas's long-arm statute provides for jurisdiction over persons and claims to the maximum extent permitted by constitutional due process.

Pangaea, Inc. v. Flying Burrito LLC, 647 F.3d 741, 745 (8th Cir. 2011) (internal citation omitted);

Ark. Code Ann. § 16-4-101. As explained by the Eighth Circuit:

Due process requires that a defendant have certain “minimum contacts” with the forum state for personal jurisdiction to be exercised. *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945). Contacts with the forum state must be sufficient that requiring a party to defend an action would not “offend traditional notions of fair play and substantial justice.” *Id.* at 316, 66 S. Ct. 154 (internal quotation marks and citation omitted). “The ‘substantial connection’ between the defendant and the forum State necessary for a finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum State.” *Asahi Metal Indus. Co. v. Super. Ct. of Cal.*, 480 U.S. 102, 112, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987) (internal citations omitted).

We developed a five-factor test to evaluate whether a defendant's actions are sufficient to support personal jurisdiction: (1) the nature and quality of the contacts with the forum state; (2) the quantity of those contacts; (3) the relationship of those contacts with the cause of action; (4) [the forum state's] interest in providing a forum for its residents; and (5) the convenience or inconvenience to the parties. *See, e.g., Precision Const. Co. v. J.A. Slattery Co., Inc.*, 765 F.2d 114, 118 (8th Cir. 1985)

contaminated metronidazole.

(noting that the first three factors are of primary importance and the last two of secondary importance). The third factor distinguishes between specific and general jurisdiction.

Myers v. Casino Queen, Inc., 689 F.3d 904, 911 (8th Cir. 2012).

A. General Jurisdiction

A court may assert general jurisdiction over foreign corporations only if they have developed “continuous and systematic general business contacts,” *Helicopteros Nacionales de Colom., S.A. v. Hall*, 466 U.S. 408, 416, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984), with the forum state, “[so] as to render them essentially at home in the forum State,” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. —, —, 131 S. Ct. 2846, 2851, 180 L. Ed. 2d 796, 803 (2011). “For an individual, the paradigm forum for the exercise of general jurisdiction is the individual’s domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home.” *Id.* at —, 131 S. Ct. at 2853-54, 180 L. Ed. 2d at 806; *see also Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 72 S. Ct. 413, 96 L. Ed. 485 (1952).

Viasystems, 646 F.3d at 595 (alteration in *Viasystems*).

Neither Claris defendant owns or leases property in the State of Arkansas; pays taxes to the State; has any officers, employees, assets, or bank accounts in the State; directs any sales to the State; solicits any sales in the State; sends any representatives to the State; sends any representatives to surrounding states to solicit sales or holds meetings related to its products; or designs or manufactures products in the State. The plaintiffs offer no facts to meet their burden of showing that the Claris defendants have continuous and systematic contacts with the State. Consequently, this court does not have general jurisdiction over them.

B. Specific Jurisdiction

According to the Eighth Circuit,

Specific personal jurisdiction, unlike general jurisdiction, requires a relationship between the forum, the cause of action, and the defendant. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, 104 S. Ct. 1868, 80 L. Ed.

2d 404 (1984). The exercise of specific jurisdiction is permissible if a defendant purposefully directs its activities at residents of the forum state, “and the litigation results from alleged injuries that ‘arise out of or relate to’ those activities[.]” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985) (citing *Helicopteros*, 466 U.S. at 414, 104 S. Ct. 1868).

* * *

[S]pecific jurisdiction is warranted when the defendant purposely directs its activities at the forum state and the litigation “result[s] from injuries . . . relating to [the defendant's] activities [in the forum state.]” *Steinbuch v. Cutler*, 518 F.3d 580, 586 (8th Cir. 2008). We have also emphasized the need to consider “the totality of the circumstances in deciding whether personal jurisdiction exists[.]” *K-V Pharm. Co. v. J. Uriach & CIA, S.A.*, 648 F.3d 588, 592–93 (8th Cir. 2011) (citing *Johnson v. Arden*), 614 F.3d [785,] 794 [(8th Cir. 2010)]).

Myers, 689 F.3d at 912-13 (second, third, ninth, tenth, and eleventh alterations added). Furthermore,

a manufacturer whose product ends up in the forum State on an “attenuated, random, or fortuitous” basis has not purposefully directed its activities at residents of that State. That is the teaching of *Burger King*, 471 U.S. at 475, 105 S. Ct. 2174, and *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 296-97, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980). It was the fact pattern in our post-*Asahi* cases on which the district court relied, *Gould v. P.T. Krakatau Steel*, 957 F.2d 573, 576 (8th Cir.), *cert. denied*, 506 U.S. 908, 113 S. Ct. 304, 121 L. Ed. 2d 227 (1992), and *Falkirk Min. Co. v. Japan Steel Works, Ltd.*, 906 F.2d 369, 375 (8th Cir. 1990).

Vandelune v. 4B Elevator Components Unlimited, 148 F.3d 943, 948 (8th Cir. 1998). *Gould* and *Falkirk* found no personal jurisdiction over foreign corporate defendants whose products entered the forum state through the stream of commerce but were not intended for use in that particular forum as opposed to any other. *Gould*, 957 F.2d at 576; *Falkirk*, 906 F.2d at 375.

Here, the question is whether the Claris defendants purposefully directed activities at the State of Arkansas that gave rise to, or related to, the plaintiffs’ injuries. As noted, Claris India manufactured metronidazole and supplied it to Pfizer, which distributed it in the United States as a Pfizer product. Claris USA did not distribute the drug and was not a party to the supply agreement

with Pfizer. Pfizer resold the drug, which ultimately entered the State of Arkansas where it was administered to Cassandra and Royce.

1. Claris USA

Claris USA was not a party to Claris India's supply agreement with Pfizer, nor was it involved in manufacturing or distributing of the drug. While Claris USA interacted with the Food and Drug Administration as the U.S. agent for Claris India, this contact with a U.S. regulatory agency is not of a nature or quality that would support a finding of personal jurisdiction. *See, e.g., Davis v. Quality Carriers, Inc.*, No. CIV. A. 08-4533 SRC, 2009 WL 3335860, at *1 (D. N.J. Oct. 15, 2009) (unpublished) (holding that a Canadian corporation's registration with the United States Department of Transportation to gain authorization to service commercial vehicles that travel in the United States did not subject it to jurisdiction in New Jersey).

The plaintiffs attached a printout of the Claris USA website as an exhibit to their responses to the Claris defendants' motions to dismiss.⁵ In *Johnson*, 614 F.3d at 796, the Eighth Circuit applied the *Zippo* test to determine that where information is available on a passive website, that website's "accessibility in [the forum state] alone is insufficient to confer personal jurisdiction." *See Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997). Hence, the fact that Claris USA maintains a website that can be accessed from Arkansas is insufficient to confer personal jurisdiction.

⁵ Plaintiffs' Exhibit 3 is a printout of the Claris USA website. The website identifies Claris USA as a wholly-owned subsidiary of Claris India, and it states, in part, that Claris USA "has been established to provide focused and dedicated attention to the needs of the North American Market. Today, the company has full-fledged operations with headquarters based in New Jersey, USA, backed by a team comprising of sales, marketing, sales operations and other support functions." Claris USA Website, No. 4:13CV00286, Document #13-3; No. 4:13CV00302, Document #16-3.

The plaintiffs assert that Claris USA had contacts with the Arkansas distributors of the drug and with each patient, provider, and facility that dispensed the drug in connection with the recall. According to the plaintiffs, Claris USA sent letters to physicians and clinics who had received the contaminated product to notify them of the recall.⁶ But see *Viasystems*, 646 F.3d at 594 (holding that scattered emails, phone calls, and a wire-transfer of money to a person in the forum state are not sufficient to support a finding of personal jurisdiction); *Burlington Indus., Inc. v. Maples Indus., Inc.*, 97 F.3d 1100, 1103 (8th Cir. 1996) (“Telephone calls—numbering at least 100—between Maples and BVA can be evidence of a continuous and systematic business relationship. But while phone contacts remain a consideration, they are insufficient, alone, to confer personal jurisdiction.”); *Inst’l Food Mktg. Assocs., Ltd. v. Golden State Strawberries, Inc.*, 747 F.2d 448, 456 (8th Cir. 1984) (holding phone conversations and written correspondence insufficient under the Due Process Clause to justify an exercise of personal jurisdiction). Furthermore, any such correspondence related to the recall of the drug and not to its distribution.

The plaintiffs argue that Claris USA “establish[ed] channels for providing regular advice to customers in [Arkansas]” by serving as Claris India’s U.S. agent and receiving complaints from U.S. distributors of the drug. *Asahi*, 480 U.S. at 112, 107 S. Ct. at 1032. But receiving complaints is not “providing regular advice,” and distributors are not “customers.” *Id.* Consequently, it cannot be said that Claris USA purposefully directed activities at the State of Arkansas that gave rise to, or related to, the plaintiffs’ injuries.

⁶ The Claris defendants deny that Claris USA had any interactions with the State of Arkansas or with physicians or patients within Arkansas. The FDA Establishment Inspection Report records the statement of Arun Menon, President of Claris USA that Pfizer—not the Claris defendants—would perform recall operations for its private-label products. FDA Establishment Inspection Report, No. 4:13CV00286, Document #13-1 at 3, 11; No. 4:13CV00302, Document #16-1 at 3, 11.

2. *Claris India*

The plaintiffs argue that Claris India is subject to personal jurisdiction in Arkansas because Claris India subjected itself to the supervision of the FDA in manufacturing, inspecting, and detecting contamination of its products so that those products could be sold in the United States. That Claris India subjected itself to FDA supervision so that its product could be sold in the United States does not mean, however, that it purposefully directed its product to the State of Arkansas. Only Claris India's purposeful contacts with the State of Arkansas—not the United States generally—are relevant. *See J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2790, 180 L. Ed. 2d 765 (2011) (plurality opinion).

The plaintiffs rely upon a line of cases following *Barone v. Rich Bros. Interstate Display Fireworks Co.*, 25 F.3d 610 (8th Cir. 1994), where the Eighth Circuit extended the reach of the stream-of-commerce rule, “concluding that, when a foreign manufacturer ‘pour[s] its products’ into a regional distributor with the expectation that the distributor will penetrate a discrete, multi-State trade area, the manufacturer has ‘purposefully reaped the benefits’ of the laws of each State in that trade area for due process purposes.”⁷ *Vandelune*, 148 F.3d at 948 (quoting *Barone*, 25 F.3d at 615) (alteration in *Vandelune*).

In *Vandelune* the Eighth Circuit found that a British manufacturer, Synatel, was subject to personal jurisdiction in Iowa. 148 F.3d at 948. Synatel had designed grain-elevator-speed monitors for U.S. markets and agreed to distribute them in the United States through an independent

⁷ The *Barone* regional-product-pouring extension of the stream-of-commerce rule may be invoked only to find specific jurisdiction because a stream of commerce theory cannot establish the continuous and systematic contacts necessary for general jurisdiction. *See Viasystems*, 646 F.3d at 597; *see also Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2856, 180 L. Ed. 2d 796 (2011).

distributor. *Id.* In one year Synatel sold 619 of the monitors to its U.S. distributor, and 81 of those were resold in Iowa. *Id.* Synatel placed its logo and an identifying decal on the product. *Id.* Synatel employees attended technical support meetings at its U.S. distributors' facility in Peoria, Illinois—which is about 80 miles from the Iowa border—and shipped some of its products directly to that location. *Id.*

Likewise, in *Clune v. Alimak AB*, the Eighth Circuit found that a Swedish manufacturer, Alimak AB, was subject to personal jurisdiction in Missouri where Alimak AB sold construction hoists in the United States over the course of 26 years, initially through independent distributors and then through its own U.S. subsidiary. 233 F.3d 538, 540-41 (8th Cir. 2000). Members of Alimak AB's board of directors served as directors for the company's U.S. subsidiary. *Id.* at 544. The court stated that Alimak AB “did more than simply set a product adrift in the international stream of commerce. The record shows []Alimak AB created the distribution system that brought the hoist to Missouri.” *Id.* at 543. Alimak AB sold approximately 700 construction hoists in the United States, between 20 and 40 of which were sold in Missouri. *Id.* at 541. Alimak AB placed its logo on its hoists. *Id.* at 543. It conducted training seminars in the United States for its U.S. subsidiary. *Id.* And it “provided sales brochures and instruction manuals to its distributors for use in promoting and servicing its products in the United States.” *Id.* at 544.

Barone, Vandelune, and Clune are not apropos here. While Claris India placed its product into the stream of commerce toward the United States, it did not target any specific region of which Arkansas is a part; nor did it pour its products into a nearby regional distributor. *Barone*, 25 F.3d at 615. Claris India did not send representatives to nearby regional meetings. Although Claris India

placed marks on the metronidazole that allowed for easy identification of the drug during recall, Pfizer sold the metronidazole under its label as a Pfizer product.

The case that controls here is *McIntyre*, where the court explained:

Respondent has not established that J. McIntyre engaged in conduct purposefully directed at New Jersey. Recall that respondent's claim of jurisdiction centers on three facts: The distributor agreed to sell J. McIntyre's machines in the United States; J. McIntyre officials attended trade shows in several States but not in New Jersey; and up to four machines ended up in New Jersey. The British manufacturer had no office in New Jersey; it neither paid taxes nor owned property there; and it neither advertised in, nor sent any employees to, the State. Indeed, after discovery the trial court found that the "defendant does not have a single contact with New Jersey short of the machine in question ending up in this state." These facts may reveal an intent to serve the U.S. market, but they do not show that J. McIntyre purposefully availed itself of the New Jersey market.

131 S. Ct. at 2790 (plurality opinion) (internal citation omitted); *see id.* at 2791 (Breyer, J., concurring). Here, the only contact between Claris India and Arkansas is that some of Claris India's product was distributed here by Pfizer. Like the defendant in *McIntyre*, Claris India may have intended to serve the U.S. market, but it did not purposefully direct its product toward the State of Arkansas. *See also Gould*, 957 F.2d at 576; *Falkirk*, 906 F.2d at 375; *Tuttle v. Steris Corp.*, No. 4:09-CV-1288 CEJ, 2011 WL 293760, at *1-4 (E.D. Mo. Jan. 27, 2011) (unpublished) (Missouri did not have personal jurisdiction over a foreign manufacturer whose only contact with Missouri was that its products were distributed in Missouri by unaffiliated third parties); *Staple Cotton Coop. Assoc. v. D.G. & G., Inc.*, 631 F. Supp. 2d 1168, 1172-74 (E.D. Mo. 2007) (same).

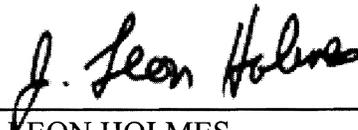
Although the State of Arkansas has an interest in providing a forum for its citizens who are injured by pharmaceuticals sold here, and although this forum obviously would be convenient to them, those considerations are insufficient to establish personal jurisdiction over Claris India. "The unique burdens placed upon one who must defend oneself in a foreign legal system should have significant

weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders.” *Asahi*, 480 U.S. 102, 114, 107 S. Ct. 1026, 1033.

CONCLUSION

Claris USA has no contacts with Arkansas. The only contact between Claris India and Arkansas is that products manufactured by Claris India were sold here by an unaffiliated third party. That contact is insufficient under the Due Process Clause of the Fourteenth Amendment to establish personal jurisdiction over Claris India. Neither Claris USA nor Claris India is subject to personal jurisdiction in Arkansas. The Claris defendants’ motions to dismiss are granted. No. 4:13CV00286, Documents #9 and #11; No. 4:13CV00302, Documents #12 and #14.

IT IS SO ORDERED this 28th day of October, 2013.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE