

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

LETITIA MALKMUS and
GLEN MALKMUS,

Plaintiffs,

v.

DEPUY ORTHOPAEDICS, INC.
and TRP & ASSOCIATES, LLC,

Defendants.

Case No. 2:11-cv-00365-AEG

**PLAINTIFFS' OPPOSITION TO MOTION TO STAY
AND INCORPORATED MEMORANDUM OF LAW**

This lawsuit was filed in the Circuit Court of Kenosha County, Wisconsin in response to the failure of a recalled DePuy ASR hip implanted in the Plaintiff Letitia Malkmus's body manufactured by Defendant DePuy Orthopaedics, Inc. ("DePuy") and promoted, distributed, sold, and serviced by Defendant TRP & Associates, LLC ("TRP"). Despite the fact that TRP is a citizen of Wisconsin, defendants DePuy and TRP filed a Notice of Removal removing this case from the Circuit Court for Kenosha County to this Federal Court. Defendants claimed in their Notice of Removal that TRP had been fraudulently joined, thus complete diversity jurisdiction existed, and removal to this Court was proper. Plaintiffs have filed a Motion to Remand to the Circuit Court for Kenosha County, Wisconsin, demonstrating that joinder of the in-state Defendant was proper.

Defendants have additionally filed a Motion to Stay Pending Transfer of this Case to MDL No. 2197 – In Re: DePuy Orthopaedics, Inc. ASR Hip Implant Products Liability Litigation ("Motion to Stay"). In their Motion to Stay, Defendants state they have notified the United States Judicial Panel on Multidistrict Litigation (the "Panel") of this action as related to

MDL No. 2197. Defendants thereafter assert this case will be listed on a Conditional Transfer Order to be issued by the Panel in the near future. The Conditional Transfer Order will order the transfer of this action to MDL No. 2197, pending in the Northern District of Ohio. The Conditional Transfer Order will not be entered and will remain conditional, in accordance with the rules of the Panel, to give Plaintiffs the right to object to the transfer and be heard by the Panel.

Defendants argue that pending transfer of this matter to the MDL, assuming such transfer occurs, this Court should stay all proceedings in this action, including proceedings relating to Plaintiffs' pending Motion to Remand. Defendants would have this Court believe it is in the interest of fairness to the parties, judicial economy and conservation of judicial resources to stay this action at this juncture. At bottom, however, Defendants merely seek to avoid answering to this Court on their claim of fraudulent joinder and wish to push to another day and a more distant tribunal their heavy burden of showing the existence of diversity jurisdiction despite the presence of in-state Defendants.

I. This Court has the authority to consider Plaintiffs' Motion for Remand pending the potential transfer of this action to MDL No. 2197.

The mere pendency of a transfer before the Panel does not in any way limit the jurisdiction of the transferor court to rule upon matters properly presented to it for decision. *General Elec. Co. v. Byrn*, 611 F.2d 670 (7th Cir. 1997). This holding is consistent with Rule 2.1(d) of the Rules of Procedure of the United States Judicial Panel on Multidistrict Litigation (formerly Rule 1.5(d)), which states:

The pendency of a motion, order to show cause, conditional transfer order or conditional remand order before the Panel pursuant to 28 U.S.C. § 1407 does not affect or suspend orders and pretrial proceedings in any pending federal district court action and does not limit the pretrial jurisdiction of that court.

Similarly, the Manual for Complex Litigation, Fourth, § 20-131 (2004) states:

The transferor court should not automatically stay discovery . . .
Nor should the court automatically postpone rulings on pending motions, or generally suspend further proceedings.

Thus, this Court may still rule on a pending motion to remand despite the issuance (or expectation of the issuance) of a conditional transfer order. *Meyers v. Bayer AG*, 143 F. Supp. 2d 1044, 1046 (E.D. Wis. 2001). *See also, Kopitke v. DePuy Orthopaedics, Inc. and Premier Sales, Inc.*, 2011 WL 856865 (N.D. Ill. Mar. 8, 2011) (District Court denied stay and granted remand after entry of conditional transfer order in suit involving the DePuy ASR hip).¹

Consistent with Rule 2.1, the Seventh Circuit has held that a district court does not exceed its jurisdiction in remanding the action to state court after a conditional transfer order had been filed. “We will not require a district court that believes that it lacks subject matter jurisdiction over a case to facilitate a transfer under § 1407, a statute that does not itself confer jurisdiction.” *Illinois Municipal Retirement Fund v. Citigroup, Inc.*, 391 F.3d 844, 852 (7th Cir. 2004) (Finding a conditional transfer order does not in any way limit the pretrial jurisdiction of the district court); *Wisconsin v. Abbot Laboratories*, 390 F. Supp. 2d 815, 819 (W.D. Wis. 2005) (Finding district court retained jurisdiction to consider motion for remand despite issuance of conditional transfer order).

The Judicial Panel on Multidistrict Litigation recently emphasized that a district court may rule on motions to remand prior to the transfer of an action to MDL 2197, stating:

Panel Rule 2.1(d) expressly provides that the pendency of a conditional transfer order does not in any way limit the pretrial jurisdiction of the court in which the subject action is pending.

¹ DePuy exhorts this Court to jump on the bandwagon and join the 93 other federal district courts across the country which have granted stays . Defs. Motion to Stay, p. 1. Defendants, however, fail to mention that the majority of the 93 motions to stay were unopposed nor do they mention those that were denied, such as the decision in *Kopitke*.

Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court wishing to rule upon that motion (or any other motion) generally has adequate time in which to do so.

In Re: DePuy Orthopaedics, Inc., ASR Hip Implant Products Liability Litigation, MDL No. 2197, Transfer Order, n. 1 (J.P.M.L. April 18, 2011). For these reasons, this Court has the authority to consider Plaintiffs' Motion for Remand at this time.

II. This Court *must* consider Plaintiffs' Motion for Remand before it may consider Defendants' Motion to Stay.

Plaintiffs filed this action in state court setting forth state law claims against Defendants, including the in-state Defendants. Defendants removed the case to this Court claiming improper joinder. Plaintiffs then sought the remand of this case to state court for the reason that the joinder of the in-state Defendants was proper and thus, complete diversity of the parties does not exist to establish diversity jurisdiction. Both Plaintiffs and Defendants have raised the issue of the existence of diversity jurisdiction. Accordingly, the issue of whether this Court possesses subject matter jurisdiction over this action is squarely before the Court.

A. Jurisdiction is a Fundamental, Threshold Matter.

The question of a court's jurisdiction over a proceeding is a fundamental one, going to the court's very power to act. The United States Supreme Court has explained that "jurisdiction is the power to declare the law..." *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94 (1998). As "[f]ederal courts are courts of limited jurisdiction,...[t]hey possess only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). A court's power may not "be expanded by judicial decree." *Id.* Instead, a court is to presume that an action lies outside of its limited jurisdiction and answer the first and fundamental question in every case – that of jurisdiction – even when it is not raised by

the parties. *Steel Co.* at 94; *Kokkonen* at 377. *Accord Howery v. Allstate Ins. Co.*, 243 F. 3d 912, 916 (5th Cir. 2001). *See also, Illinois Municipal Retirement Fund v. Citigroup Inc.*, 391 F. 3d 844, 851 (7th Cir. 2005) (Finding all courts of limited jurisdiction have a fundamental obligation to rule on jurisdiction). Thus, the United States Supreme Court has declared the requirement that jurisdiction be established as a threshold matter. *Steel Co.* at 94-5. (Finding that this requirement “‘springs from the nature and limits of the judicial power of the United States’ and is ‘inflexible and without exception.’”) (Emphasis supplied.)

Citing a “long and venerable line of cases,” the Supreme Court has instructed that jurisdiction defines the bounds of authorized judicial action:

Without jurisdiction the court cannot proceed *at all* in any cause. Jurisdiction is the power to declare the law, and when it ceases to exist, the *only* function remaining to the court is that of announcing the fact and dismissing the cause.

Id. at 94. *Accord National Association for the Advancement of Colored People v. City of Kyle, Texas*, 626 F. 3d 233, 237 (5th Cir. 2010) (Emphasis supplied in same manner as emphasis added in *NAACP v. Kyle*). *See also, Scott Air Force Base Properties, LLC v. County of St. Clair, Illinois*, 548 F. 3d 516, 520 (7th Cir. 2008) (“Indeed, ‘[i]t is axiomatic that a federal court must assure itself that it possesses jurisdiction over the subject matter of an action before it can proceed to take *any action...*’” (Emphasis supplied); *Panhandle Eastern Pipe Line Co. v. Federal Power Commission*, 343 F. 2d 905, 908 (8th Cir. 1965) (“A court without jurisdiction has no power to adjudicate but can only dismiss the proceeding for lack of jurisdiction.”). Absent jurisdiction, a court may not act except to dismiss or remand the action before it. The Supreme Court has announced this precept to be a fundamental principle of the separation of powers. *Steel Co.* at 94.

So well established is the foregoing that the United States Claims Court referred to it as “an age-old rule” when finding it had no authority to impose Rule 11 sanctions where subject matter jurisdiction was lacking. *Schiff v. U.S.*, 24 Cl. Ct. 249, 254 (1991). Referring to Supreme Court precedent, the *Schiff* court explained:

[W]here the court has no jurisdiction, it has no power to do anything but strike the case from its docket, the matter being *coram non judice*.

Thus, when jurisdiction is lacking, as it is here, we cannot address any issue relating to the merits, *even if it would be in the best interests of justice to do so*.

Id. (Emphasis original in first paragraph, supplied in second.)

As this Court’s subject matter jurisdiction has been brought into question, it must satisfy its first and fundamental duty to determine if it has the power to adjudicate any issues in this case. If this Court determines that it lacks jurisdiction, then it may take no action, *even that of granting a stay*. The only avenue available to this Court if it lacks subject matter jurisdiction is to remand this cause to the state court which does have jurisdiction. This Court must abide by this “age-old rule” even if it feels that a stay and transfer to the MDL would be in the best interest of justice.

Other district courts have followed this “age-old rule” in situations similar to that presented here. For example, in *Lloyd v. Cabell Huntington Hospital, Inc.*, the plaintiff filed suit in state court claiming she had been injured by a defective orthopedic medical product. *Lloyd v. Cabell Huntington Hospital, Inc.*, 58 F. Supp. 2d 694, 696 (S.D. W. Va. 1999). The defendant manufacturer removed the case to federal court and the plaintiff sought a remand. *Id.* The defendant then moved for a stay of proceedings pending transfer to an MDL in another district.

Id. The district court granted the motion to remand and denied the motion to stay as moot, finding:

This Court cannot, however, stay proceedings in an action over which it lacks jurisdiction...If federal jurisdiction is doubtful, remand is necessary.

Id.

Similarly, in *Pennsylvania v. TAP Pharmaceutical Products, Inc.*, suit was brought in state court and removed to federal court. *Pennsylvania v. TAP Pharmaceutical Products, Inc.*, 415 F. Supp. 2d 516, 518-19 (E.D. Penn. 2005). Defendants moved to stay the proceedings to transfer the matter to an MDL in the federal district court in Massachusetts while the state of Pennsylvania moved for remand to state court. *Id.* The state argued that the district court in Pennsylvania *must* decide the threshold issue of jurisdiction before deciding the motion to stay. *Id.* at 520-21. The court agreed with the state and concluded “the power to grant a stay is subject to an important limitation: the existence of subject matter jurisdiction.” *Id.* at 521. The court explained that “to adjudicate any pretrial matters, it must satisfy itself that it has the power to do so.” *Id.* Thus, the court held:

Therefore, granting a stay solely based on the existence of a factually-related MDL proceeding, without undertaking an individualized analysis of subject matter jurisdiction, would run counter to established case law, congressional intent, and JPML Rule [2.1], all of which contemplate a district court will act to resolve threshold jurisdictional concerns.

Id. Employing this analytical framework, the district court in Pennsylvania considered and granted the motion for remand but did not adjudicate the motion to stay for the reason that subject matter jurisdiction was lacking. *Id.* at 521, n. 2.

The district court for the Northern District of Alabama reached the same conclusion when presented with a motion for remand and a motion for stay in an action involving multi-district

litigation. In *Stern v. Mutual Life Ins. Co. of New York*, 968 F. Supp. 637, 639 (N.D. Ala. 1997), the district court denied the stay, holding:

If the court lacks jurisdiction over the action *ab initio*, it is without jurisdiction to enter such a stay. It is incumbent upon a court whose subject matter jurisdiction is questioned to make a determination as to whether it has, or does not have, jurisdiction over the action. This determination involves no issues that the putative transferee court in the multi-district action would be uniquely qualified to address. Therefore, defendants' request for a stay of proceedings should be denied.

Like the district courts in the foregoing cases, this Court has a fundamental duty to determine its subject matter jurisdiction before it considers the Motion to Stay. If this Court determines it has no subject matter jurisdiction, it will concurrently have no power through which to adjudicate the Motion to Stay. The presence of a factually related MDL has no bearing on this threshold issue of jurisdiction and this Court's authority to preside over this action. For these reasons, which form the very basis of our system of federal jurisprudence, this Court must rule on Plaintiffs' Motion for Remand prior to considering Defendants' Motion to Stay.

B. *Meyers v. Bayer AG*

Plaintiffs would be remiss if they did not point out that at least one judge in this district feels that the argument that a court is “powerless to take any action at all” before verifying jurisdiction is “slightly overstate[d]”. *Meyers v. Bayer AG*, 143 F. Supp. 2d 1044, 1047 (E.D. Wis. 2001). For example, the *Meyers* opinion points out that “federal courts have jurisdiction to determine whether they have subject matter jurisdiction.” *Id.*, citing *Shannon v. Shannon*, 965 F.2d 542, 545 (7th Cir. 1992). The *Meyers* opinion interprets *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998) as forbidding “a court’s assuming law-declaring power by deciding the merits of a case in the absence of verified subject matter jurisdiction.” *Meyers* at 1047, citing Scott C. Idleman, *The Demise of Hypothetical Jurisdiction in the Federal Courts*, 52

Vand. L. Rev. 235, 333 & n. 409 (1999). Based on the foregoing discussion in section II(A), *supra*, Plaintiffs would respectfully disagree with the conclusion reached in the *Meyers* opinion. However, Plaintiffs would submit that under the methodology set forth in *Meyers*, the requested stay should be denied.

Following *Meyers*, the first step for a court to take when faced with competing motions for remand and to stay is to make a preliminary assessment of the jurisdictional issues. *Id.* at 1048. “If this preliminary assessment suggests that removal was improper, the court should promptly complete its consideration and remand the case to state court.” *Id.* at 1049. In the instant case even a cursory review of Plaintiffs’ Motion to Remand demonstrates that removal was improper. TRP, as the distributor of the DePuy ASR Hip, placed the product in the stream of commerce and therefore there exists at least a possibility that Plaintiffs will be able to state a claim against TRP.² For this reason, following *Meyers*, the stay should be denied and remand granted.

However, should this Court consider the remand issue to be factually or legally difficult after conducting its preliminary assessment, then the *Meyers* methodology would suggest a second step be taken – that of determining whether identical or similar jurisdictional issues have been raised in other cases that have been or may be transferred to the MDL. *Id.* There can be no doubt that Defendants will cheerfully provide this Court with a list of cases transferred to the MDL or facing transfer which they would assert involve identical or similar jurisdictional issues. However, the *Meyers* opinion explained that cases were unique (and therefore should not be stayed) where the remand issues presented primarily turned on issues of state law. *Id.* *citing with approval Kohl v. American Home Products Corp.*, 78 F. Supp. 2d 885, 888 (W.D. Ark.

² Rather than restating their arguments in support of remand herein, Plaintiffs would refer this Court to their Motion to Remand and Memorandum of Law in Support thereof which have been filed in this action.

1999) and *Aetna U.S. Healthcare, Inc. v. Hoescht Aktiengesellschaft*, 54 F. Supp. 2d 1042, 1055 (D. Kan. 1999). The court reasoned that if the jurisdictional issue were different from others raised in the MDL, there would be no judicial economy gained by permitting the transferee court to decide the jurisdictional issue. Once again, even a swift review of Plaintiffs' Motion to Remand will reveal that the issues of remand in this case revolve around the application of Wisconsin law and are thus unique. As pointed out in *Meyers*, there is no conservation of judicial resources gained by transferring this matter prior to a determination of jurisdiction when the transferee judge would be required to make an individualized determination of Wisconsin law for this matter.

Pursuant to the test set forth in *Meyers*, the jurisdictional issue in the present case is neither difficult nor identical to other matters transferred to the MDL. Accordingly, this Court should not consider the Motion to Stay until its assessment of the Motion to Remand is complete.

III. Principles of fairness to the parties, judicial economy and conservation of judicial resources dictate the resolution of Plaintiffs' Motion for Remand in this District Court as opposed to the District Court overseeing MDL No. 2197.

In their Motion to Stay, Defendants argue it would be in the interests of uniformity and judicial economy to stay Plaintiffs' Motion to Remand pending the possible transfer of this action to MDL No. 2197. Courts which have previously analyzed this argument have rejected it.

Defendants claim that the cases throughout the country regarding the DePuy ASR Hip are virtually identical and contain many overlapping issues which Defendants maintain should be collectively decided in the MDL. The collective approach, while perhaps promoting efficiency in matters such as basic discovery disputes, is not appropriate for determining subject matter jurisdiction. Rather, the Seventh Circuit and other courts have emphasized that jurisdictional issues are unique to each case and require individualized evaluation. *Illinois Municipal*

Retirement Fund v. Citigroup Inc., 391 F. 3d 844, 851 (7th Cir. 2005) (“We find nothing absurd in district courts individually evaluating their own jurisdiction...Congress has indicated a preference for remands based upon such individualized jurisdictional evaluations and a tolerance for inconsistency.”); *Pennsylvania v. TAP Pharmaceutical Products, Inc.*, 415 F. Supp. 2d 516, 521 (E.D. Penn. 2005) (“Therefore, the existence of subject matter jurisdiction cannot be resolved more efficiently or uniformly in MDL 1456 because it is undisputed that one federal court must make an individualized assessment of the jurisdictional issues in this case.”); *Craft v. United Ins. Co. of America*, 2002 WL 32509283, *2 (S.D. Miss.) (“These are matters that are unique to this case and should be decided in this court, prior to transfer to another federal forum.”) citing *Dantzler v. American Home Products Corp.*, 2000 WL 34333156, *2 (N.D. Miss.) (“[M]otions to remand...are based on issues ‘unique to an action’” and “are ‘well suited for decisions prior to the 1407 transfer.’”).

As an individualized evaluation is necessary for a determination of the jurisdictional issues raised, no advantages of uniformity or conservation of judicial resources could be achieved by staying these fundamental jurisdictional issues and permitting them to be decided by the transferee court. Indeed, the District Court for the Western District of Wisconsin has determined it “would be more efficient for the parties and the judicial system as a whole for this court to rule” on a motion to remand. *Wisconsin v. Abbot Laboratories*, 390 F. Supp. 2d 815, 819 (W.D. Wis. 2005) (Reiterating Magistrate Judge’s decision that motion to stay consideration of remand pending transfer to MDL was denied.)

Other courts have decided that with respect to jurisdictional issues, “the same degree of judicial resources must be expended” in either the transferor or transferee court “to make an assessment of which party should prevail.” *Pennsylvania v. TAP Pharmaceutical Products, Inc.*,

415 F. Supp. 2d 516 at 521. Thus, the District Court in *TAP Pharmaceutical Products* concluded:

Multi-district litigation undoubtedly conserves judicial resources in many respects, but, in determining the threshold issue of jurisdiction this Court concludes such an inquiry is fundamental to its purpose.

Id. For these reasons, there would be no savings in terms of judicial effort by abdicating the present question of jurisdiction to the Northern District of Ohio.

Similarly, in a medical product liability action removed to the Western District of Texas, the District Court rejected defense arguments that uniformity and judicial economy would be served by staying the matter pending transfer, stating:

Defendants first argue that this Court should defer ruling on the remand motion to allow the MDL judge to consider the motion because “[r]uling on this remand motion runs the risk of inconsistent decisions by different judges in cases that are in the same state and involve the same issue-which is contrary to federal case law.” The Court disagrees and is of the opinion that judicial efficiency and economy are better served by this Court considering, before the case is transferred to the MDL Court, the Motion to Remand.

Barragan v. Warner-Lambert Co., 216 F. Supp. 2d 627, 630 (W.D. Tex. 2002). For these reasons, Defendants’ assertions that principles of uniformity and judicial economy would be served by a stay of the jurisdictional issues pending transfer lack merit.

Moreover, principles of fairness support the notion that this Court should, in keeping with its fundamental duty to decide the threshold issue of subject matter jurisdiction, deny the stay requested by Defendants and consider Plaintiffs’ Motion for Remand. Defendants make the blanket statement that Plaintiffs will not be prejudiced by the stay and transfer of these proceedings. Defs. Motion to Stay, p. 4. Plaintiffs would beg to differ. Plaintiffs initially filed this action in state court and sought to have their dispute resolved quickly in a local forum. By

removal and their attempts to stay this action and transfer it to the MDL in the Northern District of Ohio, Defendants, who have access to the resources of an international corporation, have, in essence, sought to move Plaintiffs' litigation far away from Plaintiffs to an unfamiliar forum for resolution on a timetable driven not by these Plaintiffs and these Defendants but by large committees of such groups with the inevitable delay attendant to litigation by committee.

The burdens imposed on Plaintiffs in this situation were explained in the *Meyers* opinion:

Removing a case to federal court has long been known to impose a burden upon plaintiffs; at a minimum, it requires the plaintiff to present its arguments for remand in a foreign forum, often at a considerable distance from the local county courthouse and before a judge who might be less sympathetic to the plaintiffs' cause than a judge who is local (and often, elected). Edward A. Purcell, Jr., *Litigation and Inequality: Federal Diversity Jurisdiction in Industrial America, 1870-1958* 25, 52-53 (1992). Concerns about being haled into distant courts are particularly implicated by the MDL system. Not only is the judge unknown, but the proceeding is all but certain to be even farther from home, and plaintiff's chosen counsel may have little power to shape the course of the litigation. Earle F. Kyle, IV, *The Mechanics of Motion Practice Before the Judicial Panel on Multidistrict Litigation*, 175 F.R.D. 589, 590 (1998) ("the Panel can seize control of your case, thrust you into someone else's litigation halfway across the country, and relegate you to '100th chair' status in an already over-lawyered mass litigation"); Mike Roberts, *Multidistrict Litigation and the Judicial Panel, Transfer and Tag-Along Orders Prior to a Determination of Remand: Procedural and Substantive Problem or Effective Judicial Public Policy?*, 23 *Memphis St. U.L.Rev.* 841, 843 (1993) (observing that a plaintiff may be "swiftly transferred from his state court to his home federal district and then whisked to an unknown, unpredictable United States district judge").

Meyers at 1048.

Additionally, Defendants argue they would suffer hardship in the absence of a stay by being forced to respond to discovery requests both in this Court and the MDL. Defs. Motion to Stay, p. 5. To the contrary, Plaintiffs would point out that they are confident Defendants will not be required to respond to discovery in this Court. Plaintiffs have objected to a stay for the reason

that this Court lacks subject matter jurisdiction to preside over this action. Once this Court hears and rules on Plaintiffs' Motion for Remand, Plaintiffs suggest that the case will be remanded to state court and the issue of Defendants' onerous burden of responding to discovery in this Court will be moot.

The stay and transfer of this action, as proposed by Defendants would result in the District Court for the Northern District of Ohio being required to make an individualized assessment of Plaintiffs' Motion for Remand, applying the law of the State of Wisconsin. Surely, such an analysis is easier and more efficiently performed by a federal court sitting in the State of Wisconsin as opposed to a federal judge seated in Ohio. *See, Dantzler v. American Home Products Corp.*, 2000 WL 34333156, *2 (N.D. Miss.) ("In this matter, where the pivotal remand issue involves the application of Mississippi law, the undersigned is of the opinion that the remand motion is more appropriately decided in this forum.") This Court is likely far more familiar with the nuances of Wisconsin law as it relates to Plaintiffs' Motion for Remand, as evidenced by the citations to the opinions of the Federal District Courts of Wisconsin contained in Plaintiffs' Memorandum of Law in Support of their Motion for Remand. For these reasons, considerations of fairness would counsel the prompt determination of the jurisdictional question in this forum.

CONCLUSION

The Seventh Circuit has opined that, despite the issuance of a conditional transfer order, a stay of proceedings is not required where the court concludes it lacks subject matter jurisdiction. *Illinois Municipal Retirement Fund v. Citigroup Inc.*, 391 F. 3d 844, 852 (7th Cir. 2005). Rather, the Seventh Circuit has found that district courts have a fundamental obligation to rule on issues of jurisdiction. *Id.*

For the foregoing reasons, this Court has a duty to first consider the fundamental issue of subject matter jurisdiction as raised in Defendants' Notice of Removal and Plaintiffs' Motion for Remand before it may decide the propriety of Defendants' Motion to Stay. Until this Court determines it has the authority to consider the Motion to Stay, Defendants' Motion to Stay should be denied.

GODIN, GERAGHTY & PUNTILLO

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