

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

STATE OF ALABAMA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	2:06cv920-MHT
)	(WO)
ABBOTT LABORATORIES, INC.,)	
et al.,)	
)	
Defendants.)	

ORDER

This litigation is before this court, once again on plaintiff State of Alabama's motion to remand. The motion should be granted for a number of reasons, including the following: (1) 31 U.S.C. § 3732(b) appears to be a "supplemental" jurisdictional statute and thus cannot, by itself, be a basis for "removal" jurisdiction, which must rest on "original" jurisdiction. In other words, a removing party cannot assert "supplemental" jurisdiction as a basis for "removal" jurisdiction in one case based on "original" jurisdiction in an entirely

different case.¹ See Syngeta Crop Prot., Inc. V. Henson, 537 U.S. 28, 34 (2002); Ahearn v. Charter Township of Bloomfield, 100 F.3d 451, 456 (6th Cir. 1996); see also Darden v. Ford Consumer Fin. Co., Inc., 200 F.3d 753, 755 (11th Cir. 2000). (2) Because the Massachusetts qui tam lawsuit was not generated in the Alabama state-court proceeding, it is not an "order or other paper," 28

1. Section 3732 provides:

(a) Actions under section 3730.--Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

"(b) Claims under state law.--The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3730."

U.S.C. § 1446(b). See Gaitor v. Peninsular & Occidental S.S. Co., 287 F.2d 252, 254 (5th Cir. 1961)²; Morsani v. Major League Baseball, 79 F.Supp.2d 1331 (N.D. Fla. 1999). (3) Because the Massachusetts qui tam lawsuit was not a voluntary act of plaintiff State of Alabama, 28 U.S.C. § 1446 removal is not appropriate. See Addo v. Globe Life & Acc. Ins. Co., 230 F.3d 759, 762 (5th Cir. 2000). Finally, although the court does not reach the issue, it has serious concerns that it can even entertain a second removal of this case. See Harris v. Blue Cross/Blue Shield of Alabama, Inc., 951 F.2d 325, 330 (11th Cir. 1992) ("[O]ut of respect for the state court and in recognition of principles of comity, ... [t]he action must not ricochet back and forth depending upon the most recent determination of a federal court.").

Accordingly, it is ORDERED that plaintiff State of

2. In Bonner v. Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit Court of Appeals adopted as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Alabama's motion to remand (doc. no. 128) is granted and that this lawsuit is, again, remanded to the Circuit Court of Montgomery County, Alabama, for want of subject-matter jurisdiction.

It is further ORDERED that the motion to stay (doc. no. 170) is denied.

It is further ORDERED that all other outstanding motions (other than pro hac vice motions) are left for resolution by the state court after remand.

The clerk of the court is DIRECTED to take appropriate steps to effect the remand.

DONE, this the 2nd day of November, 2006.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE