

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

**STATE OF ALABAMA,**

**Plaintiff,**

**v.**

**ABBOTT LABORATORIES, INC,  
et al.,**

**Defendants.**

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

**Civil Action No.: 2:05-cv-00647-VPM**

**MOTION FOR EXPEDITED RULING  
ON  
PLAINTIFF'S MOTION TO REMAND**

Plaintiff, State of Alabama, moves this Court to conduct an emergency review of Plaintiff's Motion to Remand filed on July 21, 2005. In support of said Motion Plaintiff states the following:

1. Plaintiff, State of Alabama, filed this Complaint against some 79 Defendants on **January 26, 2005**, over seven months ago. Defendants made no attempt to remove this case based on the Plaintiff's original Complaint. Plaintiffs amended their Complaint on **April 13, 2005**, the thrust of the amendment was simply adding a cause of action for fraudulent suppression and supplementing the specifically named drugs that were the subject of Plaintiff's Complaint. Again, Defendants failed to remove this case within the 30 days allowed under the Federal Rules of Civil Procedure.

2. Defendants removed this case on **July 13, 2005**, seven months after the Plaintiff originally filed its Complaint and three months after the Plaintiff filed its Amended Complaint. Defendants contend, erroneously, that a case released on June 13, 2005 by the United States Supreme Court known as *Grable & Sons Metal Prods., Inc. v. Darue Engineering & Manufacturing*, 545 U.S. \_\_\_\_ 125 S.Ct. 2363 (June 13, 2005), creates a federal question out of Plaintiff's original and Amended Complaints. A review of *Grable* by this Court will quickly demonstrate the frivolity of Defendants' contention of federal jurisdiction.

3. Despite the fact that *Grable* does not create a federal question out of the Plaintiff's Complaints, the Defendants' Notice of Removal is grossly untimely in that it has been filed seven months after the original Complaint and three months after the Amended Complaint. Defendants' meritless argument that the June 13, 2005 release of the *Grable* opinion qualifies as the "other paper" exception to the rule that the case must be removed within 30 days is unsupported by any binding precedent. The very case that the Defendants rely upon *Smith v. Burroughs, et al.*, 670 Fed.Sup. 740, 741 (E.Div.Mich. 1987), has long since been overruled by the very court that authored the opinion, overruled in the case of *Kocaj v. Chrysler Corp.*, 794 Fed.Sup. 234 (E.Div.Mich. 1992), **a fact which the Defendants failed to share with this Court, and perhaps a violation of Rule 11 of the Federal Rules of Civil Procedure.**

4. Because the United States Supreme Court's decision in *Grable* is not an "other paper" under 28 U.S.C. § 1446(b), and even if it was, the *Grable* opinion

does not create a federal question, Defendants removal of this action is untimely, unsupported, and this case is due to be summarily remanded back to the state court from which it was removed.

5. On these facts alone, the Plaintiff would request that its Motion for Expedited Ruling on the Motion to Remand be granted. However, there is an additional factor that creates a sense of urgency upon which Plaintiff pleads that this Court acknowledge, that is that the Defendants misuse of the removal petition in an attempt to stall this case in the federal court system just long enough to bring about a transfer of this case to a federal court in Boston by mischaracterizing the Plaintiff's case as a "tag along" in the MDL proceeding known as In Re Pharmaceutical Industry Average Wholesale Price Litigation, MDL No. 1456.

6. A review of the Defendants' Removal Petition, in conjunction with the Plaintiff's Complaint and Amended Complaint clearly demonstrate that the Defendants' Removal can only be characterized as frivolous. A review of the case law relied upon by the Defendants brings to light the true motive for Defendants' actions in removing this case, that is, to delay this matter long enough for Defendants to maneuver this case into an MDL proceeding in Boston, Massachusetts, despite the fact that none of the Plaintiff's claims even remotely resemble the federal causes of action set forth in In Re Pharmaceutical Industry Average Wholesale Price Litigation, MDL No.: 1456. This case is not a "tag along", and if it was, the Defendants would have already removed this case. The Defendants failed to remove this case because of binding precedent issued by the

MDL Judge, the Honorable Patty B. Saris, in which she unequivocally states that cases like the Alabama case where no federal claims are asserted, do not belong in the MDL. **See Exhibit A attached hereto.** The Defendants are keenly aware of the legal precedent against their grounds for removal in this case, but have chosen to abuse the federal process by attempting to mischaracterize this case as a “tag along” (Defendants have already filed a “Notice of Related Action,” filed on July 15, 2005, [two days after they filed their Notice of Removal] a copy of which is attached hereto as Exhibit B).

7. As demonstrated above, it would be grossly unfair to award the Defendants misconduct with the delay they seek through the use of their frivolous removal petition. Plaintiff pleads to this Court to grant its Motion for an Expedited Ruling on the Plaintiff’s Motion to Remand and further requests that this Court summarily remand this case immediately, based on the pleadings currently filed. Alternatively, Plaintiff requests that the Court expedite its ruling on the Plaintiff’s Motion to Remand and issue a ruling within **ten days** from the date of this Motion so that the MDL Panel will not attempt to transfer this case when this Court has not had an opportunity to determine that subject matter jurisdiction does not exist and removal is improper.

8. Plaintiff requests that this Court act immediately on Plaintiff’s Motion to Remand.

s/ Troy King

Troy King  
ATTORNEY GENERAL

STATE OF ALABAMA  
300 State House  
11 S. Union Street  
Montgomery, Alabama 36130

Email: [tking@ago.state.al.us](mailto:tking@ago.state.al.us)

s/ Jere L. Beasley

Jere L. Beasley (BEA020)  
Deputy Attorney General  
W. Daniel "Dee" Miles, III (MIL060)  
Deputy Attorney General  
Clinton C. Carter (CAR112)  
Deputy Attorney General

**BEASLEY, ALLEN, CROW,  
METHVIN, PORTIS & MILES, P.C.**

Post Office Box 4160 (36103-4160)  
272 Commerce Street  
Montgomery, Alabama 36104  
Telephone: (334) 269-2343  
Facsimile: (334) 954-7555

Email: [jere.beasley@beasleyallen.com](mailto:jere.beasley@beasleyallen.com)

[dee.miles@beasleyallen.com](mailto:dee.miles@beasleyallen.com)

[clint.carter@beasleyallen.com](mailto:clint.carter@beasleyallen.com)

s/ Roger L. Bates

Roger L. Bates (BAT006)  
Deputy Attorney General  
Caine O'Rear III (ORE003)  
Deputy Attorney General  
Windy C. Bitzer (BIT005)  
Deputy Attorney General

**HAND ARENDALL, L.L.C.**

1200 Park Place Tower  
2001 Park Place North  
Birmingham, Alabama 35203  
Telephone: (205) 324-4400  
Facsimile: (205) 322-1163

Email: [rbates@handarendall.com](mailto:rbates@handarendall.com)

**HAND ARENDALL, L.L.C.**

Post Office Box 123  
Mobile, Alabama 36601  
Telephone: (251) 432-5511  
Facsimile: (251) 694-6375

Email: [corear@handarendall.com](mailto:corear@handarendall.com)

[wbitzer@handarendall.com](mailto:wbitzer@handarendall.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on July 21, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: **James Harold Anderson; Joseph P. H. Babington; Lisa Wright Borden; Robert C. (Mike) Brock; Chad W. Bryan; Philip Henry Butler; Steven F. Casey; Thomas William Christian; Lawrence B. Clark; William D. Coleman; Betsy P. Collins; Julia Boaz Cooper; Lee Hall Copeland; Kelly Jeanne Davidson; William Asher Davis; Robert D. Eckinger; Joseph C. Espy, III; Patrick Conor Finnegan; Alvin Latham (Peck) Fox, Jr.; Robert Bruce Funkhouser; Charles Nelson Gill; Richard Hamilton Gill; William Huger Hardie, Jr.; Fred M. (Tripp) Haston, III; John Alec Henig, Jr.; Frederick Geroge Herold; Kimberly Kaye Heuer; S. Craig Holden; Robert A. Huffaker; Francis Inge Johnstone; Donald R. Jones, Jr.; Anthony Aaron Joseph; Joseph William Letzer; Robert S. Litt; Gary M. London; David Wayne Long-Daniels; Julian Rushton McClees; Walter Joseph McCorkle, Jr.; James H. McLemore; Derrick A. Mills; F. Chadwick Morriss; Robert F. Northcutt; Tabor Robert Novak, Jr.; George Robert Parker; Laura Howard Peck; Anthony C. Porcelli; Harlan Irby Prater, IV; Archibald Theodore Reeves, IV; Robert Philip Reznick; Sandra Grisham Robinson; Bruce F. Rogers; Stephen Jackson Rowe; Andrew D. Schau; Alexandra T. Schimmer; John D. Shakowki; Richard Lee Sharff, Jr.; Edward Sledge**

**Sledge, III; William Stancil Starnes; Robert R. Stauffer; Gilbert Calvin Steindorff, IV; Sharon Donaldson Stuart; Kevin R. Sullivan; C. Clay Torbert, III; John Michael Townsend; George Walton Walker, III; James N. Walter, Jr.; Jason Robert Watkins; and Jarrod J. White, and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: Justin S. Antonipillai; Steven F. Barley; J. Steven Baughman; Sam Blair; David J. Burman; Tiffany Cheung; Eric P. Christofferson; Toni-Ann Citera; Courtney A. Clark; Barak Cohen; Jonathan D. Cohen; Richard M. Cooper; Paul T. Coval; Wayne Cross; James R. Daly; Merle M. DeLancey, Jr.; Steven S. Diamond; John C. Dodds; Michael P. Doss; Ronald G. Dove, Jr.; Paul F. Doyle; Rebecca L. Dubin; Paul K. Dueffert; Steven M. Edwards; Douglas B. Farquhar; David D. Fauvre; John R. Fleder; Michael S. Flynn; Michael Gallagher; Mark Godler; Gary R. Greenberg; Elizabeth I. Hack; Kimberley D. Harris; James V. Hayes; Nicola Heskett; Geoffrey E. Hobart; Andrew L. Hurst; Edwin John U; Michael L. Koon; Katy E. Koski; Brian Ledahl; Thomas H. Lee, II; Mark H. Lynch; James W. Matthews; Warren C. Matthews; Joseph G. Matye; Christopher May; Jessica L. Medina; Neil Merkl; J. Ryan Mitchell; John T. Montgomery; Saul Morgenstern; Robert J. Muldoon, Jr.; William D. Nussbaum; Brien T. O'Connor; Kathleen M. O'Sullivan; Christopher Palermo; Jane W. Parver; Carlos M. Pelayo; Gregory M. Petouvis; Zoe Philippides; Carlos Provencio; Brian Rafferty; Richard D. Raskin; Jonathan T. Rees; Daniel E. Reidy; Joel E. Richardson; Michael J. Rinaldi; Thomas J. Roberts; Grace M. Rodriguez; Louis J. Scerra, Jr.; Lori A. Schechter; Michael T. Scott; Mark D. Seltzer; John Starnes; Scott A. Stempel; T. Reed Stephens; Jonathan L. Stern; E. Abim Thomas; Lyndon M. Tretter; Steven M. Umin; James M. Vant; Peter J. Venaglia; Karen Walker; Jason D. Wallach; Bruce Wessel; D. Scott Wise; Brendan Woodard; and Joseph H. Young.**

*s/ Jere L. Beasley*  
\_\_\_\_\_  
OF COUNSEL