

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION**

COMMONWEALTH OF KENTUCKY <i>ex rel.</i>)	
GREGORY D. STUMBO, Attorney General,)	
)	
Plaintiff)	
)	
v.)	CASE NO. 3:05-CV-00047-KKC
)	
ALPHARMA, INC., <i>et al.</i> ,)	
)	
Defendants)	
_____)	

**DEFENDANTS’ RESPONSE TO PLAINTIFF’S NOTICE
OF FILING REMAND ORDER IN MINNESOTA AWP CASE**

Defendants submit this response to plaintiff’s Notice of Filing of Remand Order in Minnesota AWP Case (“Notice”). In that Notice, plaintiff brings to the Court’s attention: (i) the decision in *State of Minnesota v. Pharmacia Corp.*, No. 05-1394 (PAM/JSM) (D. Minn. Oct. 22, 2005) (Magnuson, J.) (“Op.”), and (ii) two recent cases relying on *Grable & Sons Metal Prod., Inc. v. Darue Engineering & Manufacturing*, 125 S. Ct. 2363 (2005), to reject a claim for federal jurisdiction. For the reasons stated below, the Court should not rely on the additional authorities cited by plaintiff to guide the Court’s decision on defendants’ motion for a stay pending MDL transfer or plaintiff’s motion to remand.

First, a decision to remand now would thwart rather than promote judicial economy. Despite the remands in Alabama, Pennsylvania, Wisconsin and Minnesota, removed AWP cases brought by state attorneys general are still pending in Illinois and New York, as well as in this Court. All of these cases were set for consideration (without oral argument) at the JPML hearing on November 17, 2005. Contrary to plaintiff’s unsupported assertions, the JPML

issues orders promptly after each hearing, especially in cases that have been set for consideration without oral argument. Thus, the likely imminent transfer of this case – along with the Illinois and New York cases – to the MDL court will yield substantial savings in judicial resources.

Second, the Minnesota decision is yet another decision that conflicts with the MDL judge's decision in *State of Montana v. Abbott Lab.*, 266 F. Supp. 2d 250 (D. Mass. 2003), on the identical federal question jurisdiction issue, as well as with the decisions of the district courts in Alabama, Pennsylvania and Wisconsin that have reached the same result that the Minnesota court reached.¹ There are now five decisions on the same identical jurisdictional issue that conflict with each other in varying degrees. The interests of judicial economy and consistency of decisions clearly have not been served by each court deciding the remand motions. In contrast, permitting this case to be transferred to the pending MDL promotes judicial economy by consolidating cases presenting common questions of fact and federal law before a single judge. Contrary to plaintiff's assertions, those interests *will* be served if this Court exercises its undoubted discretion to stay a decision on the remand motion pending transfer to the MDL judge who has extensive experience with the legal and factual issues that are relevant to the jurisdictional issues. *See, e.g., Meyers v. Bayer AG*, 143 F. Supp. 2d 1044, 1047 (E.D. Wis. 2001).

Third, defendants submit that the Minnesota court erred in ruling that Minnesota's AWP-based claims do not present a substantial federal question. The Minnesota court

¹ *See State of Alabama v. Abbott Labs., et al.*, No. 2:05cv647-T (M.D. Ala. Aug. 11, 2005) (Alabama's AWP-based claims did not raise a "disputed and substantial" federal issue); *Commonwealth of Pennsylvania v. Tap Pharma. Prod., Inc., et al.*, 2005 WL 2242913, at *6 (E.D. Pa. Sept. 9, 2005) (Pennsylvania's identical *parens patriae* claims do not require a court to ascribe any meaning to the words 'average wholesale price' for Pennsylvania to prevail"); *State of Wisconsin v. Amgen, Inc., et al.*, 390 F. Supp. 2d 815, 823 (W.D. Wis. 2005) ("[P]laintiff's claims present a substantial and disputed question of federal law.").

characterized the need for a uniform interpretation of AWP under the Medicare statute as the only federal interest at issue in the AWP cases. (Op. at 6.) As the MDL judge recognized, however, the federal interest in this case goes beyond a mere concern for uniform statutory interpretation and extends to potentially hundreds of millions of dollars of federal funds. *See Montana*, 266 F. Supp. 2d at 255 (“The adjudication of whether the term ‘average wholesale price’ in the Medicare statute embraces a ‘spread’ could have broad implications for Medicare reimbursements and co-payments.”). As we have previously noted, a ruling that defendants fraudulently inflated the 20 percent co-payments of Medicare beneficiaries would necessarily imply that defendants also inflated the remaining 80 percent that is paid by the federal government because both are based on the same AWP. Such a ruling against the numerous defendants in this case would implicate hundreds of millions of dollars of federal funds and presents a paramount federal interest. *See Defendants’ Status Report on JPML Consideration of this Case and Response to Plaintiff’s Notice of Remand Order in Wisconsin AWP case* (Docket No. 245) at 2-3 (Oct. 18, 2005) (“Defendants’ Status Report on JPML Consideration”).

In its Notice, plaintiff asserts that in this case “the Commonwealth is not relying on a violation of a federal statute as an element of its state law causes of action.” Notice at 5. This statement mischaracterizes both the complaint and the test for federal jurisdiction. The Commonwealth’s claims based on Medicare co-payments place at issue the meaning of the term “Average Wholesale Price” as the term is used in the federal Medicare statute. *See Plaintiff’s First Amended Complaint*, ¶¶ 1-2, 45-79 (May 12, 2005). That is the first test for federal jurisdiction. *See Grable*, 125 S. Ct. at 2368 (state-law claim giving rise to federal question jurisdiction must raise “actually disputed and substantial” question of federal law). Plaintiff goes on to assert that “the absence of a private right of action” in the Medicare statute “further

supports a finding that federal jurisdiction is lacking.” Notice at 5. This contention, of course, is entirely contrary to the holding of *Grable* that a private right of action is *not* required for federal jurisdiction. *See id.* at 2366, 2369-70.

Fourth, defendants submit that the Minnesota court also incorrectly adopted the reasoning of the Wisconsin court that removing a state’s AWP-based claims to federal court would disrupt the division of labor between federal and state courts. (Op. at 6-7.) The observations that defendants submitted to this Court regarding Judge Crabb’s reasoning apply equally to Judge Magnuson’s decision. Removal of the AWP cases brought by state attorneys general to federal court would not open the floodgates to garden variety tort cases because these are not routine state tort cases, and the meaning of the federal Medicare statute is essential to resolution of the *parens patriae* claims. *See* Defendants’ Status Report on JPML Consideration at 3-4.

The two additional decisions that plaintiff discusses in its Notice – *Leggette v. Washington Mutual Bank, FA*, 2005 WL 2679699 (N.D. Tex. Oct. 19, 2005), and *Sarantino v. American Airlines, Inc.*, 2005 WL 2406024 (E.D. Mo. Sept. 29, 2005) – do not undermine defendants’ position. In both cases, the state law claims brought by private individuals at issue did not present the type of unique state law claims based on a disputed question of federal law that *parens patriae* claims brought by a state attorney general, such as plaintiff’s do in this case. *See Leggette*, 2005 WL 2679699 at *4 (homeowner’s state law contract and foreclosure claims that depended on disputed question of federal housing regulations could open the courts to hundreds of thousands of claims); *Sarantino*, 2005 WL 2406024, at *8 (state law negligence claims brought by private individual based on federal aviation regulations against airline for plane crash could open federal courts to “a tremendous number of cases” based on similar facts)

(citation omitted). Moreover, a recent decision by the Second Circuit Court of Appeals applying *Grable* recognized that when a “rare” state law claim depends on a disputed federal statute, such as plaintiff’s *parens patriae* claims do here, federal question jurisdiction is proper because it will not disturb the division of labor between state and federal courts envisioned by Congress. *See Broder v. Cablevision Systems Corp.*, 418 F.3d 187, 196 (2d Cir. 2005) (“We think it is likely to be the rare New York breach-of-contract action or suit under [other New York statutes] ... that seeks to assert a private right of action for violation of a federal law [determining applicable rates to be charged cable customers] otherwise lacking one.”).

Fifth, the Minnesota court’s rationale for holding that defendants’ removal was untimely does not apply in this case. The court held that *Johansen v. Employee Ben. Claims, Inc.*, 668 F. Supp. 1294 (D. Minn. 1989), controlled its decision because *Johansen* was issued by a Minnesota district court and had not been directly overruled. (Op. at 4.) This court, however, is not obligated to follow that decision. The decisions in *Doe v. American Red Cross*, 14 F.3d 196 (3d Cir. 1993), and *Green v. R.J. Reynolds Tobacco Co.*, 274 F.3d 263 (5th Cir. 2001), both issued after *Johansen*, make clear that, contrary to *Johansen*, an “order or other paper” can be an intervening judicial decision and need not be generated in the underlying state proceeding in order to trigger the removal right under section 1446(b). Moreover, as the Minnesota court recognized (Op. at 5), these two cases limited their holdings to the term “order.” Defendants respectfully submit that this reasoning leads to the contradictory result that the broader term “other paper” must be construed more narrowly than the specific term “order,” a holding that violates a fundamental rule of statutory construction.

Finally, in denying defendants’ motion for a stay pending transfer to the AWP MDL, the Minnesota court mistakenly relied on *Commonwealth of Pennsylvania v. Tap Pharma.*

Prod. Inc., et al., 2005 WL 2242913 (E.D. Pa. Sept. 9, 2005), in which the court concluded that it could not rule on defendants' motion to stay unless it first determined that federal jurisdiction existed. *See id.* at *3. As we have previously demonstrated, this view ignores numerous cases holding that courts can enter stays before ruling on remand motions pending transfer to an MDL court.²

For the reasons stated above, this court should decline to follow the three recent supplemental authorities submitted by plaintiff.

Respectfully submitted,

s/Amy D. Cabbage

Sheryl G. Snyder

Amy D. Cabbage

Frost Brown Todd LLC

400 West Market Street, 32nd Floor

Louisville, Kentucky 40202-3363

Tel: (502) 589-5400

Fax: (502) 581-1087

-and-

D. Scott Wise

Michael S. Flynn

Kimberly Harris

Kristi T. Prinzo

Carlos M. Pelayo

Davis Polk & Wardwell

² See, e.g., *In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990) (recognizing authority to stay action despite pending remand motion); *Gaffney v. Merck & Co.*, 2005 WL 1700772, at *1 (W.D. Tenn. July 19, 2005) ("Although some courts have opted to rule on pending motions to remand prior to the MDL Panel's decision on transfer, ... there are many more that have chosen to grant a stay, even if a motion to remand is filed.") (citations omitted); *Michael v. Warner-Lambert Co.*, 2003 U.S. Dist. LEXIS 21525, at *3 (S.D. Cal. Nov. 20, 2003); *Bd. of Trustees v. WorldCom, Inc.*, 244 F. Supp. 2d 900, 902 (N.D. Ill. 2002); *Med. Soc'y v. Conn. Gen. Corp.*, 187 F. Supp. 2d 89, 91 (S.D.N.Y. 2001); *Aikins v. Microsoft Corp.*, 2000 WL 310391, at *1 (E.D. La. Mar. 24, 2000); *Tench v. Jackson Nat'l Life Ins. Co.*, 1999 WL 1044923, at *1-2 (N.D. Ill. Nov. 12, 1999); *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1362 (C.D. Cal. 1997); *Johnson v. AMR Corp.*, 1996 WL 164415, at *3-4 (N.D. Ill. Apr. 3, 1996); *In re Amino Acid Lysine Antitrust Litig.*, 910 F. Supp. 696, 700 (J.P.M.L. 1995). As we have also demonstrated, the decision in *Farkas v. Bridgestone/Firestone, Inc.*, 113 F. Supp. 1077 (W.D. Ky. 2001), does not require this Court to decide the jurisdictional issue before addressing defendants' motion for a stay. *See Defendants' Reply Memorandum in Support of Defendants' Motion To Stay*, 5-8 (Aug. 22, 2005).

450 Lexington Avenue
New York, NY 10017

*Attorneys for Defendants AstraZeneca
Pharmaceuticals LP and AstraZeneca LP*

-and-

s/Charles H. Cassis with permission

Charles H. Cassis
Goldberg & Simpson, PSC
3000 National City Tower
Louisville, Kentucky 40202
Tel: (502) 589-4440
Fax: (502) 581-1344

-and-

John R. Fleder
Hyman, Phelps & McNamara, PC
700 Thirteenth Street NW, Suite 1200
Washington, D. C. 20005
Tel: (202) 737-5600
Fax: (202) 737-9329

*Counsel for Defendants, Alparma Inc.;
Alparma USHP Inc.; Alparma Branded
Products Division Inc.; and Purepac
Pharmaceutical Co.*

-and-

s/David R. Monohan with permission

David R. Monohan
Andrew D. Dill
Woodward, Hobson & Fulton
2500 National City Tower
Louisville, Kentucky 40202
Tel: (502) 581-8000
Fax: (502) 581-8111

Counsel for Amgen Inc.

-and-

s/Edward H. Stopher with permission

Edward H. Stopher
Raymond G. Smith
Darryl S. Lavery

Boehl Stopher & Graves, LLP
400 West Market Street, Suite 2300
Louisville, Kentucky 40202
Tel: (502) 589-5980

-and-

Michael L. Koon
Joseph G. Mayte
Shook, Hardy & Bacon, LLP
2555 Grand Boulevard
Kansas City, Missouri 64108

-and-

Carlos Provencio
Shook, Hardy & Bacon, LLP
Hamilton Square
600 14th Street, NW, Suite 800
Washington, DC 20005

Counsel for Aventis Pharmaceuticals, Inc.

-and-

s/Edward H. Stopher with permission _____

Edward H. Stopher
Raymond G. Smith
Darryl S. Lavery
Boehl Stopher & Graves, LLP
400 West Market Street, Suite 2300
Louisville, Kentucky 40202
Tel: (502) 589-5980

-and-

Jonathan T. Rees
Gregory Petouvis
Hogan & Hartson, LLP
555 Thirteenth Street, NW
Washington, DC 20004

*Counsel for ZLB Behring, LLC
f/k/a Aventis Behring, LLC*

-and-

s/Dennis J. Hummel with permission _____

Karen N. Walker
Edwin John U
Barak Cohen
Kirkland & Ellis LLP

655 Fifteenth Street, N.W.
Washington, DC 20005

-and-

Dennis J. Hummel (Kentucky Bar No.
34510)

Hummel Coan Miller & Sage

The Seventeenth Floor

Kentucky Home Life Building

239 South Fifth Street

Louisville, Kentucky 40202-3268

Tel: (502) 585-3084

Fax: (502) 585-3548

Counsel for Barr Pharmaceuticals, Inc.

-and-

s/John L. Tate with permission

John L. Tate

O. Scott Barber

Stites & Harbison

400 West Market Street

Suite 1800

Louisville, Kentucky 40202

Tel: (502) 681-0460

Fax: (502) 587-6391

Counsel for Baxter Healthcare Corp.

-and-

s/William E. Johnson with permission

William E. Johnson

Johnson, True & Guarneiri

326 West Main Street

Frankfort, Kentucky 40601

Tel: (502) 875-6000

Fax: (502) 875-6008

-and-

Richard D. Raskin
Michael P. Doss
Sidley, Austin Brown & Wood LLP
10 S. Dearborn Street
Bank One Plaza
Chicago, IL 60603

Counsel for Bayer Corporation

-and-

s/Rosemary D. Welsh with permission
Rosemary D. Welsh (Ky. Bar No. 86584)
Vorys, Sater, Seymour and Pease LLP
Suite 2000, Atrium Two
221 E. Fourth Street
P. O. Box 0236
Cincinnati, Ohio 45201-0236
Tel: (513) 723-4487
Fax: (513) 852-8449

-and-

Paul J. Coval
Douglas L. Rogers
Darrell A.H. Miller
Vorys, Sater, Seymour & Pease
52 E. Gay Street
P.O Box 1008
Columbus, OH 43216-1008

*Counsel for Ben Venue Laboratories, Inc.
Boehringer Ingelheim Pharmaceuticals, Inc.
and Boehringer Ingelheim Roxane, Inc.*

-and-

s/David T. Schafer with permission
David T. Schaefer
Andrew D. Dill
Woodward, Hobson & Fulton
2500 National City Tower
Louisville, Kentucky 40202
Tel: (502) 581-8000
Fax: (502) 581-8111

-and-

Lyndon M. Tretter
Steven M. Edwards

Hogan & Hartson LLP
875 Third Avenue, Suite 2600
New York, NY 10022

Counsel for Bristol-Myers Squibb Co.

-and-

s/Patricia K. Burgess with permission

Peter J. Venaglia
Brian Rafferty
Dornbush Schaeffer Strongin & Weinstein,
LLP
747 Third Avenue
New York, New York 10017
Tel: (212) 759-3300
Fax: (212) 753-7673

-and-

Patricia K. Burgess
Sawyer & Glancy, PLLC
3120 Wall Street, Suite 310
Lexington, Kentucky 40513
Tel: (859) 223-1500
Fax: (859) 223-1583

Counsel for Forest Laboratories, Inc.

-and-

s/Michael D. Baker with permission

Michael D. Baker
Wyatt, Tarrant & Combs, LLP
1600 Lexington Financial Center
Lexington, Kentucky 40507-1746
Tel: (859) 288-7613

-and-

David J. Burman
Kathleen M. O'Sullivan
Zoe Philippides
Perkins Coie
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099

Counsel for Immunex Corporation

-and-

s/Bruce A. Wessel with permission _____

Bruce A. Wessel

Brian D. Ledahl

Irell & Manella LLP

1800 Ave. of the Stars, Suite 900

Los Angeles, California 90067

Tel: (310) 277-1010

Fax: (310) 203-7199

-and-

Colin Hugh Lindsay

Dinsmore & Shohl LLP

1400 PNC Plaza

500 West Jefferson Street

Louisville, Kentucky 40202

Tel: (502) 540-2300

Fax: (502) 585-2207

-and-

Jennifer Mitchell

Dinsmore & Shohl LLP

255 East 5th Street, Suite 1900

Cincinnati, Ohio 45202

Tel: (513) 977-8200

Fax: (513) 977-8141

*Counsel for Ivax Corporation and Ivax
Pharmaceuticals, Inc.*

-and-

s/Scott T. Dickens with permission

Scott T. Dickens

Tachau Maddox Hovious & Dickens PLC

2700 National City Tower

101 South Fifth Street

Louisville, Kentucky 40202-3116

Tel: (502) 588-2000

Fax: (502) 588-2020

-and-

William F. Cavanaugh, Jr.

Andrew D. Schau

Patterson, Belknap, Webb & Tyler LLP

1133 Avenue of the Americas

New York, New York 10036-6710

Tel: (212) 336-2000

Fax: (212) 336-2222

*Counsel for Johnson & Johnson; Janssen
Pharmaceutical Products, L.P.; Ortho-
McNeil Pharmaceutical, Inc.; Ortho Biotech
Products, L.P.; and McNeil-PPC, Inc.*

-and-

s/John M. Famularo with permission

John M. Famularo

Stites & Harbison, PLLC

2300 Lexington Financial Center

250 West Main Street

Lexington, Kentucky 40507-1758

-and-

John M. Townsend

Robert P. Reznick

Robert B. Funkhouser

Hughes Hubbard & Reed LLP

1775 I Street, N.W.

Washington, DC 20006-2401

Counsel for Merck & Company, Inc.

-and-

s/Colin Hugh Lindsay with permission

Colin Hugh Lindsay
Dinsmore & Shohl LLP
1400 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
Tel: (502) 540-2300
Fax: (502) 585-2207

-and-

Jennifer Mitchell
Dinsmore & Shohl LLP
255 East 5th Street, Suite 1900
Cincinnati, Ohio 45202
Tel: (513) 977-8200
Fax: (513) 977-8141

-and-

Gary R. Greenberg
Louis J. Scerra, Jr.
Jonathan D. Cohen
James Vant
Greenberg Traurig, LLP
One International Place, 20th Floor
Boston, MA 02110

*Counsel for Mylan Laboratories Inc. and
Mylan Pharmaceuticals, Inc.*

-and-

s/Edwin A. Logan with permission

Edwin A. Logan (#41830)
Logan & Gaines, PLLC
100 East Main Street
Frankfort, Kentucky 40601

-and-

Jane W. Parver
Mark D. Godler
Jeremiah Lee Frei-Pearson
Margo Genevieve Ferrandino
Kaye Scholer, LLP
425 Park Avenue
New York, NY 10022

-and-

Samuel N. Lonergan
Saul P. Morganstern
Nathan Cohen

Kaye Scholer LLP
425 Park Avenue
New York, NY 10022

Counsel for Novartis Pharmaceutical Corp.

-and-

s/Margaret E. Keane with permission

Margaret E. Keane
Holland N. McTyeire, V
Greenebaum Doll & McDonald PLLC
3500 National City Tower
101 South Fifth Street
Louisville, Kentucky 40202
Tel: (502) 589-4200
Fax: (502) 587-3695

-and-

Richard M. Cooper
Paul K. Dueffert
Thomas J. Roberts
Williams & Connolly LLP
725 Twelfth Street, N.W.
Washington, DC 20005
Tel: (202) 434-5000
Fax: (202) 434-5029

*Counsel for Par Pharmaceutical Companies,
Inc.*

-and-

s/Carol Dan Browning with permission

Carol Dan Browning
Sarah G. Cronan
Stites & Harbison, PLLC
400 West Market Street
Louisville, Kentucky 40202-3352
Tel: (502) 587-3400
Fax: (502) 587-6391

-and-

Scott A. Stempel
John C. Dodds
Kimberly K. Heuer
Morgan Lewis & Bockius LLP

1111 Pennsylvania Avenue, NW
Washington, D.C. 20004

Counsel for Pfizer, Inc.

-and-

s/Carol Dan Browning with permission

Carol Dan Browning
Sarah G. Cronan
Stites & Harbison, PLLC
400 West Market Street
Louisville, Kentucky 40202-3352
Tel: (502) 587-3400
Fax: (502) 587-6391

-and-

Scott A. Stempel
John C. Dodds
Kimberly K. Heuer
Morgan Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004

Counsel for Pharmacia Corporation

-and-

s/Patrick R. Hughes with permission

Patrick R. Hughes
Kevin F. Hoskins
Deters, Benzinger & LaVelle, P.S.C.
207 Thomas More Parkway
Crestview Hills, Kentucky 41017-2596
Tel: (859) 341-1881
Fax: (859) 341-4879

*Counsel for Sandoz, Inc., f/k/a Geneva
Pharmaceuticals, Inc.*

-and-

s/W. Kennedy Simpson with permission

W. Kennedy Simpson
Thompson Miller & Simpson PLC
600 West Main Street, Suite 500

Louisville, Kentucky 40202
Tel: (502) 357-1923
Fax: (502) 585-9993

-and-

Mark D. Seltzer
Mona M. Patel
Sarah A. Franklin
Brian K. French
Holland & Knight LLP
10 St. James Avenue
Boston, MA 02116

-and-

Mark H. Lynch
Valerie Margo Wagner
Covington & Burling
1201 Pennsylvania Avenue, NW
P.O. Box 7566
Washington, DC 20044-7566

-and-

Frederick G. Herold
Dechert, LLP
975 Page Mill Road
Palo Alto, CA 94022

-and-

Thomas H. Lee , II
Dechert, LLP
1717 Arch Street
4000 Bell Atlantic Tower
Philadelphia, PA 19102

*Counsel for SmithKline Beecham
Corporation, d/b/a GlaxoSmithKline*

-and-

s/David J. Hale with permission _____

John S. Reed
David J. Hale
Reed Weitkamp Schell & Vice PLLC
500 West Jefferson Street, Suite 2400
Louisville, Kentucky 40202
Tel: (502) 589-1000
Fax: (502) 562-2200

-and-

James R. Daly
Jones Day

77 West Wacker
Chicago, Illinois 60601-1692
Tel: (312) 782-3939
Fax: (312) 782-8585

-and-

Toni-Ann Citera
Jones Day
222 East 41st Street
New York, New York 10017
Tel: (212) 269-3939
Fax:(212) 755-7306

*Counsel for TAP Pharmaceutical Products,
Inc.*

-and-

s/Douglas C. Ballantine with permission

Douglas C. Ballantine
Ogden Newell & Welch PLLC
1700 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
Tel: (502) 582-1601

-and-

Elizabeth I. Hack
Elizabeth Finberg
Sonnenschein Nath & Rosenthal LLP
1301 K Street, N.W.
Suite 600, East Tower
Washington, DC 20005
Tel: (202) 408-9236

*Counsel for TEVA Pharmaceuticals, USA,
Inc. and Sicor, Inc.*

-and-

s/Charles H. Cassis with permission

Charles H. Cassis
Goldberg & Simpson, PSC
3000 National City Tower
Louisville, Kentucky 40202
Tel: (502) 589-4440
Fax: (502) 581-1344

-and-

Douglas B. Farquhar
Hyman, Phelps & McNamara
700 Thirteenth Street NW, Suite 1200
Washington, D. C. 20005
Tel: (202) 737-5600
Fax: (202) 737-9329

*Counsel for Watson Pharma, Inc. & Watson
Pharmaceuticals, Inc.*

CERTIFICATE OF SERVICE

I certify that a true and correct copy was filed with the Office of the Clerk electronically via the CM/ECF system and was served by first class mail, postage prepaid, on the following on November 23, 2005:

Gregory D. Stumbo
Janet M. Graham
C. David Johnstone
Office of the Attorney General
Commonwealth of Kentucky
1024 Capital Center Drive
Frankfort, KY 40601

F. Jeffrey Archibald
Archibald Consumer Law Office
1914 Monroe Street
Madison, WI 53711

s/Amy D. Cabbage
An Attorney for Defendants