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STATE OF WISCONSIN **CIRCUIT COURT BRANCH 9** **DANE COUNTY**

STATE OF WISCONSIN,

Plaintiff,

v. Case No. 04 CV 1709

ABBOTT LABORATORIES, et al.

FILED
MAY 16 2016
DANE COUNTY CIRCUIT COURT

Defendants.

DECISION AND ORDER DENYING STATE OF WISCONSIN'S MOTION TO TRY DEFENDANTS ABBOTT AND TAP IN ONE TRIAL

For those reasons set out forth at length in the submissions by TAP Pharmaceutical Products, Inc. and Abbott Laboratories (incorporated herein by reference as though fully set forth), the court finds no persuasive reason to try both TAP and Abbott in the same jury trial, as moved by plaintiff State of Wisconsin almost 9 years after the court granted separate trials. To be sure, the cast of characters has substantially diminished since the court's September 28, 2007 Decision and Order Denying Defendants' Joint Motion to Sever and Provisionally Grant Defendants' Joint Motion for Separate Trials. Nonetheless, on a smaller scale, the issues most concerning to the court at that time persist here, mostly related to the potential for jury confusion and each defendant's right to a fair hearing on its individual case.

To these concerns we should add the potential for judge confusion. Since the court ordered separate trials, I have had the benefit of presiding over the Pharmacia jury trial, the only trial to have occurred in this case over the last 12 years. Even with just one defendant, this court faced a monumental task on motions after verdict (not to mention motions *in limine*) which the court observed at that time "substantially validated this court's decision to sever the trials against each individual defendant in this mass litigation." Decision and Order on Remaining Forfeitures Issues, p. 2, n.1.

Moreover, there is no prejudice to the State of Wisconsin from separate trials, given their fee attorneys' fees arrangement, merely some inconvenience and perhaps some incremental cost.

Thus, separate trials remain the better, more equitable approach. Plaintiff's motion to jointly try TAP and Abbott is accordingly DENIED.

Dated this 16th day of May, 2016.

BY THE COURT:

Richard G. Niess
Circuit Judge

Cc: All counsel of record via whomever is in charge of this case's Lexis/Nexis File and Serve