

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN**

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STATE OF WISCONSIN,	)	
	)	
Plaintiff,	)	Case No.: No. 04-C-0477-C
	)	
v.	)	
	)	
ABBOTT LABORATORIES, ET AL.,	)	
	)	
Defendants.	)	

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**DEFENDANTS' JOINT MOTION FOR EXTENSION OF TIME IN WHICH TO FILE  
RESPONSIVE PLEADINGS IN LIGHT OF PENDING MOTION FOR STAY**

The undersigned defendants (the "Defendants") hereby jointly move this Court for an extension of time in which to file pleadings in response to the Complaint in this matter in light of their pending motion to stay all proceedings pending transfer of this case by the Judicial Panel on Multidistrict Litigation ("MDL Panel") to the United States District Court for the District of Massachusetts. In support of this Motion, the Defendants state as follows:

1. Throughout this matter, the Defendants have maintained that all pretrial proceedings should be heard and resolved by U.S. District Court Judge Patti Saris, who presides over thirty lawsuits consolidated in an MDL proceeding involving many of the same factual and legal issues involved in this case. Generally stated, those issues include whether the defendants have improperly inflated the "Average Wholesale Prices" (AWPs) of their respective medicines. *In re Pharmaceutical Average Wholesale Price Litigation*, MDL 1456.

2. Accordingly, when this case was initially filed in the Dane County Circuit Court, the Defendants removed it to this court, indicating that they would promptly ask the MDL

Panel to transfer the case to the District of Massachusetts and would also ask this court to stay all proceedings until the transfer issue had been resolved.

3. After the case was removed, the parties negotiated a Stipulation extending the deadline for the Defendants' responsive pleadings until September 15, 2004. Magistrate Judge Stephen Crocker accepted the parties' stipulation and noted that there "shall be no more extensions."

4. On July 22, 2004, the Defendants filed a Joint Motion to Stay All Proceedings Pending Transfer by the Judicial Panel on Multidistrict Litigation. That motion, which if granted would stay the defendants' obligation to file responsive pleadings, is fully briefed and remains pending. In addition, the court stayed all briefing on the plaintiff's Motion to Remand pending resolution of the Motion for Stay.

5. As the stipulated deadline for filing responsive pleadings approaches without resolution of the pending stay motion, it has become necessary for the Defendants to begin preparing their consolidated responsive pleading, consisting of a motion(s) to dismiss under Rule 12, Fed. R. Civ. Proc. As described below, the content and form of this briefing will depend upon whether it is presented to a Wisconsin state court or to a United States District Court.

6. The Defendants respectfully request an additional extension of time in which to file their coordinated motion to dismiss. The defendants' request is based on their belief that (a) such an extension is consistent with the manner in which this case has been managed to date, (b) would conserve the parties' and court's time and resources by dispensing with the need to prepare and file briefs until the final venue for this action has been determined,

and (c) would permit the Defendants to draft their motion and briefs according to the needs of the forum that will hear and decide it.

7. In particular, this court has already stayed all proceedings related to the plaintiff's Motion to Remand until the Defendants' motion for stay has been resolved. The Defendants' request is consistent with this Order, which contemplates permitting the MDL Panel to resolve whether this case should be transferred to the District of Massachusetts before addressing other procedural and substantive issues in the case.

8. In addition, an extension would conserve the parties' and court's time and resources because the Defendants would not have to prepare and file their coordinated motion, and the court would not have to consider it, before the final venue for this matter has been determined. Indeed, the substance of the Defendants' motion to dismiss will be vastly different depending upon the forum in which it is filed. Judge Saris is already familiar with the factual and legal issues presented by the plaintiff's claims and has already issued opinions addressing many of the issues that would be raised by the Defendants' motion to dismiss. However, Judge Saris would not be as familiar with the Wisconsin state law claims asserted by the plaintiff and would need extensive briefing on those issues.

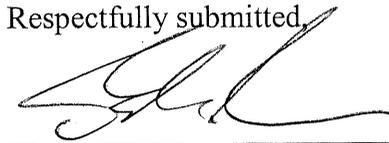
9. In contrast, a Wisconsin state court considering this case would need extensive briefing on the proceedings which have already occurred before Judge Saris and, presumably, less briefing on the nature of the state law claims the plaintiff has asserted. Accordingly, extending the time for the filing of the Defendants' motion to dismiss until after the final venue for this matter has been determined would permit the Defendants to draft the motion according to the needs of the forum that will hear and decide it.

WHEREFORE, the Defendants respectfully request that, should their pending stay motion be denied, they be granted an additional extension of time in which to file responsive pleadings until 45 days after the plaintiff's remand motion is resolved.

Dated: August 27, 2004.

Respectfully submitted,

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