

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

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

**DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR
JOINT MOTION TO STAY ALL PROCEEDINGS PENDING TRANSFER
BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

INTRODUCTION

Plaintiff's response opposing a stay makes two central arguments, neither of which has merit or justifies denial of the motion. First, plaintiff claims – with no support whatsoever – that a stay pending transfer of this case to the MDL proceedings before Judge Saris will significantly delay the resolution of plaintiff's remand motion. Plaintiff even goes so far as to suggest that "a full year will have passed" before the jurisdictional issue will be decided. (Resp. at 4). In fact, however, the MDL Panel issued a "conditional transfer order" ("CTO") for this action *on August 3, 2004*. (A copy of this conditional transfer order is attached hereto as Attachment 1.) This order provides that it will become effective and require the transfer of this case to the District of Massachusetts unless plaintiff files an objection by August 18, 2004. *See* Attachment 1.

Plaintiff's remand motion thus will be placed before Judge Saris in a matter of days

(absent objection by plaintiff to the CTO), rather than after “many months” as plaintiff contends. (Resp. at 4). At that point, the remand motion will be in precisely the same position as now: awaiting a briefing schedule and argument before the Court. Plaintiff provides no basis, and there is none, for the suggestion that Judge Saris will unfairly delay resolution of the remand motion.

Second, plaintiff argues that the stay should be denied because, it contends, the removal is frivolous. (Resp. at 2-3). Far from being frivolous, however, the removal falls precisely within Judge Newman’s jurisdictional analysis in *Levi Strauss*, which plaintiff unsuccessfully attempts to distinguish in its remand motion. Plaintiff’s claims for remand ultimately rest on a misreading of the Seventh Circuit’s diversity jurisdiction decisions under 28 U.S.C. § 1367(a) and on strongly worded – but ultimately baseless – claims that the assertion of federal jurisdiction somehow infringes on the State’s sovereignty and the Eleventh Amendment.

Finally, plaintiff simply ignores the fact that nine stay orders have already been entered under similar circumstances in other AWP cases. In each instance, the district court granting the stay reasoned that the twin aims of the multidistrict litigation statute – judicial economy and avoiding inconsistent judgments – would be best served by allowing Judge Saris to reach and decide these issues. Plaintiff offers no reason for reaching a different conclusion here.

ARGUMENT

I. Plaintiff’s Claims Of Inevitable Delay Are Wholly Unsupported.

Plaintiff claims that a stay will unfairly delay consideration of its remand motion, asserting that “many months will pass” before the MDL Panel sends the case to the District of Massachusetts, and claiming it may be “a full year” before Judge Saris decides this motion (Resp. at 4, 6). This claim that the remand motion will languish if a stay is granted is not

supported by a shred of evidence. Instead, the record shows that the opposite is true. Almost two weeks ago, on August 3, 2004, the MDL Panel entered a conditional transfer order (CTO-17), which directs that this case be transferred to the District of Massachusetts unless plaintiff files an objection by August 18, 2004. *See* Attachment 1. In that conditional transfer order, like the numerous similar orders entered previously, the MDL Panel found that this lawsuit “involves questions of fact which are common to the action previously transferred to the District of Massachusetts and assigned to Judge Saris” and thus appropriately belongs before Judge Saris “for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.” *Id.*

In light of this conditional transfer order, this case should very shortly be on its way to the District of Massachusetts. At that point, plaintiff will be in the same position that it is in now, with a pending remand motion awaiting a scheduling order on briefing and argument. The only potential impediment to the prompt transfer of this case to Judge Saris, therefore, would be if plaintiff files an objection to transfer, which would require a briefing schedule on the transfer issue. (MDL Panel Rule 7.4(c)).¹ Any such objection would be without merit, however, as the MDL Panel has consistently transferred every single AWP case to the District of Massachusetts, including those where objections were filed, and has repeatedly held that the pendency of a remand motion is not a basis for challenging transfer. *See, e.g.,* Stay Mem., Exh. K. If plaintiff files such an objection, therefore, any delay would be entirely of its own making, and would provide no basis for denying the requested stay.

Plaintiff’s suggestion that Judge Saris is overwhelmed with work on these AWP cases, and will be unable to reach the remand motion in a timely fashion, is similarly unsupported.

¹ Nor is there any valid basis for an objection to transfer. As pointed out in Defendants’ opening brief (Stay Mem. at 3), the MDL Panel has ordered the final transfer to Judge Saris of every single AWP case that has been presented to it, including those with pending remand motions.

(Resp. at 2, 4, 6). Like most federal courts, Judge Saris has a full and active docket. But there is no basis for plaintiff to claim that the MDL proceedings act as some type of litigation black hole where disputes languish. Indeed, the very fact that Judge Saris has so many AWP cases pending before her strongly supports the requested stay, rather than argues against it. Because of this extensive involvement, Judge Saris already is well aware of the numerous fact and legal issues that have been raised in these cases, including AWP cases brought by state and local governments.

II. This Case Was Properly Removed Under This Court's Diversity Jurisdiction.

Plaintiff's claim that a stay is unwarranted because the removal was frivolous is equally unfounded. (Resp. at 2-3). As an initial matter, there is no requirement that this Court undertake a "preliminary assessment" of federal jurisdiction before granting the requested stay. (Resp. at 3). The Supreme Court has made clear that federal courts have inherent authority to issue stays before making any determination on federal jurisdiction. *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936); *see also Clinton v. Jones*, 520 U.S. 681, 706 (1997). A substantial majority of cases that have issued stays under these circumstances have done so without reaching, even preliminarily, the question of federal jurisdiction. For example, in *Wienke v. Microsoft Corp.*, 84 F. Supp. 2d 989, 990 (E.D. Wis. 2000), Judge Reynolds issued a stay pending transfer by the MDL Panel without making any inquiry into the merits of a pending remand motion. Numerous other courts have followed suit,² including a number of district courts that have granted stays in

² *E.g.*, *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1361-62 (C.D. Cal. 1997); *Clark v. Bayer Corp.*, No. Civ. A. 02-0834, 2002 WL 987367, at * 1 (E.D. La. May 13, 2002); *Aikins v. Microsoft Corp.*, No. Civ. A. 00-0242, 2000 WL 310391, at *1 (E.D. La. Mar. 24, 2000); *Tench v. Jackson Nat'l Life Ins. Co.*, No. 99 C 5182, 1999 WL 1044923, at *1 (N.D. Ill. Nov. 12, 1999); *Johnson v. AMR Corp.*, Nos. 95 C 7659, 95 C 7664, 1996 WL 164415, at *3-4 (N.D. Ill. Apr. 3, 1996); *Arthur-Magna, Inc. v. Del-Val Financial Corp.*, No. 90-4378, 1991 WL 13725, at *1 (D.N.J. Feb. 1, 1991).

other AWP cases.³ Besides being well within this Court's power, such an approach makes eminent sense because any review of the jurisdictional issues, even if only cursory, wastes the very judicial resources that the stay and transfer seeks to preserve.

In any event, any preliminary review of federal jurisdiction in this case shows removal to be fully justified under the facts and law. As reflected in the removal notice, this case falls squarely within the jurisdictional principles discussed by then-District Judge Newman in *State of Connecticut v. Levi Strauss & Co.*, 471 F. Supp. 363, 370-71 (D. Conn. 1979). Because plaintiff brings claims that on their face are on behalf of a defined group of Wisconsin residents and organizations, and requests payments directly to these individuals and organizations, it is their citizenship status, not the State's, that controls for the purpose of determining diversity jurisdiction. *Id.*; see also *Butler v. Cadbury Beverages, Inc.*, No. 3:97-CV-2241, 1998 WL 422863, at *2 (D. Conn. July 1, 1998).

Contrary to plaintiff's analysis (Remand Mot. at 5-7), the *Levi Strauss* analysis does not hinge on a finding that the State is only a nominal plaintiff. Instead, federal diversity jurisdiction is present (assuming the jurisdictional amount is met, which plaintiff does not challenge) where a State brings an action for recovery by identified and diverse citizens regardless of whether the State itself has an independent stake in the action. That was precisely the situation in *Levi Strauss*, where Judge Newman recognized that the State sought recovery both for itself and for identified citizens. *Levi Strauss & Co.*, 471 F. Supp. at 370. The fact that a State may remain more than a nominal party for certain claims does not destroy diversity jurisdiction, however, because, under settled Seventh Circuit law, only *one* identified diverse plaintiff is needed to justify the removal based on federal diversity jurisdiction, with the remaining non-diverse

³ See Stay Mem., Exhibts A, C, D, F, H.

plaintiffs subject to the federal court's supplemental jurisdiction under 28 U.S.C. § 1367(a). *Stromberg Metal Works v. Press Mech'l, Inc.*, 77 F.3d 928, 931 (7th Cir. 1996) (“[section] 1367(a) allows suit by a pendent plaintiff who meets the jurisdictional amount but not the diversity requirement, [just like] it also allows suit by a pendent plaintiff who satisfies the diversity requirement but not the jurisdictional amount”). Plaintiff repeatedly ignores *Stromberg* in requesting remand, wrongly asserting that the potential presence of non-diverse plaintiffs precludes removal. (Remand Mot. at 5-7, 12).

Plaintiff's claim that a stay would somehow improperly impinge on its sovereign status and violate the Eleventh Amendment (Resp. at 6-7) also widely misses the mark. The Eleventh Amendment has no application where the State is a plaintiff as opposed to a defendant, and thus imposes no restriction on removal here. *E.g., People of the State of Cal. v. Dynegy, Inc.*, 375 F.3d 831, 848 (9th Cir. 2004) (“[A] state that voluntarily brings suit as a plaintiff in state court cannot invoke the Eleventh Amendment when the defendant seeks removal to a federal court of competent jurisdiction.”); *Oklahoma ex rel. Edmondson v. Magnolia Marine Transp. Co.*, 359 F.3d 1237, 1239 (10th Cir. 2004) (same); *Regents of Univ. of Cal. v. Eli Lilly & Co.*, 119 F.3d 1559, 1564 (Fed. Cir. 1997) (“[T]he Eleventh Amendment applies to suits ‘against’ a state, not suits by a state.”).

Plaintiff repeatedly suggests that jurisdiction is suspect here because this is the first AWP case brought by a state where removal is based on diversity jurisdiction. (Resp. at 2, 5). Despite numerous common fact and legal issues, however, each AWP case presents unique claims and circumstances, and thus the fact that this is the first such case removed on diversity grounds is of no significance. For example, the referenced Pennsylvania and New York actions (Resp. at 5) would not be subject to removal on diversity grounds because certain named defendants maintain

their principal places of business in those states. At bottom, these other cases simply have no bearing on whether federal diversity jurisdiction exists in *this* case.

III. A Stay Will Preserve Resources And Avoid Inconsistent Judgments.

Defendants' opening brief established that a stay will serve the principal goals of the multidistrict litigation statute: preserving resources of both the court and the parties and avoiding inconsistent rulings on the same pretrial issues by different federal courts. Regarding the preservation of judicial resources, plaintiff ignores the fact that Judge Saris has already expended substantial time in gaining expertise in the factual and legal underpinnings of these AWP cases. A stay thus will allow this Court to avoid unnecessarily duplicating Judge Saris' efforts. Moreover, although the precise diversity jurisdiction issue has not before been presented to Judge Saris, there is a reasonable likelihood that it will again be raised as additional states decide to pursue similar AWP claims. Also, plaintiff's procedural challenge to removal based on the lack of unanimity at the time of removal (Remand Mot. at 12-14) is an issue with which Judge Saris already has dealt in these AWP cases (in one of the Nevada cases and in the Swanston case).⁴ Again, in light of the number of defendants named in these suits, this is an issue that is likely to repeat itself in future cases.⁵

It is for these same reasons that a stay will serve the purpose of avoiding inconsistent federal decisions on the same or similar issues. Although the diversity jurisdiction issues have not yet been presented to Judge Saris, they very well may be presented in the future and thus

⁴ *In re Pharmaceutical Industry Average Wholesale Price Litigation*, 307 F. Supp. 2d 190, 193-95 (D. Mass. 2004); *Montana v. Abbot Lab.*, 266 F. Supp. 2d 250, 260-63 (D. Mass. 2003).

⁵ Plaintiff's unanimity challenge fails because Defendant Gensia Sicor Pharmaceuticals, Inc. did in fact file a written consent to removal within 30 days of the date Plaintiff alleges service was completed on it, which is all that is required following the Supreme Court's decision in *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999).

potentially be subject to inconsistent decisions or reasoning. The same is true for the procedural challenge concerning unanimity. Judge Saris has already twice evaluated similar challenges, albeit under a different fact settings. Any other court that reaches this unanimity issue thus raises the risk of inconsistent judgments or reasoning.

Finally, plaintiff's claim (Resp. at 3) that this Court is better suited than Judge Saris to apply Seventh Circuit law fails because plaintiff does not contend, much less show, that the federal law of this circuit is meaningfully different from the law of the First Circuit or is somehow more difficult or complex. Plaintiff's parochial claim that this Court should not "cede" this jurisdictional issue to a district court in the First Circuit (Resp. at 3) is directly at odds with the multidistrict litigation statute, which strongly promotes this very outcome.

CONCLUSION

For these reasons, and those presented in our opening brief, defendants respectfully request that this Court grant their motion to stay all proceedings pending a final determination by the MDL Panel to transfer this action to the District of Massachusetts.

Dated: August 16, 2004.

Respectfully submitted,

By: 

Kevin J. O'Connor
Todd G. Smith
LAFOLLETTE, GODFREY & KAHN, LLP
Suite 500
One East Main Street, P.O. Box 2719
Madison, WI 53701-2719
Tele: (608) 257-3911
Fax: (608) 257-0609

Richard Raskin
Michael Doss
SIDLEY AUSTIN BROWN & WOOD, LLP
Bank One Plaza
10 S. Dearborn Street
Chicago, Illinois 60603
Tele: (312) 853-7000
Fax: (312) 853-7036
***Attorneys for Defendant Bayer Corporation,
and signing on behalf of following Defendants:***

ABBOTT LABORATORIES

Allen C. Schlinsog, Jr.
Mark A. Cameli
REINHART BOERNER VAN DEUREN, S.C.
1000 North Water Street
P.O. Box 2965
Milwaukee, WI 53201-2965
Tele: (414) 298-1000
Fax: (414) 298-8097

Lynn M. Stathas
Anthony J. Lucchesi
REINHART BOERNER VAN DEUREN, S.C.
22 East Mifflin Street
P.O. Box 2018
Madison, WI 53701-2018
Tele: (608) 229-2200
Fax: (608) 229-2100

James R. Daly
Jeremy P. Cole
JONES DAY
77 West Wacker
Chicago, IL 60601-1692
Tele: (312) 782-3939
Fax: (312) 782-8585

R. Christopher Cook
Jesse A. Witten
JONES DAY
51 Louisiana Avenue, N.W.
Washington D.C. 20001-2113
Tele: (202) 879-3939
Fax: (202) 626-1700

AMGEN INC.

William M. Conley
Jeffrey A. Simmons
FOLEY & LARDNER, LLP
150 East Gilman Street
P.O. Box 1497
Madison, WI 53701
Tele: (608) 258-4209
Fax: (608) 258-4258

David W. Simon
FOLEY & LARDNER, LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
Tele: (414) 271-2400
Fax: (414) 297-4900

Steven F. Barley
Joseph H. Young
HOGAN & HARTSON, LLP
111 South Calvert Street
Baltimore, MD 21202
Tele: (410) 659-2700
Fax: (410) 539-6981

**ASTRAZENECA PHARMACEUTICALS LP AND
ASTRAZENECA LP**

Brian E. Butler
STAFFORD ROSENBAUM, LLP
P.O. Box 1784
Madison, WI 53701-1784
Tele: (608) 256-0226
Fax: (608) 259-2600

D. Scott Wise
DAVIS POLK & WARDWELL
450 Lexington Avenue
New York, NY 10017
Tele: (212) 450-4000
Fax: (212) 450-3800

AVENTIS PHARMACEUTICALS INC.

Stephen P. Hurley
Marie Stanton
Andrew Erlandson

HURLEY, BURISH & MILLIKEN, S.C.
301 North Broom Street
Madison, WI 53703
Tele: (608) 257-0945
Fax (608) 257-5764

Paul Schleifman
Carlos Provencio
SHOOK, HARDY & BACON
South Hamilton Square
600 14th Street, NW, Suite 800
Washington, D.C. 20005-2004
Tele: (202) 783-8400
Fax (202) 783-4211

Michael L. Koon
Tiffany W. Killoren
SHOOK, HARDY & BACON
2555 Grand Blvd.
Kansas City, MO 64108
Tele: (816) 474-6550
Fax (816) 421-5547

AVENTIS BEHRING, LLC
Stephen P. Hurley
Marie Stanton
Andrew Erlandson
HURLEY, BURISH & MILLIKEN, S.C.
301 North Broom Street
Madison, WI 53703
Tele: (608) 257-0945
Fax (608) 257-5764

William D. Nussbaum
Jonathan T. Rees
Martha L. Russo
HOGAN & HARTSON, LLP
555 13th Street, NW
Washington, D.C. 20004-1109
Tele: (202) 637-5600
Fax (202) 637-5910

BAXTER INTERNATIONAL, INC.
Merle M. DeLancey
Andres Colon
DICKSTEIN, SHAPIRO, MORIN & OSHINSKY, LLP

2101 L Street, N.W.
Washington, D.C. 20037
Tele: (202) 785-9700
Fax (202) 887-0689

Bruce A. Schultz
COYNE, NIESS, SCHULTZ, BECKER & BAUER, S.C.
150 E. Gilman Street
Madison, WI 53703
Tele: (608) 255-1388
Fax (608) 255-8592

BOEHRINGER INGELHEIM CORPORATION

Paul J. Coval
Douglas L. Rogers
Allen S. Kinzer
Darrell A.H. Miller
VORYS, SATER, SEYMOUR AND PEASE, LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
Tele: (614) 464-6400
Fax (614) 464-6350

BRISTOL-MYERS SQUIBB CO.

James R. Clark
FOLEY & LARDNER, LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
Tele: (414) 271-2400
Fax (414) 297-4900

Roberta F. Howell
Michael D. Leffel
FOLEY & LARDNER, LLP
150 East Gilman Street
P.O. Box 1497
Madison, WI 53701
Tele: (608) 258-4209
Fax (608) 258-4258

Steven M. Edwards
Lyndon M. Tretter
James S. Zucker
HOGAN & HARTSON, LLP
875 Third Avenue

New York, NY 10022
Tele: (212) 918-3000
Fax (212) 918-3100

DEY, INC.

John W. Markson
John M. Moore
BELL, GIERHART & MOORE, S.C.
44 East Mifflin Street
P.O. Box 1807
Madison, WI 53701
Tele: (608) 257-3764
Fax (608) 257-3757

Christopher C. Palermo
Philip D. Robben
KELLEY DRYE & WARREN LLP
101 Park Avenue
New York, NY 10178
Tele: (212) 808-7800
Fax (212) 808-7897

FUJISAWA HEALTHCARE, INC.

Bruce A. Schultz
COYNE, NIESS, SCHULTZ, BECKER & BAUER, S.C.
150 E. Gilman Street
Madison, WI 53703
Tele: (608) 255-1388
Fax (608) 255-8592

Kathleen H. McGuan
Andrew L. Hurst
REED SMITH, LLP
1301 K Street, N.W.
East Tower, Suite 1100
Washington, D.C. 20005
Tele: (202) 414-9200
Fax (202) 414-9299

GENSIA SICOR PHARMACEUTICALS, INC.

Elizabeth I. Hack
T. Reed Stephens
SONNENSCHNEIN, NATH & ROSENTHAL, LLP
1301 K Street N.W.
Suite 600, East Tower
Washington, D.C. 20005

Tele: (202) 408-6400

Fax: (202) 408-6399

Lester A. Pines

CULLEN, WESTON, PINES & BACH

122 W. Washington Avenue, #900

Madison, WI 53703-2718

Tele: (608) 251-0101

Fax: (608) 251-2883

SMITHKLINE BEECHAM CORP., D/B/A

GLAXOSMITHKLINE

Daniel W. Hildebrand

DEWITT ROSS & STEVENS, S.C.

2 East Mifflin Street, Suite 600

Madison, WI 53703

Tele: (608) 255-8891

Fax: (608) 252-9243

Frederick G. Herold

DECHERT, LLP

975 Page Mill Road

Palo Alto, CA 94022

Tele: (650) 813-4800

Fax: (650) 813-4848

Mark H. Lynch

COVINGTON & BURLING

1201 Pennsylvania Avenue, N.W.

P.O. Box 7566

Washington, D.C. 20044-7566

Tele: (202) 662-6000

Fax: (202) 662-6291

JOHNSON & JOHNSON

Donald Schott

Waltraud A. Arts

QUARLES & BRADY, LLP

One South Pickney Street, Suite 600

Madison, WI 53703-2808

Tele: (608) 251-5000

Fax: (608) 251-9166

William F. Cavanaugh, Jr.

Andrew Schau

PATTERSON, BELKNAP, WEBB & TYLER LLP

1133 Avenue of the Americas
New York, NY 10036-6710
Tele: (212) 336-2000
Fax: (212) 336-2500

PFIZER INC. AND PHARMACIA CORPORATION

Beth Kushner
Timothy Feeley
VON BRIESEN & ROPER, S.C.
411 East Wisconsin Ave., Suite 700
Milwaukee, WI 53202
Tele: (414) 287-1373
Fax: (414) 276-6281

John C. Dodds
Kimberly K. Heuer
MORGAN, LEWIS & BOCKIUS, LLP
1701 Market Street
Philadelphia, PA 19103
Tele: (215) 963-5000
Fax: (215) 963-5001

Scott A. Stempel
MORGAN, LEWIS & BOCKIUS, LLP
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004
Tele: (202) 739-3000
Fax: (202) 739-3001

SCHERING-PLOUGH CORPORATION

Earl H. Munson
BOARDMAN, SUHR, CURRY & FIELD, LLP
One South Pickney Street
Fourth Floor, P.O. Box 927
Madison, WI 53701-0927
Tele: (608) 283-1796
Fax: (608) 283-1709

Brien T. O'Connor
ROPES & GRAY, LLP
One International Place
Boston, MA 02110
Tele: (617) 951-7385
Fax: (617) 951-7050

TAP PHARMACEUTICAL PRODUCTS, INC.

Allen C. Schlinsog, Jr.
Mark A. Cameli
REINHART BOERNER VAN DEUREN, S.C.
1000 North Water Street
P.O. Box 2965
Milwaukee, WI 53201-2965
Tele: (414) 298-1000
Fax: (414) 298-8097

Lynn M. Stathas
Anthony J. Lucchesi
REINHART BOERNER VAN DEUREN, S.C.
22 East Mifflin Street
P.O. Box 2018
Madison, WI 53701-2018
Tele: (608) 229-2200
Fax: (608) 229-2100

Daniel E. Reidy
Lee Ann Russo
Tina M. Tabacchi
JONES DAY
77 West Wacker
Chicago, IL 60601-1692
Tele: (312) 782-3939
Fax: (312) 782-8585

WATSON PHARMACEUTICALS, INC.

Douglas B. Farquhar
HYMAN, PHELPS & MCNAMARA, P.C.
700 13th Street, N.W., Suite 1200
Washington, D.C. 20005
Tele: (202) 737-5600
Fax: (202) 737-9329

Ralph Weber
GASS WEBER MULLINS, LLC
309 North Water Street
Milwaukee, WI 53202
Tele: (414) 223-3300
Fax: (414) 224-6116

AUG - 3 2004

FILED
CLERK'S OFFICE

DOCKET NO. 1456

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

**IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE
LITIGATION**

State of Wisconsin v. Abbott Laboratories, et al., W.D. Wisconsin, C.A. No. 3:04-477

CONDITIONAL TRANSFER ORDER (CTO-17)

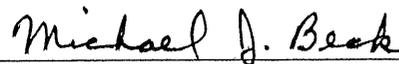
On April 30, 2002, the Panel transferred 16 civil actions to the United States District Court for the District of Massachusetts for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. Since that time, 32 additional actions have been transferred to the District of Massachusetts. With the consent of that court, all such actions have been assigned to the Honorable Patti B. Saris.

It appears that the action on this conditional transfer order involves questions of fact which are common to the actions previously transferred to the District of Massachusetts and assigned to Judge Saris.

Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001), this action is transferred under 28 U.S.C. § 1407 to the District of Massachusetts for the reasons stated in the order of April 30, 2002, 201 F.Supp.2d 1378 (J.P.M.L. 2002), and, with the consent of that court, assigned to the Honorable Patti B. Saris.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the District of Massachusetts. The transmittal of this order to said Clerk shall be stayed fifteen (15) days from the entry thereof and if any party files a notice of opposition with the Clerk of the Panel within this fifteen (15) day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:



Michael J. Beck
Clerk of the Panel

Attachment 1

RULE 5.2: SERVICE OF PAPERS FILED

(a) All papers filed with the Clerk of the Panel shall be accompanied by proof of previous or simultaneous service on all other parties in all actions involved in the litigation. Service and proof of service shall be made as provided in Rules 5 and 6 of the Federal Rules of Civil Procedure. The proof of service shall indicate the name and complete address of each person served and shall indicate the party represented by each. If a party is not represented by counsel, the proof of service shall indicate the name of the party and the party's last known address. The proof of service shall indicate why any person named as a party in a constituent complaint was not served with the Section 1407 pleading. The original proof of service shall be filed with the Clerk of the Panel and copies thereof shall be sent to each person included within the proof of service. After the "Panel Service List" described in subsection (d) of this Rule has been received from the Clerk of the Panel, the "Panel Service List" shall be utilized for service of responses to motions and all other filings. In such instances, the "Panel Service List" shall be attached to the proof of service and shall be supplemented in the proof of service in the event of the presence of additional parties or subsequent corrections relating to any party, counsel or address already on the "Panel Service List."

(b) The proof of service pertaining to motions for transfer of actions pursuant to 28 U.S.C. §1407 shall certify that copies of the motions have been mailed or otherwise delivered for filing to the clerk of each district court in which an action is pending that will be affected by the motion. The proof of service pertaining to a motion for remand pursuant to 28 U.S.C. §1407 shall certify that a copy of the motion has been mailed or otherwise delivered for filing to the clerk of the Section 1407 transferee district court in which any action affected by the motion is pending.

(c) Within eleven days of filing of a motion to transfer, an order to show cause or a conditional transfer order, each party or designated attorney shall notify the Clerk of the Panel, in writing, of the name and address of the attorney designated to receive service of all pleadings, notices, orders and other papers relating to practice before the Judicial Panel on Multidistrict Litigation. Only one attorney shall be designated for each party. Any party not represented by counsel shall be served by mailing such pleadings to the party's last known address. Requests for an extension of time to file the designation of attorney shall not be granted except in extraordinary circumstances.

(d) In order to facilitate compliance with subsection (a) of this Rule, the Clerk of the Panel shall prepare and serve on all counsel and parties not represented by counsel, a "Panel Service List" containing the names and addresses of the designated attorneys and the party or parties they represent in the actions under consideration by the Panel and the names and addresses of the parties not represented by counsel in the actions under consideration by the Panel. After the "Panel Service List" has been received from the Clerk of the Panel, notice of subsequent corrections relating to any party, counsel or address on the "Panel Service List" shall be served on all other parties in all actions involved in the litigation.

(e) If following transfer of any group of multidistrict litigation, the transferee district court appoints liaison counsel, this Rule shall be satisfied by serving each party in each affected action and all liaison counsel. Liaison counsel designated by the transferee district court shall receive copies of all Panel orders concerning their particular litigation and shall be responsible for distribution to the parties for whom he or she serves as liaison counsel.