

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

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STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04-C-0477-C

ABBOTT LABORATORIES, ET AL.,

Defendants.

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**PLAINTIFF STATE OF WISCONSIN'S OPPOSITION TO DEFENDANTS' JOINT  
MOTION FOR EXTENSION OF TIME IN WHICH TO FILE RESPONSIVE  
PLEADINGS**

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Plaintiff, State of Wisconsin, opposes Defendants' motion to extend time to answer or otherwise plead because Defendants' motion is a breach of an agreement they had with Plaintiff's counsel, is inconsistent with an Order already entered by this Court and is unsupported by any convincing rationale. The factual context of this case shows why this is so.

After Defendants removed this case to federal court, Defendants sought out Plaintiffs' counsel in an effort to obtain more time to answer or otherwise plead. They proposed the very extension they now seek from the Court—an open-ended extension giving the Defendants 45 days from the date the remand motion would be decided. Plaintiff's counsel objected to this proposal because it would delay any progress in this case into the foreseeable future. Plaintiff's counsel believed that such a delay was particularly inappropriate in the context of a removal petition which on its face was frivolous and they so informed Defendants' counsel. After negotiating further about this issue, Plaintiff's and Defendants' counsel finally reached agreement on a stipulation giving the Defendants until September 15<sup>th</sup> to answer or otherwise

plead. That stipulation was accepted by the Court, Magistrate Judge Crocker, who entered the stipulation but ruled that no further extensions would be granted. (See the attached Order.)

Two days after the stipulation was entered Defendants filed their materials with the Court asking the Court to stay all the proceedings while they attempted to transfer this case to the MDL. Subsequently, Defendants, by letter, requested that the Court stay briefing on the remand motion (the outcome of which could, and indeed, should moot the conditional transfer proceedings) until after their motion to stay was decided. Defendants informed neither the Court nor opposing counsel that they intended to renege on their earlier agreement to answer or otherwise plead should the Court grant defendants' motion.

The Court granted Defendants' motion to stay briefing on the remand motion. Now, having delayed resolution of the remand motion, Defendants are attempting to gain further delay in filing their responsive pleadings or answer (among other things) by linking these pleadings to the delay they created by staying briefing on the remand motion. In short, Defendants have piled delay on delay all under the now transparently false notion that somehow what they are doing is economical. And all of this is bottomed on a completely frivolous removal petition. It is an appropriate time to reject these continued delays for all the following reasons.

First, Defendants had an agreement with the Plaintiff. They negotiated away their right to ask for more time to answer or otherwise plead when they obtained agreement from Plaintiff's counsel to stipulate to September 15<sup>th</sup> as the return date. And they knew when they reached agreement on this stipulation that they were going to ask for a stay of all proceedings (Defendants had already contacted the MDL and they filed their motion for a stay just two days after the stipulation was entered). In short, Defendants made a deal and they should be held to it.

Second, Judge Crocker specifically ordered that no further delays would be appropriate and that Order should remain in effect. If Defendants believed that his Order was in error they should have promptly sought relief from either Judge Crocker or Judge Crabb and told either one what they were planning to do. Instead, Defendants sat on their hands. They should not be rewarded for doing so.

Third, the problems Defendants say they will encounter if they have to honor their agreement with counsel and answer or otherwise plead are non-existent for two reasons. First, it is truly inconceivable that Defendants will prevail in their efforts to remove this case. Every court to consider the argument advanced by the Defendants to support their removal of this case, from the Supreme Court on down, has rejected it. Second, Defendants' theory that somehow the briefing will differ depending on which court is ultimately assigned the case is simply wrong. The only issue in whatever court this case lands is whether Plaintiff has pleaded a cause of action under Wisconsin law. Contrary to Defendants' representation, there is no need to educate a judge in Dane County about the myriad other state law claims now being litigated in the MDL. And we are sure that Judge Saris in Massachusetts does not need any special coaching on Wisconsin law.

Finally, Defendants do not deserve any special consideration because they are now unsure which court to address. Defendants' confusion about what to do on September 15 when their responsive pleadings are due is all their own doing. Defendants set in motion the chain of events leading to their current motion by filing a baseless removal petition and then bargaining with the Plaintiffs on a due date for their pleadings. They, as all litigants, should be required to accept the consequences of their own conduct.

**CONCLUSION**

Plaintiff respectfully requests that Defendants' motion for extension of time be denied.

Dated this \_\_\_\_ day of August, 2004.

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