

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

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STATE OF WISCONSIN,

Plaintiff,

v.

ABBOTT LABORATORIES, ET AL.,

Defendants.

THERESA M. OWENS
CLERK US DIST COURT
WD OF WI

Case No. 05-C-0408-C

**PLAINTIFF STATE OF WISCONSIN'S RESPONSE TO DEFENDANTS'
MOTION TO FILE SUPPLEMENTAL AUTHORITY**

Plaintiff State of Wisconsin opposes defendants' motion for leave to file supplemental authority. This additional brief was not provided for in the briefing schedule, and it is misleading in that it misstates what took place in Illinois.

Defendants' argue that a decision in the Northern District of Illinois granted them a stay and directed the State of Illinois to the MDL for resolution of its remand motion. This is not what happened. The Court in the Northern District of Illinois simply mistook the conditional transfer order as a final order transferring the case to Massachusetts. That is why he denied defendants' motion for a stay as moot instead of ruling on defendants' request. Illinois has filed a motion to vacate (filed after it surprisingly received the two minute orders attached to defendants' memorandum) which summarizes what happened there. It is attached hereto as Exhibit A.

It may be, because of this unusual posture, that the Illinois case will find its way to the MDL, but, if so, it is for none of the reasons advanced by the defendants, and it will be clear that the three part test utilized by this Court to resolve remand motions was not employed there.

Finally, nothing in defendants' submission changes two facts. First, many different state court judges will decide the issues raised in the AWP cases both because, as in Alabama, some or all the remaining removed cases are promptly remanded back, or because defendants failed to remove more cases than they actually removed.

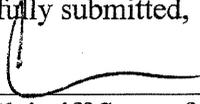
Second, defendants have no rejoinder to the fact that sending this case to the MDL sentences it to a year or more of inactivity. Indeed, past history may understate what will happen to this case. Judge Saris has recently issued a class certification order 89 pages in length (which is why it is not attached here) in which she denied class certification but gave the plaintiffs sixty days to submit the names of new class representatives each of whom may be subject to challenge by the defendants in another round of class certification discovery and briefing. It is also worth noting that no State Medicaid claims are included in this class certification contest.

CONCLUSION

For all these reasons plaintiff opposes defendants' memorandum of supplemental authority and their request that they be given leave to file it.

Dated this 24th day of August, 2005.

Respectfully submitted,



One of Plaintiff State of Wisconsin's Attorneys

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,) No. 05 CH 4056
)
v.) The Honorable Charles R. Norgle, Sr.
)
ABBOTT LABORATORIES, *et al.*,) Magistrate Judge Jeffrey Cole
)
Defendants.)

PLAINTIFF'S MOTION TO VACATE TRANSFER ORDER, TO
REINSTATE CASE, AND TO ALLOW FILING OF PLAINTIFF'S
REPLY BRIEF *INSTANTER* ON THE MOTION TO REMAND

Plaintiff, the State of Illinois, respectfully moves this Court to vacate its Transfer Order (attached as Exh. A) of August 12, 2005, which transferred this case to the Judicial Panel on Multidistrict Litigation. As described below, this Court misinterpreted the Conditional Transfer Order from the JPML of August 9, 2005 (attached as Exh. B). That Conditional Transfer Order is only conditional, and does not take effect until the parties have had a chance to object to it. Accordingly, the JPML has not transferred the case as yet.

In support of this motion, the State of Illinois states as follows:

1. This case was originally filed in the Circuit Court of Cook County. Defendants recently removed it to this Court. The state has filed a motion to remand, and the defendants filed a motion to stay proceedings pending their efforts to get this case transferred by the JPML to the District of Massachusetts. The motion to stay is now fully briefed; the final brief on the motion to remand was due to be filed on August 19, 2005.

Ex A

2. As part of their effort to get this case and other AWP cases transferred to the District of Massachusetts, the defendants notified the JPML of the pendency of this case and suggested it was a "tag-along case" that should be transferred. Pursuant to its standard procedures, the JPML on August 9, 2005 issued a "Conditional Transfer Order" (Exh. B). It is this order that this Court mistakenly interpreted as an order from the JPML ordering the case transferred.

3. The Conditional Transfer Order, however, does *not* transfer the case. Instead, under Rule 12 of the JPML (attached as Exh. C), upon receipt of a Conditional Transfer Order, any party opposing the transfer may file a notice of opposition with the Clerk of the Panel within 15 days of the date of entry of the order. If such a notice of opposition is timely filed, the Clerk of the Panel shall not transmit the conditional transfer order to the clerk of the transferee court until further order of the Panel. Within 15 days of the filing of its notice of opposition, the party opposing transfer shall file a motion to vacate the conditional transfer order. The Clerk of the Panel then sets the motion for hearing at the next appropriate session of the Panel. On August 18, 2005, plaintiff became aware that this Court had issued the "Transfer Order" of August 12, 2005, transferring the case to the District of Massachusetts.

4. Plaintiff does oppose transfer of this case and on Monday, August 22, within the 15-day period provided by Rule 12, plaintiff will file the notice of opposition.

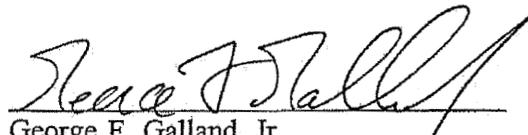
5. In short, this case has not been transferred by the JPML and may never be transferred by it. This Court is therefore respectfully requested to withdraw its erroneous transfer order, to reinstate the case, and to allow the state to file its reply brief on the motion to remand *instanter*.

6. As plaintiff has discussed at length in its brief opposing a stay of proceedings, once the case is reinstated, the law in plaintiff's view requires this Court not to stay proceedings on the motion to remand pending a decision on transfer by the JPML, but to proceed immediately to decide the motion to remand, to grant it, and to remand the case to state court. This is precisely what the federal judge in the Alabama AWP case did, in an order attached hereto as Exh. D.

Respectfully submitted,

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United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Charles R. Norgle	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	05 C 4056	DATE	8/12/2005
CASE TITLE	Illinois vs. Abbott Laboratories, Inc. et al		

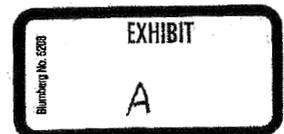
DOCKET ENTRY TEXT:

Transfer Order

On 8/12/2005, the court received an order from the MDL dated 8/9/2005, which transferred this case to the District of Massachusetts. The parties shall routinely proceed to the transferee court pursuant to the MDL rules. The court moves expeditiously to inform counsel, to ensure the parties do not prepare additional briefs. Defendants Joint Motion to Stay [76-1] is denied as moot.

Docketing to mail notices.

	Courtroom Deputy Initials:	ER
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UNITED STATES OF AMERICA
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

CHAIRMAN:
Judge Wm. Terrell Hodges
United States District Court
Middle District of Florida

MEMBERS:
Judge John F. Keenan
United States District Court
Southern District of New York

Judge D. Lowell Jensen
United States District Court
Northern District of California

Judge J. Frederick Motz
United States District Court
District of Maryland

Judge Robert L. Miller, Jr.
United States District Court
Northern District of Indiana

Judge Kathryn H. Vratil
United States District Court
District of Kansas

Judge David R. Hansen
United States Court of Appeals
Eighth Circuit

DIRECT REPLY TO:

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Thurgood Marshall Federal
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Telephone: [202] 502-2800
Fax: [202] 502-2888

<http://www.jpml.uscourts.gov>

August 9, 2005

TO INVOLVED COUNSEL

Re: MDL-1456 -- In re Pharmaceutical Industry Average Wholesale Price Litigation

(See Attached Schedule CTO-25)

Dear Counsel:

Attached hereto is a copy of a conditional transfer order filed today by the Panel involving the above-captioned matter. This matter is transferred 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). Copies of Rule 5.2, dealing with service, and Rules 7.4 and 7.5, regarding "tag-along" actions, are attached for your convenience.

Inasmuch as there is an unavoidable time lag between notification of the pendency of the tag-along action and the filing of a conditional transfer order, counsel are required by Rule 7.4(b) to notify this office **BY FACSIMILE**, at (202) 502-2888, of any official changes in the status of the tag-along action. These changes could involve dismissal of the action, remand to state court, transfer to another federal court, etc., as indicated by an order filed by the district court. Your cooperation would be appreciated.

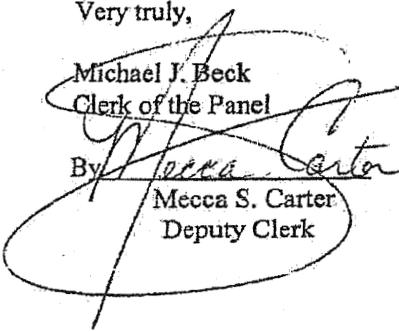
NOTICE OF OPPOSITION DUE ON OR BEFORE: August 24, 2005 (4 p.m. EST)
(Facsimile transmission is suggested.)

If you are considering opposing this conditional transfer order, please review Rules 7.4 and 7.5 of the Panel Rules before filing your Notice of Opposition.

A list of involved counsel is attached.

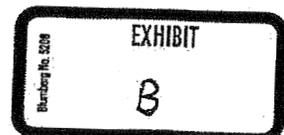
Very truly,

Michael J. Beck
Clerk of the Panel

By 
Mecca S. Carter
Deputy Clerk

Attachments

JPML Form 39



AUG - 9- 2005

FILED
CLERK'S OFFICE.

DOCKET NO. 1456

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

*IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESAL PRICE
LITIGATION*

(SEE ATTACHED SCHEDULE)

CONDITIONAL TRANSFER ORDER (CTO-25)

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, 59 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 actions on this conditional transfer order involve 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), these actions are 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

Michael J. Beck
Clerk of the Panel

SCHEDULE CTO-25 - TAG-ALONG ACTIONS
DOCKET NO. 1456
IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE
LITIGATION

<u>DIST. DIV. C.A. #</u>	<u>CASE CAPTION</u>
ALABAMA MIDDLE ALM 2 05-647	State of Alabama v. Abbott Laboratories, Inc., et al.
FLORIDA NORTHERN FLN 4 05-257	State of Florida ex rel., et al. v. Alpharma, Inc., et al.
ILLINOIS NORTHERN ILN 1 05-4056	The People of the State of Illinois v. Alpharma, Inc., et al.
KENTUCKY EASTERN KYE 3 05-47 KYE 3 05-48 KYE 3 05-49	Commonwealth of Kentucky, etc. v. Alpharma, Inc., et al. Commonwealth of Kentucky, etc. v. Abbott Laboratories, Inc. Commonwealth of Kentucky v. Warrick Pharmaceuticals Corp., et al.
MINNESOTA MN 0 05-1394	State of Minnesota, etc. v. Pharmacia Corp.
NEW YORK NORTHERN NYN 1 05-872 NYN 1 05-873 NYN 1 05-874	People of the State of New York, etc. v. Pharmacia Corp. The People of the State of New York, etc. v. Aventis Pharmaceuticals, Inc. The People of the State of New York, etc. v. GlaxoSmithkline, PLC, et al.
PENNSYLVANIA EASTERN PAE 2 05-3604	Commonwealth of Pennsylvania, etc. v. Tap Pharmaceutical Products, Inc., et al.
WISCONSIN WESTERN WIW 3 05-408	State of Wisconsin v. Abbott Laboratories, et al.

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.

RULE 7.4: CONDITIONAL TRANSFER ORDERS FOR "TAG-ALONG ACTIONS"

(a) Upon learning of the pendency of a potential "tag-along action," as defined in Rule 1.1 of these Rules, an order may be entered by the Clerk of the Panel transferring that action to the previously designated transferee district court on the basis of the prior hearing session(s) and for the reasons expressed in previous opinions and orders of the Panel in the litigation. The Clerk of the Panel shall serve this order on each party to the litigation but, in order to afford all parties the opportunity to oppose transfer, shall not send the order to the clerk of the transferee district court for fifteen days from the entry thereof.

(b) Parties to an action subject to a conditional transfer order shall notify the Clerk of the Panel within the fifteen-day period if that action is no longer pending in its transferor district court.

(c) Any party opposing the transfer shall file a notice of opposition with the Clerk of the Panel within the fifteen-day period. If a notice of opposition is received by the Clerk of the Panel within this fifteen-day period, the Clerk of the Panel shall not transmit said order to the clerk of the transferee district court until further order of the Panel. The Clerk of the Panel shall notify the parties of the briefing schedule.

(d) Within fifteen days of the filing of its notice of opposition, the party opposing transfer shall file a motion to vacate the conditional transfer order and brief in support thereof. The Chairman of the Panel shall set the motion for the next appropriate hearing session of the Panel. Failure to file and serve a motion and brief shall be treated as withdrawal of the opposition and the Clerk of the Panel shall forthwith transmit the order to the clerk of the transferee district court.

(e) Conditional transfer orders do not become effective unless and until they are filed with the clerk of the transferee district court.

(f) Notices of opposition and motions to vacate such orders of the Panel and responses thereto shall be governed by Rules 5.12, 5.2, 7.1 and 7.2 of these Rules.

RULE 7.5: MISCELLANEOUS PROVISIONS CONCERNING "TAG-ALONG ACTIONS"

(a) Potential "tag-along actions" filed in the transferee district require no action on the part of the Panel and requests for assignment of such actions to the Section 1407 transferee judge should be made in accordance with local rules for the assignment of related actions.

(b) Upon learning of the pendency of a potential "tag-along action" and having reasonable anticipation of opposition to transfer of that action, the Panel may direct the Clerk of the Panel to file a show cause order, in accordance with Rule 7.3 of these Rules, instead of a conditional transfer order.

(c) Failure to serve one or more of the defendants in a potential "tag-along action" with the complaint and summons as required by Rule 4 of the Federal Rules of Civil Procedure does not preclude transfer of such action under Section 1407. Such failure, however, may be submitted by such a defendant as a basis for opposing the proposed transfer if prejudice can be shown. The inability of the Clerk of the Panel to serve a conditional transfer order on all plaintiffs or defendants or their counsel shall not render the transfer of the action void but can be submitted by such a party as a basis for moving to remand as to such party if prejudice can be shown.

(d) A civil action apparently involving common questions of fact with actions under consideration by the Panel for transfer under Section 1407, which was either not included in a motion under Rule 7.2 of these Rules, or was included in such a motion that was filed too late to be included in the initial hearing session, will ordinarily be treated by the Panel as a potential "tag-along action."

(e) Any party or counsel in actions previously transferred under Section 1407 or under consideration by the Panel for transfer under Section 1407 shall promptly notify the Clerk of the Panel of any potential "tag-along actions" in which that party is also named or in which that counsel appears.

INVOLVED COUNSEL LIST (CTO-25)
DOCKET NO. 1456
IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE
LITIGATION

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Rule 12. Conditional Transfer Orders for "Tag-Along Actions",

(a) Upon learning of the pendency of a potential "tag-along action," as defined in Rule 1 of these Rules, an order may be entered by the Clerk of the Panel transferring that action to the previously designated transferee district court on the basis of the prior hearing or hearings and for the reasons expressed in previous opinions and orders of the Panel in the litigation. The Clerk of the Panel shall serve this order on each party to the litigation but, in order to afford all parties the opportunity to oppose transfer, shall not send the order to the clerk of the transferee district court for fifteen days from the entry thereof.

(b) Parties to an action subject to a conditional transfer order shall notify the Clerk of the Panel within the fifteen-day period if that action is no longer pending in its transferor district court.

(c) Any party opposing the transfer shall file a notice of opposition with the Clerk of the Panel within the fifteen-day period. If a notice of opposition is received by the Clerk of the Panel within this fifteen-day period, the Clerk of the Panel shall not transmit said order to the clerk of the transferee district court until further order of the Panel.

(d) Within fifteen days of the filing of its notice of opposition, the party opposing transfer shall file a motion to vacate the conditional transfer order and brief in support thereof. The Clerk of the Panel shall set the motion for hearing at the next appropriate session of the Panel. Failure to file and serve a motion and brief shall be treated as withdrawal of the opposition and the Clerk of the Panel shall forthwith transmit the order to the clerk of the transferee district court.

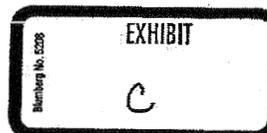
(e) Conditional transfer orders do not become effective unless and until they are filed with the clerk of the transferee district court.

(f) Notices of opposition and motions to vacate orders of the Panel and responses thereto shall be governed by Rules 7, 8, 9 and 10 of these Rules.

(Added May 3, 1993, eff. July 1, 1993.)

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

STATE OF ALABAMA, in its)
capacity as sovereign and)
on behalf of the Alabama)
Medicaid Agency,)

Plaintiff,)

v.)

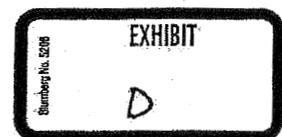
ABBOTT LABORATORIES,)
INC., et al.,)

Defendants.)

CIVIL ACTION NO.
2:05cv647-T

ORDER

After careful consideration of the state-law claims presented in this case, the court does not believe that the claims "necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." Grable & Sons Metal Prods., Inc. v. Darue Eng'g. & Mfr., 545 U.S. ___, ___, 125 S. Ct. 2363, 2368 (2005); see also Caterpillar, Inc. v. Williams, 482 U.S. 386, 107 S.Ct. 2425 (1987); Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 107 S.Ct. 1542 (1987);



Merrell Dow Pharmaceuticals, Inc. v. Thompson, 478 U.S. 804, 106 S.Ct. 3229 (1986); Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 103 S.Ct. 2841 (1983); Gully v. First National Bank of Meridian, 299 U.S. 109, 57 S.Ct. 96 (1936).

Accordingly, it is the ORDER, JUDGMENT, and DECREE of the court that plaintiff's motion to remand (Doc. no. 69) is granted and that, pursuant to 28 U.S.C.A. § 1447(c), this cause is remanded to the Circuit Court of Montgomery County, Alabama, for want of subject-matter jurisdiction.

It is further ORDERED that plaintiff's and defendants' motions to stay (Doc. nos. 71 & 109) and plaintiff's motion for expedited ruling (Doc. no. 73) are denied.

It is further ORDERED that all other substantive motions are left for disposition by the state court after remand.

The clerk of the court is DIRECTED to take appropriate steps to effect the remand.

DONE, this the 11th day of August, 2005.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE