

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

STATE OF WISCONSIN,

Plaintiff,

v.

ABBOTT LABORATORIES, AMGEN, INC.,
ASTRAZENECA PHARMACEUTICALS, LP,
ASTRAZENECA, LP, AVENTIS PHARMACEUTICALS,
INC., AVENTIS BEHRING, LLC., BAXTER
INTERNATIONAL, INC., BAYER CORPORATION,
BOEHRINGER INGELHEIM CORPORATION,
BRISTOL-MYERS SQUIBB CO., DEY, INC.,
FUJISAWA HEALTHCARE, INC.,
GENSIA SICOR PHARMACEUTICALS, INC.,
GLAXOSMITHKLINE, INC., JOHNSON &
JOHNSON, INC., PFIZER, INC., PHARMACIA
SCHERING-PLOUGH CORPORATION,
TAP PHARMACEUTICAL PRODUCTS, INC.,
and WATSON PHARMACEUTICALS, INC.,

Defendants.

ORDER

04-C-447-C

This is a suit for monetary and injunctive relief filed by the State of Wisconsin on behalf of its citizens, state programs, and private payers against twenty pharmaceutical manufacturers. Plaintiff alleges that defendants inflated the average wholesale prices of their

drugs, thereby violating several provisions of Wisconsin law. This case was filed in the Circuit Court for Dane County on June 3, 2004. Defendant Bayer Corporation removed the case to this court by filing a notice of removal with this court on July 14, 2004. In that notice, defendant Bayer alleged federal jurisdiction under the diversity statute, 28 U.S.C. § 1332. On July 22, 2004, defendants jointly filed a motion to stay all proceedings in this court pending a possible transfer of this case by the Judicial Panel on Multidistrict Litigation. On July 26, plaintiff filed a motion to remand this case back to the Dane County court. In separate orders dated August 2 and 3, 2004, I stayed briefing on plaintiff's motion to remand until defendants' motion to stay is resolved. On August 3, 2004, the Judicial Panel on Multidistrict Litigation issued a Conditional Transfer Order transferring this case to the District of Massachusetts pursuant to 28 U.S.C. § 1407. The panel found that this case presented questions of fact similar to cases that have been assigned to Judge Patti B. Saris in the District of Massachusetts. See In Re Immunex Corp. Average Wholesale Price Litigation, 201 F. Supp. 2d 1378 (J.P.M.L. 2002).

In Meyers v. Bayer AG, 143 F. Supp. 2d 1044, 1048-49 (E.D. Wis. 2001), the district court proposed an analytical framework for situations in which a court must decide both a motion to remand and a motion to stay proceedings pending a possible MDL transfer. According to Meyers, the district court's "first step should be to make a preliminary assessment of the jurisdictional issue." Id. at 1048. If this initial examination

suggests that removal was improper, the court should promptly complete its consideration and remand the case to state court. If, on the other hand, the jurisdictional issue appears factually or legally difficult, the court's second step should be to determine whether identical or similar jurisdictional issues have been raised in other cases that have been or may be transferred to the MDL proceeding.

Id. at 1049. Finally, “[o]nly if the jurisdictional issue is both difficult and similar or identical to those in cases transferred or likely to be transferred should the court proceed to the third step and consider the motion to stay.” Id. I find the Meyers court's analytical framework persuasive and adopt it for the purpose of this order.

After examining the briefs supporting and opposing the motion to stay, as well as the orders entered by other district courts that addressed motions to remand coupled with motions to stay pending a possible MDL transfer, it appears that removal was improper in this case. It is appropriate to take up the jurisdictional issue in this court because the question involves no specialized knowledge about the merits of the case or the handling of the other pharmaceutical cases and there is no apparent overlap between the jurisdictional issue presented in this case and the jurisdictional issues raised in other cases that have been transferred to Judge Saris. However, I am willing to entertain any additional arguments defendants may have in support of this court's jurisdiction. Therefore, I will lift the stay on the briefing on plaintiff's motion to remand. Defendants will have until September 22, 2004 to submit additional arguments regarding why this case should not be remanded to the

Circuit Court for Dane County. Should defendants submit argument opposing the motion to remand, plaintiff need not submit a reply brief.

IT IS ORDERED that defendants may have until September 22, 2004, in which to submit any additional arguments they have concerning plaintiff's motion to remand. A reply brief from plaintiff is not necessary.

Entered this 9th day of September, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge