IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated,	:	**Civil No. 3:18-CV-1144**
	:	**(Judge Mariani)**
Plaintiffs	:	**(Magistrate Judge Carlson)**
v.	:	
MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP, NATALIE D. RAMSEY and LEONARD A. BUSBY,	:	
Defendants	:	

REPORT AND RECOMMENDATION

I. INTRODUCTION

There is a certain measure of jurisdictional irony in his case. This litigation began in the Court of Common Pleas of Luzerne County as a malpractice action against the law firm that represented the interests of the plaintiff in a complex bankruptcy case. That bankruptcy case, in turn, was litigated in the United States District Court for the Southern District of New York.

The lawsuit is now before this court. However, the one thing all parties seem to agree upon is that this case should not remain with this court. What divides these parties, and now requires the attention of this court, is the question of the next legal

waystation for this litigation. The defendants insist that this litigation should be overseen by the federal court which presided over the bankruptcy litigation, the Southern District of New York. The plaintiff, in turn, invites us to return this litigation to the venue from whence it came, to the Court of Common Pleas of Luzerne County. Upon consideration of the parties' competing positions, for the reasons set forth below, we recommend the following roadmap for this peripatetic lawsuit: The defendants' motion to have this case transferred to the United States District Court for the Southern District of New York be GRANTED and that the Court decline to rule on the plaintiff's motion to remand or the defendants' motion to dismiss so that these motions may be addressed by the bankruptcy court, which has the greatest interest in, and the greatest familiarity with, the issues raised in this litigation.

II. FACTUAL AND PROCEDURAL BACKGROUND

Stanley Waleski initiated this action on behalf of himself and as many as 4,300 other unsecured creditors of Tronox, Inc., a large chemical company that filed for chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Southern District of New York in January 2009. Waleski and the putative class of plaintiffs he purports to represent (the "Avoca Plaintiffs") recovered a portion of $329 million in damages from a bankruptcy trust that was created as part of the Tronox bankruptcy to compensate victims of environmental contamination that

Tronox caused. This recovery was funded by a $5.15 billion settlement of fraudulent transfer claims brought on behalf of the bankruptcy estate in the Southern District of New York – the largest settlement ever obtained in an environmental case. That settlement ensured that creditors like Waleski and the Avoca Plaintiffs – who were allegedly injured as a result of the release of toxic chemicals from Tronox's wood treatment plant in Avoca, Pennsylvania – would enjoy some recovery on their claims, as the settlement provided that 12% of the proceeds of the settlement, along with other funds, would be deposited into a bankruptcy trust for the benefit of these creditors. The terms of the fraudulent transfer settlement, the terms of the reorganization plan that was confirmed by the bankruptcy court, and the procedures for the allocation and distribution of trust funds were litigated and resolved in the Southern District of New York as part of the administration of the Tronox bankruptcy.

During the Tronox bankruptcy, and throughout the post-reorganization proceedings, the Avoca Plaintiffs were represented by the Powell Law Group, P.C. In late January 2009, the Powell Law Group and the defendant in the instant action, Montgomery McCracken Walker & Rhoads LLP ("MMWR") entered into a contingent fee agreement which provided that MMWR would assist in representing Powell Law Group's clients in the Tronox bankruptcy. That agreement provided that MMWR would represent the interests of the Avoca Plaintiffs "in a manner to be

mutually agreed with [Powell Law Group]." (Compl., Ex. A, p. 1.) Pursuant to the agreement, MMWR represented the interests of the Avoca Plaintiffs during the Tronox bankruptcy, including being involved in the preparation and confirmation of the reorganization plan. MMWR also represented Avoca Plaintiff Michael E. Carroll as a member of the creditor's committee that was appointed to represent the interests of unsecured creditors, and the bankruptcy court approved payment of MMWR's fees for representing Mr. Carrol in his capacity on the creditor's committee. (Doc. 19, Ex. A, Order Confirming Plan at ¶ 156; Reorganization Plan (attached as Ex. A to Order), Art. XII, § E.)

The plan that the bankruptcy court approved also expressly provided that the United States Bankruptcy Court for the Southern District of New York would retain jurisdiction over all matters arising out of or related to the Tronox chapter 11 case or the reorganization plan, including jurisdiction to:

> 7. enter and implement such orders as may be necessary or appropriate to execute, implement or consummate the provisions of the Plan and all contracts, instruments, releases, indentures and other agreements or documents created in connection with the Plan or the Disclosure Statement;
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> . . .
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> 9. resolve any cases, controversies, suits, disputes or Causes of Action that may arise in connection with the Consummation, interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;
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> . . .
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> 11. resolve any cases, controversies, suits, disputes or Causes of Action with respect to the releases, injunctions and other provisions contained in Article VIII and enter such orders as may be necessary or

> appropriate to implement such releases, injunctions, and other provisions;
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> . . .
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> 14. determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan or the Disclosure Statement;
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> 16. adjudicate any and all disputes arising from or relating to Distributions under the Plan;
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> 19. hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents or instruments executed in connection with the Plan;
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> 21. hear and determine all disputes involving the existence, nature, scope, or enforcement of any exculpations, discharges, injunctions and releases granted in the Plan . . .;
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> 22. enforce all orders previously entered by the Bankruptcy Court . . .

(Plan, Article XI, §§ 7, 9, 11, 14, 16, 19, 21-22.) The reorganization plan became effective on February 14, 2010. (Compl., ¶ 56.)

During the Tronox bankruptcy proceedings, another group of alleged environmental tort victims from Mississippi also alleged that they had claims against the estate stemming from environmental contamination. (Compl., ¶47.) An *ad hoc* committee representing the Mississippi claimants filed a collective proof of claim in the bankruptcy court in advance of the claims bar date. (Id.) The trust claims administrator approved their claims in the aggregate amount of $343 million. (Id., ¶62.) The Avoca Plaintiffs, through the law firm Brown Rudnick, which was

representing them at the time, objected to the proposed distribution of funds to non-asbestos toxic exposure victims, which were referred to in the bankruptcy as "Category D" claims. (Id., ¶ 71.) On June 17, 2015, the bankruptcy court rejected the Avoca Plaintiffs' objection and upheld the trustee's decision to include the Mississippi claimants in the Category D distributions. In re: Tronox, Inc., No. 09-10156, 2015 WL 3799702 (Bankr. S.D.N.Y. Jun 17, 2015). The bankruptcy court entered a final decree on September 30, 2015. Also in September 2015, the Avoca Plaintiffs endeavored to pursue claims against a successor entity to Tronox in the Luzerne County Court of Common Pleas, but they were enjoined from pursuing these bankruptcy-related claims. See In re Tronox, 549 B.R. 21 (S.D.N.Y. 2016), appeal dismissed, 855 F.3d 84 (2d Cir. 2017).

Frustrated by the diminution of their claims by the bankruptcy court, and foreclosed from seeking relief in Luzerne County, Waleski initiated the instant action by filing another complaint in the Luzerne County Court of Common Pleas, this time naming MMWR and two of its lawyers, Natalie D. Ramsey and Leonard A. Busby, as defendants, alleging that the settlement that he received from Tronox was unreasonably diluted and undervalued, and seeking to recover additional monies from the law firm and its attorneys under a malpractice theory. Waleski now seeks to represent himself and the other Avoca Plaintiffs who previously settled their claims with the bankruptcy trust, alleging that the defendants breached the

contingent fee agreement between MMWR and Powell Law Group, and for breach of the same agreement under an intended beneficiary theory. (Compl., Counts I and II.)

On June 4, 2018, MMWR removed the case to this Court pursuant to 28 U.S.C. § 1441(a) and 1452(a). (Doc. 1.) On June 11, 2018, MMWR filed a motion to dismiss the complaint, (Doc. 6), and a second motion to have the case transferred to the United States District Court for the Southern District of New York (Doc. 7). Waleski has opposed these motions and has filed a motion to remand this case to the Court of Common Pleas. (Doc. 11.)

Although the parties disagree about the facts and the law applicable, the motions do make it clear that the parties agree on one thing: neither Waleski nor the defendants believe that this case should remain venued in the United States District Court for the Middle District of Pennsylvania. Upon consideration of the motions, and guided by the substantial weight of relevant legal authority as applied to Waleski's claims and the factual background that gave rise to them, we recommend that the case be transferred to the Southern District of New York, where the plaintiff's motion for remand and the defendants' motion to dismiss may be considered by the Court having the greatest interest in, and familiarity with, this dispute.

III. DISCUSSION

The first question we must address in this matter relates to the order in which we should consider, and address, the parties' competing suggestions regarding where his lawsuit should be litigated. In contexts such as this one, where a party's claims either arise out of or relate to a bankruptcy proceeding that is pending or was administered in another court, courts have generally found that motions to transfer venue should be considered before a motion for remand or dismissal. See George Junior Republic v. Williams, No. 07-4537, 2008 WL 763304, at *5 (E.D. Pa. Mar. 21, 2008) ("the 'home court' is in the best position to evaluate the claims and determine whether remand is appropriate"); Hohl v. Bastian, 279 B.R. 165, 178 (W.D. Pa. 2002) (the "home court" of the underlying bankruptcy proceeding is the proper venue for adjudicating related litigation); In re Allegheny Health, Educ. & Research Found., Nos. 98-25773, 98-26774, 98-25777, 99-0932, 1999 WL 1033566 (Bankr. E.D. Pa. Nov. 10, 1999) (transferring a case "related to" a bankruptcy proceeding to the bankruptcy court for consideration of a motion to remand); In re III Enterprises, Inc. V, 163 B.R. 453, 458 n.2 (Bankr. E.D. Pa. 1994); In re Convent Guardian Corp., 75 B.R. 346, 347 (Bankr. E.D. Pa. 1987) (finding that motion for remand "should be resolved by the 'home court', i.e. [the bankruptcy court]"); Colarusso v. Burger King Corp., 35 B.R. 365, 366-68 (Bankr. E.D. Pa. 1984). Like

these courts, we find that there is good reason to resolve the defendants' motion to transfer in the first instance.

In the bankruptcy context, 28 U.S.C. § 1412 specifically provides that "[a] district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties." Courts have construed this disjunctive language as it is written and found that an action may be transferred if the transfer would be in the interest of justice ***or*** if it would be more convenient to the parties. Miller v. Chrysler Group, LLC, No. 12-760, 2012 WL 6093836, at *5 (D.N.J. Dec. 7, 2012); Clark v. Chrysler Group, LLC, No. 10-3030, 2010 WL 4486927, at *5 (E.D. Pa. Nov. 5, 2010).

The "interest of justice" prong is "broad and flexible," Miller, 2012 WL 6093836, at *5, and the factors that may be considered by a court in ruling on a motion to transfer are not exclusive. In addition to relying on certain presumptions applicable to bankruptcy-related proceedings discussed below, courts will also consider the factors applicable to motions for transfer brought under 28 U.S.C. § 1404(a), including: (1) the plaintiff's choice of forum; (2) defendant's preference; (3) whether the underlying claim arose elsewhere; (4) relative physical and financial conditions of the parties; (5) convenience of witnesses; (6) location of books and records; (7) enforceability of any judgment obtained; (8) practical considerations tending to make trial expeditious or inexpensive; (9) administrative difficulty arising

from court congestion; (10) local interest in the controversy; (11) public policies in each forum; and (12) the trial court's familiarity with applicable law. See, e.g., Al's Family Automotive v. Bennett, No. 11-6237, 2012 WL 246226, at *1 (E.D. Pa. Jan. 25, 2012); see also Dearden v. FCA US LLC, No.5:15-cv-00713, 2017 WL 1190980, at *4 (E.D. Pa. Mar. 31, 2017).

Motions to transfer bankruptcy-related proceedings brought under 28 U.S.C. §1412 are also typically subject to certain presumptions regarding transfer. Chief among these presumptions is the principle that when a civil case is filed that is related to a bankruptcy proceeding venued elsewhere, the case should be litigated in the district where the bankruptcy was filed. Dearden v. FCA US LLC, 2017 WL 119080, at *4 (E.D. Pa. Mar. 31, 2017) (transferring case to district where bankruptcy was pending, noting "First, it is presumed that when a case is related to a bankruptcy proceeding, the district where the bankruptcy is pending is generally the appropriate venue."); Clark v. Chrysler Group, LLC, No. 10-3030, 2010 WL 4486927, at *9 (E.D. Pa. Nov. 5, 2010); Toth v. Bodyonics, Ltd., No.06-1617, 2007 WL 792172 (E.D. Pa. Mar. 15, 2007); Krystal Cadillac-Oldsmobile-GMC Truck, Inc. v. General Motors Corp., 232 B.R. 622, 627 (Bankr. E.D. Pa. 1999).

Second, this resumption in favor of transfer of an action to the bankruptcy court is further buttressed in a case such as this where the bankruptcy court has expressly retained continuing jurisdiction over matters arising out of the bankruptcy.

In such instances courts presume that the bankruptcy court is generally the appropriate venue if the bankruptcy court expressly retained jurisdiction over the dispute. Dearden, 2017 WL 119080, at *4; Clark, 2010 WL 4486927, at *9.

Third, courts frequently find that transfer to the bankruptcy court is more likely to achieve judicial economy and avoid inconsistency. Id.; see also Shared Network Users Grp., Inc. v. WorldCom Techs., Inc., 309 B.R. 446, 452 (E.D. Pa. 2004). This is so even in cases where the debtor "is defunct, the bankruptcy case long cold, and the presiding judge retired." Miller v. Chrysler Group, LLC, No. 12-760, 2012 WL 6093836, at *6 (D.N.J. Dec. 7, 2012). Relatedly, the bankruptcy court is generally considered to be in the best position to evaluate the validity of claims relating to the bankruptcy proceedings that were thoroughly litigated before that court. Ritter v. Chrysler Group, LLC, No. 4:13-CV-2123, 2013 WL 7175621 (M.D. Pa. Oct. 28, 2013).

Applying these presumptions to the instant case, we find that they weigh in favor of transferring Waleski's claims to the Southern District of New York.

At the outset, Waleski's claims plainly arose in the context of the Tronox bankruptcy and seek to challenge MMWR's representation of his and other creditor interests in that proceeding. Moreover, the bankruptcy court expressly retained jurisdiction over the very claims that Waleski seeks to bring here, regardless of the theories he applies to them. Waleski is challenging counsel's representation of the

Avoca Plaintiffs' interests, but that representation also goes directly to the plan that the bankruptcy court approved, the tort claims distribution procedures that were thoroughly litigated in those proceedings, and the eventual allowance of claims, (Compl., ¶¶ 49, 53, 56, 58, 66-67, 85-87, 103-05), all of which falls squarely within the broad reservation of the bankruptcy court's jurisdiction as set forth in the plan that the court confirmed. (Plan, Art. XI, §§ 7, 9, 11, 14, 16, 19, 21-22.)

We also agree with the defendants that having Waleski's case transferred to the Southern District of New York is likely to lead to greater judicial economy by having the entire controversy considered in the venue with the most familiarity with the complex bankruptcy proceedings that were litigated and resolved there. This is particularly true because Waleski's attack on counsel's representation relates directly to the bankruptcy court's own rulings regarding the Avoca Plaintiffs' objections to the Mississippi claims, and its rulings on the allowance of claims and the trust distribution process. It would seem to make little sense to have this Court evaluate counsel's representation in that context, which would involve analyzing and potentially questioning the bankruptcy court's own resolution of the Avoca Plaintiffs' objections, and the distribution that the Avoca Plaintiffs eventually received.

Aside from finding that these factors strongly counsel for a transfer of this action to the bankruptcy court, we also agree with the defendants that a number of

the § 1404 factors militate in favor of transfer. Although the Avoca Plaintiffs' choice of forum is to be given consideration, we believe that the court best suited to determining whether their preferred choice of forum – the Luzerne County Court of Common Pleas – is the proper place to resolve dispute is the Southern District of New York. Transferring the case to the court which presided over the underlying bankruptcy will allow that matter to be addressed by the court in the best position to determine this threshold question. Yet, that transfer does not necessarily prejudice Waleski since the bankruptcy presiding court would remain entirely free to grant the plaintiff's motion to remand. Furthermore, regardless of Waleski's preference regarding forum, the "overwhelmingly significant factor" of judicial economy, Shared Nework Users, 309 B.R. at 452, impels transfer in the first instance.

The second and third factors – the defendant's choice of forum, and the place where the underlying claim arose – both weigh in favor of transfer. The defendants prefer to be in the Southern District of New York, and Waleski's claims grew directly out of the defendants' representation of the Avoca Plaintiffs in the bankruptcy proceedings that were administered in that district.

Most of the other remaining factors we are called upon to consider are generally neutral, and do not supply sufficient basis to override the presumption that this case should be transferred. The location of the parties and witnesses would not make the transfer of these proceedings to the Southern District of New York a

particular hardship. Moreover, and Waleski's counsel is sophisticated and would appear to have the resources to litigate this matter in either venue. Further, nothing in the complaint suggests that potential witnesses would be unavailable if this case were transferred at most two hours from where it is currently venued, and Waleski has not persuasively argued that either of these factors militates in favor of this Court retaining jurisdiction.

Considerations regarding the enforceability of judgments, administrative burdens, or public policies that may be implicated are at most neutral and may in fact favor transfer given the Southern District of New York's predominant interest in this matter as it relates to a large bankruptcy that was administered in that district. Moreover, factors relating to expense and efficiency tilt in favor of transferring the case, because the bankruptcy court has far more familiarity with the bankruptcy proceedings and the issues raised in the instant litigation as they relate to those proceedings.

The tenth factor regarding local interest in the matter, and the twelfth factor concerning familiarity with the applicable law, likewise weigh in favor of transfer. The Southern District of New York has substantially more familiarity with the events and circumstances that give rise to Waleski's claims than does this Court, particularly since Waleski is challenging the adequacy of counsel's representation within the bankruptcy proceedings and the claims allowance process that were fully

litigated in the Southern District of New York. Again, given that judicial economy is of paramount importance in this analysis, these factors combine to weigh in favor of transfer.

In summary, given that Waleski's and the Avoca Plaintiffs' claims arise out of the Tronox bankruptcy, and the representation of counsel in those proceedings, we recommend that the Court conclude that these claims should be considered in the first instance by the "home court" that oversaw the bankruptcy and has familiarity with counsel's conduct during the bankruptcy litigation. Dearden, 2017 WL 1190980, at *4; Clark, 2010 WL 4486927, at *9, Toth, 2007 WL 792172, at *2; Krystal Cadillac-Oldsmobile-GMC Truck, Inc., 232 B.R. at 627. Waleski's claims are based upon, and will require interpretation of, bankruptcy law and procedure generally, and specific rulings that the bankruptcy court made during the Tronox bankruptcy. Given the bankruptcy court's familiarity with these matters, and its retention of jurisdiction over the claims being asserted in this litigation, we find that transfer is plainly warranted here.

IV. RECOMMENDATION

Accordingly, IT IS RECOMMENDED that the defendants' motion to have this case transferred to the United States District Court for the Southern District of New York (Doc. 7),be GRANTED and that the Court decline to rule on the plaintiff's motion to remand (Doc. 11), or the defendants' motion to dismiss (Doc.

6) so that these motions may be addressed by the bankruptcy court, which has the greatest interest in, and the greatest familiarity with, the issues raised in this litigation.

The parties are placed on notice that pursuant to Local Rule 72.3:

> Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Submitted this 10th day of December, 2018.

/s/ *Martin C. Carlson*
Martin C. Carlson
United States Magistrate Judge