

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
JOAN CAROL ANDERSON,)	CASE NO. 05-35852 HCD
)	CHAPTER 7
)	
DEBTOR.)	
)	
)	
JOAN CAROL ANDERSON and)	
HOFFMAN ADJUSTMENT COMPANY,)	
PLAINTIFFS,)	
vs.)	PROC. NO. 07-3076
)	
UNITED FARM FAMILY CASUALTY)	
INSURANCE COMPANY, d/b/a INDIANA)	
FARM BUREAU INSURANCE COMPANY,)	
GIL SCHEIDT, and JEFFREY R. OBERLIES,)	
DEFENDANTS.)	

Appearances:

Kevin W. Marshall, Esq., attorney for debtor, Law Office of Smith & Marshall, 5253 Hohman Avenue, Hammond, Indiana 46320;

Lawrence A. Kalina, Esq., attorney for defendants United Farm Casualty Insurance Company, Gil Scheidt, and Jeffrey R. Oberlies, 8396 Mississippi Street, Merrillville, Indiana 46410; and

Jonathan A. Watson, Esq., attorney for Trustee, Warrick & Boyn, LLP, 121 West Franklin Street, Suite 400, Elkhart, Indiana 46516.

MEMORANDUM OF DECISION

At South Bend, Indiana, on March 31, 2008.

Before the court is the Complaint for Damages and Jury Demand (“Complaint”) filed by plaintiffs Joan Carol Anderson (“Anderson” or “plaintiff”) and Hoffman Adjustment Company (“Hoffman”) in the Lake County Superior Court, Gary, Indiana, on June 21, 2007, and removed to this court by defendant Gary D. Boyn, the chapter 7 Trustee (“Trustee”) in Anderson’s bankruptcy case, on July 17, 2007. The court held a status conference on the propriety of the removal to this court and on the court’s jurisdiction over the removed case.

It directed the parties to file briefs on the issue of this court's jurisdiction and to file dispositive motions, if they so chose. The Trustee filed a Motion for Summary Judgment, and the plaintiff filed a Motion to Dismiss Claims against Trustee. The court granted the plaintiff's unopposed motion and dismissed the claims against the Trustee on November 21, 2007. On January 15, 2008, the court took the matter of jurisdiction under advisement. For the reasons that follow, the court grants the Trustee's Motion for Summary Judgment and remands the plaintiffs' Complaint to the state court.

Background

Anderson filed a voluntary chapter 7 bankruptcy petition in this court on September 19, 2005.¹ In her schedules she listed the following property as assets:

Schedule A: Real property – a mobile home residence on six acres	worth \$12,000.
Schedule B: Furniture, collectibles, clothing and jewelry	worth \$ 2,550.
Schedule B: Car	worth \$ 2,000.
Schedule B: Cash and savings	worth \$ 220.

On Schedule C, the debtor listed all her scheduled property as exempt in the amounts listed on her schedules. On Schedule F, she listed \$148,474 in unsecured claims. In reliance upon the schedules, the Trustee declared it to be a no-asset estate, and the court entered an order discharging the debtor on January 2, 2006. The estate was closed on January 5, 2006.

According to the facts presented in the Complaint, Anderson bought an insurance policy from the defendant United Farm Casualty Insurance Company, doing business as Indiana Farm Bureau Insurance Company ("Farm Bureau") with a policy period from April 27, 2006 to April 17, 2007. The personal property policy limit was \$40,000. On July 29, 2006, a fire destroyed Anderson's residence and personal property. At first, Farm Bureau refused to honor the insurance policy. However, the adjustment company Hoffman negotiated a resolution to the debtor's claim without litigation, and the insurance company agreed to pay Anderson \$40,000.

¹ The debtor stated, in Schedules I and J, that she was a waitress earning about \$1,100 a month and paying about \$1,085 in expenses each month.

In his Affidavit, the Trustee stated that a Farm Bureau attorney contacted him on February 25, 2007, to inform him that Anderson had lost her mobile home and personal property in a fire. He told the Trustee that Anderson had filed a claim for more than \$56,200 and that a check in the amount of \$40,000 was about to be issued to cover the loss.² He also said that Anderson had stated to the insurer under oath that the loss did not include any new property acquired after the bankruptcy filing.

The Trustee was of the view that the “debtor had grossly understated the value of her property on the filing of the bankruptcy.” R. 24 at 2, ¶ 8. He asserted that the insurance proceeds on the property, above the exempted amount, should be considered property of the estate. Therefore, he asked the insurance company to issue the check to him to hold for the benefit of creditors. The Trustee then filed a motion to re-open the bankruptcy case. The court granted the motion on March 5, 2007. The insurance company paid \$3,235 to Anderson and the remainder, \$36,765, was given to the Trustee for disposition. The Trustee deposited the insurance proceeds into the estate account.

On June 21, 2007, Anderson and Hoffman filed a Complaint in Lake County Superior Court in Gary, Indiana, against Farm Bureau; Jeffrey R. Oberlies, an attorney for Farm Bureau; Gil Scheidt, an investigator for Farm Bureau (collectively, “Farm Bureau defendants”); and the Trustee, alleging that, despite the negotiated settlement, the insurance company wrongfully paid the insurance proceeds to the Trustee and the Trustee wrongfully possessed those proceeds. The Complaint, with a jury demand, presented the following counts:

Count I – Farm Bureau breached the insurance contract with Anderson.

Count II – Farm Bureau failed to maintain good faith in effectuating the terms of Anderson’s policy.

Count III – Farm Bureau engaged in bad faith in handling Anderson’s insurance claims.

Count IV – Gil Scheidt, Farm Bureau’s investigator, was negligent and misrepresented information to the Trustee.

² In some documents, Anderson’s claim is reported to be \$56,297; in others, \$56,207. The discrepancy is of no consequence to this analysis.

Count V – Jeff Oberlies, Farm Bureau’s attorney, was negligent in his duties to Anderson and misrepresented information to her.

Count VI – The Trustee wrongfully took receipt of the insurance money, notified creditors, and wrongfully refused to release the proceeds of the fire insurance policy to Anderson.

Count VII – Hoffman demands its 10% contingent public adjuster fee after negotiating the claim settlement.

In order to protect his interests in the matter, on July 6, 2007, the Trustee filed a Notice of Removal to remove the state court case to this court. In his view, the issues raised in the Complaint concerning the ownership of the insurance proceeds were within the exclusive jurisdiction of the bankruptcy court. An amended notice was filed July 17, 2007. Neither plaintiff submitted a statement responding to the Notice of Removal.

In his Answer to the Complaint, filed July 16, 2007, the Trustee admitted that he obtained possession of an insurance check and that he sent notice to creditors of those funds. He denied, however, that his possession of the insurance funds was wrongful and denied all other essential allegations. The Trustee offered the following affirmative defenses:

1. Plaintiff Anderson failed to properly state the value of her assets during her bankruptcy proceeding, thus practicing fraud on the court and making false oaths, and should not be permitted to attempt to profit from her wrongdoing.
2. The Plaintiff failed to seek permission from the appointing forum before suing the Defendant Trustee, and therefore the case against the Trustee should be dismissed.
3. The Plaintiff failed to seek permission from the appointing forum before suing the Defendant Trustee, and therefore their claims against him should be held to be waived or estopped.

R. 2 at 5. On August 20, 2007, the remaining defendants filed their Answer to the Complaint. They denied all the essential allegations; their affirmative defenses are summarized below:

1. The Complaint fails to state a claim upon which relief can be granted.
2. The plaintiff failed to properly state the value of her bankruptcy assets by undervaluing the assets while under oath. She therefore practiced a fraud upon the bankruptcy court and made a false oath. The defendants properly paid the funds to the Trustee so that the court could determine and approve proper distribution and payment of those funds.

See R. 19 at 12-15.

On September 5, 2007, the court held a status conference on the matter. The discussion centered on the court's jurisdiction over the insurance proceeds and the removed Complaint. The court established a schedule for the parties' filing of briefs on the jurisdiction issue and for the filing of other dispositive motions being considered by the parties.

On September 19, 2007, the Trustee filed a Motion for Summary Judgment with accompanying memorandum and affidavit. He contended that the plaintiffs as a matter of law should not be allowed to proceed against the Trustee because they failed to obtain permission for the suit against him from the bankruptcy court which had appointed him as Trustee.

On October 12, 2007, in his Brief on Issues and Jurisdiction, the Trustee expressed the view that the Complaint's state law causes of action revolved around the federal issue: whether the insurance proceeds derived from Anderson's scheduled and unscheduled assets constituted property of the bankruptcy estate under 11 U.S.C. § 541. The Trustee asserted that this question was within the exclusive jurisdiction of the bankruptcy court. *See R. 25 at 3.* Once this issue was resolved, he stated, the court could determine whether the actions of the parties were reasonable under the circumstances. He explained that his request for the proceeds as property of the estate was justified:

Ms. Anderson either vastly undervalued her property in the bankruptcy schedules or failed to list the bulk of her assets in her schedules. Since she is only entitled to the exemptions in the amount claimed, most of her property was never exempted from the Estate. Consequently, the Estate owns those assets, [and] it also owns the insurance proceeds from those assets. Ms. Anderson argues that the difference in value is created by the difference between the 'current market value' which was used as the valuation of the assets under the bankruptcy law at that time, and the "replacement value" which is assigned under the insurance contract. She further argues that because the assets were exempted from the Estate, any post-petition value realized from their destruction belongs to her. It is clear that the determination of whether assets are part of an estate, and the value to be assigned to those assets, is a core matter under the bankruptcy code, and thus the bankruptcy court can hear and make a final determination on whether the Proceeds are part of the Estate in their entirety, in some portion, or not at all.

Id. at 5-6. The Trustee contended that the federal question concerning ownership of the insurance proceeds must be decided before the state law issues can be pursued. At that point, the remaining claims would be non-core

matters related to Title 11 only by virtue of the original federal claim. They could be remanded to the state court or could be heard by the bankruptcy judge and determined by the district judge under 28 U.S.C. § 157(c)(1). Noting that Anderson demanded a jury trial and that the district court has not granted the ability to convene a jury to the bankruptcy court, however, he suggested that the court might need to remand the case to the state court.

On October 17, 2007, the plaintiff Anderson filed a Motion to Dismiss Claims against Trustee. Persuaded by the Trustee's contentions in his summary judgment motion, she sought dismissal of all claims against the Trustee in the case. She also expressed her intention to file a Motion to Abandon in the chapter 7 bankruptcy case. The dismissal motion was not opposed by any party. The court granted the motion and dismissed the case against the Trustee on November 21, 2007.

On November 19, 2007, the plaintiffs filed a Memorandum in Support of Remand to State Court. They argued that, in light of the dismissal of the Trustee as a defendant, there was no diversity jurisdiction or federal question jurisdiction remaining in the case and thus no just reason for federal jurisdiction.

On the same date, the Farm Bureau defendants filed a brief asserting that this court had jurisdiction over the Complaint pursuant to 28 U.S.C. § 1334 because the issue of ownership and turnover of the insurance proceeds that covered property of the debtor's bankruptcy estate was a core bankruptcy matter. Their position was that a fraud might have been perpetrated on the bankruptcy court by the debtor, who either had greatly undervalued her personal property or had failed to list the majority of her personal property in her schedules. On that ground, the Trustee had requested that Farm Bureau turn over the insurance proceeds to him. The defendants also asserted that the Complaint's charges of liability for the defendants' conduct in communicating with the Trustee and in turning over the insurance proceeds to him were core matters over which this court had jurisdiction. In the alternative, the defendants insisted that the court had "related to" jurisdiction over the issues under 28 U.S.C. § 1334(b). They argued that the contract and tort claims, as well as the good faith conduct issues, all involved turnover of property of the bankruptcy estate and, as such, should be resolved in the same forum.

In her Response, the plaintiff Anderson gave a reason for the differences in the valuation of her property in her bankruptcy schedules and later, after the fire, in her insurance claim: She explained that she retained counsel to assist her in preparing her bankruptcy schedules, and she retained the services of a public adjuster to assist her in the valuation of her personal property inventory and the loss. “Pursuant to Indiana law, the public adjuster and not Plaintiff Joan Anderson prepared the inventory, including valuing the loss.” R. 34 at 1. The plaintiff again requested a remand of the case back to the Lake County Superior Court.

The Farm Bureau defendants’ reply brief addressed the fact that the Trustee is no longer a party. They argued that this court still retains jurisdiction – because the Complaint is based upon the defendants’ alleged liability in their conduct with the Trustee, and because those allegations relate to core bankruptcy matters. They urged this court to hear the case, both because it has jurisdiction and because it is the most appropriate forum to adjudicate the litigation.

Discussion

When a notice of removal is filed in a court, that court must determine whether the removal is proper or deficient in terms of its procedure and the court’s jurisdiction. *See Everett v. Friedman’s Inc.*, 329 B.R. 40, 42 (S.D. Miss. 2005). The court considered each aspect of the removal of the plaintiffs’ Complaint from the Lake County Superior Court to this court.

A. Removal: Procedural Propriety

Section 1452 of Title 28 of the United States Code permits the removal of claims related to bankruptcy proceedings. The statute provides:

A party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C. § 1452(a). To accomplish the removal, a party must file a Notice of Removal following the requirements of Federal Bankruptcy Rule 9027(a). In this case, the court finds that the Trustee complied with the criteria mandated by the rule: The form and content of the Notice followed the rule's format; the Notice was filed properly and timely; it was amended with the proper signatures; and all parties were served a copy of the Notice. The plaintiffs then were given ten days to respond to the Notice of Removal.

(3) Any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice of removal, shall file a statement admitting or denying any allegation in the notice of removal that upon removal of the claim or cause of action the proceeding is core or non-core. If the statement alleges that the proceeding is non-core, it shall state that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. A statement required by this paragraph shall be signed pursuant to Rule 9011 and shall be filed not later than 10 days after the filing of the notice of removal. Any party who files a statement pursuant to this paragraph shall mail a copy to every other party to the removed claim or cause of action.

Fed. R. Bankr. P. 9027(e)(3). Neither plaintiff filed the required jurisdictional statement concerning the core or non-core nature of this proceeding, as required by the Rule. Nor did the plaintiffs allege any defect in the Notice; indeed, they presented no objection to the removal. The court finds that the Trustee's removal of the plaintiffs' Complaint from the Lake County Superior Court to this bankruptcy court was procedurally proper under Rule 9027 and thus was effective. See *H.J. Rowe, Inc. v. Sea Products, Inc. (In re Talon Holdings, Inc.)*, 221 B.R. 214, 218-19 (Bankr. N.D. Ill. 1998) (discussing procedural defects in removal).

B. Removal: Jurisdictional Propriety

The Notice stated that the removed action was one "over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1334," because the matter in controversy arose under the laws of the Bankruptcy Code. It further stated that the action was "related to core matters" in Anderson's reopened bankruptcy case and that "[a]ny and all non-core matters in the Action relate[d] to and require[d] determination of core matters by the bankruptcy court." R. 4. Moreover, the Notice announced the Trustee's consent to the bankruptcy judge's entry of final orders and/or judgment.

As the court noted above, the plaintiffs did not file a statement objecting to the bankruptcy court's jurisdiction, as required under Rule 9027(e)(3). Nor did the plaintiffs state their consent or refusal to the bankruptcy judge's determination of the claims brought in the Complaint. Some courts found that a party's failure to file that statement was a waiver of the opportunity to raise a jurisdictional objection. Others noted that the rule itself prescribes no penalty for the failure to comply. *See In re Application of Buran*, 351 B.R. 300, 304-05 (W.D.N.Y. 2006) (concluding that failure to file Rule 9027(e)(3) statement was not a waiver). In this case, despite the plaintiffs' nonresponse, this court recognized its duty to determine its own jurisdiction over the removed case. It therefore gave the plaintiffs another "bite of the apple" by requesting briefing by all parties on the issue whether bankruptcy subject matter jurisdiction exists over the claims asserted in the state court Complaint. *See, e.g., Principal Life Ins. Co. v. JPMorgan Chase Bank, N.A. (In re Brooks May Music Co.)*, 363 B.R. 801, 807-08 (Bankr. N.D. Tex. 2007). This court adjudicates the claims supported by bankruptcy jurisdiction; it may remand any claim to state court that is not properly in the bankruptcy court, on any equitable ground. *See* 28 U.S.C. § 1452(b).

The court determined, in Section A of the Memorandum of Decision, that the Trustee completed the procedural mandates of Rule 9027 when removing the plaintiffs' Complaint to this court. It now finds that the removed action relates to core matters in Anderson's bankruptcy proceeding. It determines that the insurance proceeds arising from the destroyed real and personal property of the debtor are related to her bankruptcy case because the dispute concerning those proceeds could affect the amount available for distribution to Anderson's creditors. The Trustee reasonably questioned the great disparity in the valuation of the debtor's real and personal property reported by the debtor on her bankruptcy schedules and then on her insurance claim after the property burned. He suggested that the debtor fraudulently understated the value of assets of the debtor's bankruptcy estate in this court and that he was holding the insurance proceeds resulting from the destruction of those assets until the allegation of fraudulent conduct could be investigated. The court agrees that the plaintiff's Complaint, challenging the Trustee's possession of the insurance proceeds and the conduct of other defendants in relation

to that action, is related to the Anderson bankruptcy case. In addition, it notes that the Trustee was familiar with the debtor and her property, and he knew the reasons he originally had determined that her chapter 7 was a no-asset case. This court's interest in judicial economy is a strong reason for keeping the case in this court system. *See Chapman v. Currie Motors, Inc.*, 65 F.3d 78, 81 (7th Cir. 1995) (stating that "[t]he concept of 'related to' jurisdiction is sufficiently capacious to protect this interest in judicial economy").

It is not unusual for a trustee to discover or to receive information which leads him or her to reopen a case in order to pursue the possibility that a debtor concealed the value of property in the initial filing of the bankruptcy petition.³ In this case, the court found that sufficient cause existed to reopen Anderson's bankruptcy case to determine whether the debtor intentionally undervalued assets in her schedules. Now that substantially similar issues concerning the value of the debtor's bankruptcy estate assets were raised in the plaintiffs' state court Complaint and have been removed to this court, the court finds that the bankruptcy issue dominates the state law issues and that it is reasonable and proper to hear the matter in this court.

The court finds that the removal of the plaintiffs' Complaint was proper procedurally and jurisdictionally. Before the Trustee was removed as a defendant in this Complaint, the court determined that there was no impediment to the removal of the Complaint from state court to this court. However, the jurisdictional posture of this case changed with the filings of motions by the Trustee and the plaintiff-debtor Anderson and the consequential dismissal of the Trustee from the plaintiffs' case.

³ *See, e.g., Adams v. Zembko (In re Zembko)*, 367 B.R. 253 (Bankr. D. Conn. 2007) (trustee opened no-asset case when told of debtor's concealed firearms collection; debtor's discharge revoked); *Hoagland v. Ward (In re Ward)*, 298 B.R. 869 (Bankr. S.D. Ill. 2001) (trustee reopened no-asset case after learning that lawsuits had settled; court found trustee failed to prove fraudulent scheme to conceal proceeds); *In re Bauer*, 291 B.R. 127 (Bankr. D. Minn. 2003) (information from insurer, after a fire, led trustee to reopen case to investigate whether debtors had concealed the substantial value of property on their schedules; court found debtors in bad faith, sustained trustee's objection to debtors' amending schedules and increasing homestead exemption), *aff'd*, 298 B.R. 353 (8th Cir. B.A.P. 2003); *see also Eaton v. Taskin, Inc.*, 2007 WL 2700554 (C.D. Ill. 2007) (trustee reopened bankruptcy case, removed state court complaint to bankruptcy court on grounds that debtor's personal injury lawsuit, arising from claims undisclosed in her bankruptcy, was property of the estate and that trustee was real party in interest; motion for remand to state court or for abstention denied).

C. Trustee's Motion for Summary Judgment

In his Motion for Summary Judgment, the Trustee argued that a person wanting to sue a bankruptcy trustee first must obtain the permission of the bankruptcy court that appointed him to that position. He pointed out that these plaintiffs did not seek permission. The court agrees and finds (without objection from the plaintiffs) that the plaintiffs failed to ask this court for leave to sue the Trustee in state court.

“[I]t had long been established that a receiver [or his statutory successor, a trustee] could not be sued without leave of the court that appointed him.” *In re Linton*, 136 F.3d 544, 545 (7th Cir. 1998) (citing *Barton v. Barbour*, 104 U.S. 126, 26 L. Ed. 672 (1881)). The Supreme Court established this policy in *Barton* and announced that failure to ask permission from the appointing forum results in a lack of jurisdiction in the court in which the suit is pending. *See Barton*, 104 U.S. at 131. The *Barton* doctrine is premised on the rationale that a suit brought against a court-appointed receiver, trustee, or other officer by a plaintiff claimant was intended “to obtain some advantage over the other claimants upon the assets in the receiver’s hands.” 104 U.S. at 128. The effect of such a suit would be “to take the property of the trust from his hands and apply it to the payment of the plaintiff’s claim, without regard to the rights of other creditors or the orders of the court which is administering the trust property.” *Id.* at 129. For that reason, “leave should be first obtained” from the court appointing the receiver or trustee before suit may be brought. *Id.* If leave is not obtained, the court in which the suit was brought had no jurisdiction to entertain the suit. *See id.* at 131. Courts uniformly follow the *Barton* Doctrine. *See Beck v. Fort James Corp. (In re Crown Vantage, Inc.)*, 421 F.3d 963, 970 (9th Cir. 2005) (listing circuit decisions in accord).

A limited exception to the *Barton* Doctrine is found in 28 U.S.C. § 959(a). It states that “[t]rustees . . . may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property.” Courts have interpreted the statute to mean that an individual can sue a bankruptcy trustee in state court without obtaining leave of the bankruptcy court when the lawsuit is “based on acts of a trustee committed for the purpose of operating a debtor’s business.” *Richman v. Batt*, 265

B.R. 416, 418 (E.D. Pa. 2001). The statute allows such a suit when the Trustee's acts relate to carrying on the debtor's business connected to the property in trust. *See 6 Collier on Bankruptcy* ¶ 721.05 at 721-22 to 721-23 (Alan N. Resnick & Henry J. Sommer, eds-in-chief, 15th ed. rev'd 2007). However, when the trustee performs the administrative tasks required of his office – such as consolidating, preserving, or liquidating the debtor's estate assets – such actions do not constitute “carrying on business” under § 959(a). *See id.*; *see also In re Crown Vantage, Inc.*, 421 F.3d at 972. In this case, the Trustee, by receiving the insurance proceeds and depositing them in the estate account, was not operating a business of the debtor; he was managing estate assets as he was authorized to do by the Bankruptcy Code. “This is precisely the type of activity that the *Barton* Doctrine was designed to protect.” *In re Crown Vantage, Inc.*, 421 F.3d at 972. Thus, the court finds that the narrow § 959(a) exception does not apply in this case and that the state court lacked subject matter jurisdiction over the Trustee in this lawsuit. *See id.* at 975.

The plaintiffs did not seek the permission of this bankruptcy court, the appointing forum, to sue the Trustee in state court. Nor did they allege that the Trustee's conduct fit within the § 959(a) exception. In fact, the plaintiffs filed no objection to the Motion for Summary Judgment. The court concludes that there is no genuine issue of material fact and that the Trustee is entitled, as a matter of law, to summary judgment. The Trustee's summary judgment motion is granted.

D. Plaintiff's Motion to Dismiss Claims Against Trustee

The plaintiff Anderson requested and was granted dismissal of all claims against the Trustee after she learned the consequences of the plaintiffs' failure to obtain permission to sue the bankruptcy Trustee in state court. Now that the Trustee is dismissed from the Complaint and all claims related to the Trustee are excluded from that lawsuit, the cause of action is based entirely on state law claims that were brought originally in the state court. The Complaint no longer presents substantive bankruptcy rights.

The plaintiffs argued in their “Response to Objection to Remand” that, in light of the dismissal of the Trustee as a defendant, there was neither diversity jurisdiction nor federal question jurisdiction remaining in the case. *See* R. 34 at 3. They stated:

The case in its present form involves state claims with non-diverse parties, most if not all of whom are residents of Indiana. Put another way, if the Court maintains this matter, no bankruptcy parties will be part of the proceeding, no statuses will include the normally present Chapter 7 Trustee and none of the inevitable summary judgments [*sic*] motions, memorandums, etc. will involve the Chapter 7 Trustee who has been dismissed.

Id. Without a basis for federal jurisdiction, they insisted, it was proper to remand the case to the state court. In their prayer for relief, the plaintiffs moved for remand.

Equitable remand under § 1452(b) need not be raised by a party’s motion; the court may raise it *sua sponte*. *See Smith v. Wal-Mart Stores, Inc.*, 305 F. Supp.2d 652, 658 n.9 (S.D. Miss. 2003). The court therefore considers whether remand of this Complaint to state court now is appropriate and warranted. *See* 28 U.S.C. § 1452(b) (“The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground.”). These factors are used by courts making the decision whether to remand a case:

1. duplication of judicial resources;
2. uneconomical use of judicial resources;
3. effect of remand on the administration of the bankruptcy estate;
4. case involves questions of state law better addressed by a state court;
5. comity considerations;
6. prejudice to the involuntarily removed parties;
7. lessened possibility of an inconsistent result; and
8. expertise of the court where action originated.

Intra Muros Trust v. Truck Stop Scale Co., 163 B.R. 344, 346 (N.D. Ind. 1994).

Having reviewed the criteria, this court finds that the factors weigh in favor of remand to the state court. The case now involves only state law claims, and the state court has particular expertise to decide those claims. In addition, the remand to the state court will have minimal or no effect on the administration of the

bankruptcy estate, since the state law claims are only tangentially related to the bankruptcy proceeding.⁴ The Complaint's demand for a jury trial can be honored in the state court, and that court can weigh the issues of state law without the complications of bankruptcy law, since every claim concerning the bankruptcy Trustee is removed from the Complaint. It also seems likely that comity and consistency of outcomes are supported by allowing the state court to decide issues that are wholly based on state law. *See Baxter Healthcare Corp. V. Hemex Liquidation Trust*, 132 B.R. 863, 868 (N.D. Ill. 1991). Following its analysis of the above criteria, the court determines that remand is appropriate.

Conclusion

For the reasons presented in this Memorandum, the court grants the Motion for Summary Judgment filed by Trustee Gary D. Boyn. It also grants the plaintiffs' request to remand the Complaint to the Lake County Superior Court pursuant to 28 U.S.C. § 1452(b).

SO ORDERED.

/s/ Harry C. Dees, Jr.
HARRY C. DEES, JR., CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT

⁴ In the reopened Anderson bankruptcy case, the Trustee may continue to investigate whether the debtor intentionally undervalued assets in her schedules; it is an essential function of a trustee to investigate a debtor's financial affairs and to be accountable for all property received. *See* 11 U.S.C. § 704(a). That investigation should lead to a determination whether the insurance proceeds are property of the debtor's bankruptcy estate.