

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
JACK WEICHMAN, ) CASE NO. 08-23482 JPK  
 ) Chapter 11  
 )  
Debtor. )  
\*\*\*\*\*  
ASSOCIATED PATHOLOGISTS )  
OF MUNSTER, INDIANA, P.C., )  
Plaintiff, )  
v. ) ADVERSARY NO. 08-2155  
JACK WEICHMAN, WEICHMAN & )  
ASSOCIATES PC, and MMDS, INC.)  
Defendants. )

MEMORANDUM OF DECISION REGARDING REMAND

The issue before the court is whether the causes of action which comprise the focus of this adversary proceeding should be remanded to the state court from which they were removed by the defendants. This issue is before the court on the Motion for Remand filed on April 23, 2009 by Associated Pathologists of Munster, Indiana, P.C. ("Associated"). This motion asserts that the causes of action stated in a Complaint filed in case number 45D01-0412-CT-304 in the Superior Court of Lake County, Indiana by Associated against the designated defendants Jack Weichman, MMDS, Inc., and Weichman & Associates PC (respectively "Weichman", "MMDS" and "Weichman Associates") should be remanded to the Lake Superior Court, thus abrogating the removal of this action to federal court sought to be effected by the Notice of Removal of State Court Action to U.S. Bankruptcy Court filed by Weichman on December 23, 2008.<sup>1</sup>

For the reasons which will be discussed, the court determines that all causes of action asserted by Associated against Weichman, MMDS and Weichman Associates will be remanded to Lake Superior Court.

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<sup>1</sup> MMDS and Weichman Associates have both consented to this removal.

I. PROCEDURAL HISTORY

Adversary proceeding number 08-2155 was initiated by Weichman's filing of a Notice of Removal of State Court Action to U.S. Bankruptcy Court on December 23, 2008 [record entry #1]. The first paragraph of this Notice – highly pertinent to the court's decision – states:

PLEASE TAKE NOTICE that defendant JACK WEICHMAN ("Weichman" or "Plaintiff", through his undersigned counsel, hereby files this Notice of Removal pursuant to 28 U.S.C. § 1452(a), and Federal Rules of Bankruptcy Procedure 9027(a). Weichman hereby removes to the United States Bankruptcy Court for the Northern District of Indiana the claims and causes of action in the civil action styled **Associated Pathologists of Munster, Indiana, P.C., v. Jack Weichman, MMDS, Inc. and Weichman & Associates, P.C.**, now pending in the Lake Superior Court, Cause No. 45D01-0412-CT-00304 (the "State Court Action").

Associated filed a Motion for Remand on February 27, 2009 [record entry #16], which was denied by the court's order entered on March 12, 2009 [record entry #23]. The denial of the motion was on procedural grounds, and was without prejudice.

On April 23, 2009, Associated filed the Motion for Remand which is now before the court.<sup>2</sup> At a preliminary pre-trial conference held on July 16, 2009, the court addressed issues which it deemed to be pertinent to the Motion for Remand, specifically issues under 28 U.S.C. § 1334(c)(2) and concerning the court's "related to" jurisdiction under 28 U.S.C. § 1334(b)/ 28 U.S.C. § 157(a) with respect to claims asserted by Associated against MMDS and against Weichman Associates. At that hearing, because the state court complaint requested trial by jury, the court also alerted the parties for the need to address an issue arising under N.D.Ind.L.R. 200.1(c)(2) of the Rules of the United States District Court for the Northern District of Indiana: Associated chose to not waive the jury demand and United States Bankruptcy

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<sup>2</sup> On April 23, 2009, Associated also filed a Motion for Relief from Automatic Stay [record entry #22]. By order entered on May 8, 2009 [record entry #25], the court directed that this motion be transferred by the Clerk of the Court to the general docket in case number 08-23482, and that further proceedings on that motion would be undertaken by further order of the court.

Courts in the Seventh Circuit cannot conduct jury trials; *Matter of Grabill Corp.*, 967 F.2d 1152 (7<sup>th</sup> Cir. 1992). At a telephonic pre-trial conference held on July 30, 2009, the parties and the court determined that the court would attempt to obtain data from the United States District Court for the Northern District of Indiana as to “speed” of disposition of civil cases involving a jury demand [record entry #36].<sup>3</sup> On August 12, 2009, the court filed the data compilation which it had received from the United States District Court [record entry #38].

By order entered on August 24, 2009, the court directed the further course of proceedings [record entry #40]. In that order, the following was stated as to the record to be placed before the court with respect to disposition of the Motion for Remand:

1. An evidentiary hearing will be held on **October 1, 2009, at 10:00 A.M.** to establish the complete record for final determination of the Motion, including any facts necessary for determination of issues under 28 U.S.C. § 1334(c)(2), and concerning the “related to” jurisdiction of the court over claims concerning MMDS, Inc. and Weichman and Associates, PC. under 28 U.S.C. § 1334(b)/28 U.S.C. § 157(a). The parties stipulate that a portion of the record to be entered on that date is the statistical information stated in Exhibits A and B attached to docket record entry #38. The parties may submit a stipulation of the entire record in lieu of conducting the hearing, in the event of which the hearing will be removed from the court’s calendar.

In lieu of the hearing, the parties filed their Stipulation of Facts in Adversary Proceeding on September 25, 2009 [record entry #42].<sup>4</sup> As stated in the order entered on August 24, 2009, the Stipulation filed on September 25, 2009 constitutes the entire record to be considered by the court with respect to the issues addressed by this Memorandum of Decision. The parties

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<sup>3</sup> As stated in the foregoing docket order, at the July 30, 2009 preliminary pre-trial conference, the “parties agree that questions of ‘related to’ jurisdiction will be decided by this court before any referral of the case to the district court under N.D.Ind.L.R. 2000.1(c)(2) [sic]”. As a result, this court has full jurisdiction to enter a final order with respect to the matters before the court; see, 28 U.S.C. § 157(c)(2); N.D.Ind.L.R. 200.1(a)(3)(A).

<sup>4</sup> This Stipulation supersedes the Stipulation of Facts in Adversary Proceeding filed on July 14, 2009 [record entry #33]: in fact – no pun intended, of course – the first ten enumerated paragraphs in record entry #33 are the first ten enumerated paragraphs in record entry #42.

then submitted the legal memoranda provided for by paragraph 2 of the August 24, 2009 order. The record in this case with respect to the Motion for Remand was closed on November 23, 2009.

## II. THE FACTUAL RECORD

The entire factual record before the court is stated in the Stipulation of Facts in Adversary Proceeding filed on September 25, 2009. Omitting any portion of an exhibit incorporated into that Stipulation, that Stipulation states in its entirety the following:

1. On December 17, 2004, the Complaint in Lake Superior Court Cause No. 45D01-0412-CT-00304 was filed. A true and correct copy of the Complaint is attached as Exhibit A.
2. On January 23, 2008, the case was set for a five-day trial to begin December 6, 2010.
3. On October 16, 2008, Defendant Jack Weichman, Debtor ("Weichman"), filed for Chapter 11 Bankruptcy, Case No. 08-23482-jpk in the U.S. Bankruptcy Court for the Northern District of Indiana, Hammond Division.
4. The case in the Lake Superior Court became subject to the automatic stay on October 16, 2008.
5. On December 15, 2008, Weichman filed a Notice of Removal. A true and correct copy of the Notice of Removal is attached as Exhibit B.
6. On January 23, 2008, Defendants Weichman and Associates, P.C. and MMDS, Inc. filed consents to removal.
7. Plaintiff Associated Pathologists of Munster, Indiana, P.C., IS an Indiana professional corporation with its principal place of business in Indiana.
8. Defendant Weichman is a citizen of Indiana.
9. Defendant Weichman and Associates, P. C. is an Indiana professional corporation solely owned by Weichman with its principal place of business in Indiana.
10. Defendant MMDS, Inc. is an Indiana corporation solely owned by Weichinan with its principal place of business in Indiana.
11. Weichman and Associates, P. C. and MMDS, Inc. have not filed for bankruptcy.
12. On June 18, 2009, the automatic stay was lifted for the limited purpose of

obtaining a trial setting from the Lake Superior Court. The parties were advised that the trial date for a five-day trial set for December 6, 2010 remains on the court's calendar.

13. Plaintiff filed a jury demand and does not waive a trial by jury.
14. The Court inquired about jury trial disposition data in the U.S. District Court for the Northern District of Indiana and obtained information about civil cases tried to jury verdict before district judges and magistrate judges for cases filed in that court during the past five years. A true and correct copy of the Court's findings, filed as Doc. No. 38 in this proceeding, is attached as Exhibit C.
15. As shown in Exhibit C, for the cases filed after January 1, 2005 and tried to verdict by July 30, 2009, the average time from case filing to case closing was 20.5 months. Thirty-eight other cases filed before January 1, 2005 were also tried to verdict before July 30, 2009.
16. As shown in Exhibit D attached, the docket sheets for the cases filed after January 1, 2005 and tried to verdict by July 30, 2009 show that the average time from the close of discovery or the filing of the mandate following an appeal to the Seventh Circuit to the date of the jury verdict was 9.6 months.

Attached as Exhibit A to the Stipulation are copies of documents from case number 45D01-0412-CT-304 in the Lake Superior Court, including a copy of the Complaint filed by Associated against Weichman, MMDS and Weichman Associates. The complaint is in three counts; each count asserts a separate cause of action – based respectively upon different legal theories of recovery – against all three of the designated defendants. Exhibit B is a copy of the documentation utilized by Associated to remove the state court case to the United States Bankruptcy Court. Exhibit C is the data designated in the court's record entry #38. Exhibit D is a compilation of the time for final disposition by the United States District Court for the Northern District of Indiana with respect to cases filed after January 1, 2005 and tried to a jury verdict by July 30, 2009, submitted to show “the average time from the close of discovery or the filing of the mandate following an appeal to the Seventh Circuit to the date of the jury verdict”.

### III. LEGAL ANALYSIS

The two principal issues before the court are the following:

1. Jurisdiction of the United States Bankruptcy Court for the Northern District of

Indiana over causes of action asserted by Associated against MMDS and against Weichman Associates in the state court case, and the impact of jurisdictional issues on the Motion for Remand.

2. Whether or not the provisions of 28 U.S.C. § 1334(c)(2) require “mandatory abstention” with respect to the causes of action sought to be removed by Associated to the United States Bankruptcy Court for the Northern District of Indiana.

A. The Court’s Jurisdiction Over the Removed Causes of Action

The first issue to be determined is the extent to which the causes of action asserted in the complaint were actually removed pursuant to Weichman’s Notice of Removal filed on December 23, 2008. The pertinent portion of the Notice of Removal states:

Weichman hereby removes to the United States Bankruptcy Court for the Northern District of Indiana **the claims and causes of action** in the civil action styled ***Associated Pathologists of Munster, Indiana, P.C., v. Jack Weichman, MMDS, Inc. and Weichman & Associates, P.C.***, now pending in the Lake Superior Court, Cause No. 45D01-0412-CT-00304 (the “State Court Action”).

It is clear from the foregoing that Weichman removed all “claims and causes of action” asserted by Associated in the state court case, and not merely those which related to Weichman. The court construes the contentions of the “defendants” in their two legal memoranda to assume that all causes of action against all three defendants, asserted in the three-count complaint filed in state court, were removed to the United States Bankruptcy Court. However, the court notes that decisions entered by courts with respect to the scope of causes of action actually removed have in part been focused upon whether causes of action over which a federal court had no jurisdiction could be deemed to have been removed to federal court, or whether – absent a specific designation of separate causes of action sought to be removed – all causes of action in a state court case were deemed to have been removed, regardless of whether or not a federal

court had jurisdiction over certain of those causes of action. The court fully endorses, and adopts, the reasoning and decision stated in *In re Princess Louise Corp.*, 77 B.R. 766, 771 (Bankr.C.D.Cal. 1987):

Section 1452 provides flexibility to the removing party that is not available for the non-bankruptcy removal to federal district court. Section 1452 permits the removing party to select those claims or causes of action to be removed, and to leave the remainder for litigation in state court. Alternatively, the removing party may choose to remove all claims or causes of action from the state court, thereby depriving the state court of all further jurisdiction until such time as there may be a remand.

The Court holds that the scope of what is removed from state court to the bankruptcy court is determined by the removal petition. If the removal petition extends to the entire state court action, the entire state court action is removed to the bankruptcy court. The removal petition in this case requests the removal “of the state court litigation” to the bankruptcy court. This covers the entire case, including cross-complaints, that was pending in state court. In consequence, the Los Angeles County Superior Court has been completely ousted of jurisdiction with respect to the case that was pending before it, and there is no case as to which it may proceed at this time.

The foregoing approach was endorsed by the United States District Court for the Western District of Virginia in *Red Ash Coal & Coke Corp.*, 83 B.R. 399, 403 (D.Va. 1988), as follows:

Finally, in light of the extended analysis that this issue has compelled, the court would like to express its admiration of the approach enunciated in *In re Princess Louise Corp.*, 77 B.R. 766 (Bankr.C.D.Cal.1987). In this recent decision, the court determined that the scope of removal is governed by the removal petition itself. “If the removal petition extends to the entire court action, the entire state court action is removed to the bankruptcy court.” *Id.* at 771. The beauty of this approach is that it keeps the issues of bankruptcy jurisdiction in the bankruptcy courts instead of the state courts and it simplifies and shortens the process because all that is needed to determine the scope of removal is to consult the removal petition. Pending possible remand, the state court has no jurisdiction as to those matters covered by the removal petition. *Id.* at 771-72. The clarity and simplicity of this approach is self-evident. Although this court does not feel that it must adopt this reasoning at this time, it does note that the removal petitions in this case do purport to remove the entire state action.

In the instant case, Weichman's Notice of Removal clearly intended to remove all claims and causes of action asserted in the state court litigation, and did not selectively remove only those asserted against Weichman. In this context, as stated in the Notice of Removal, the removal was sought to be effected pursuant to 28 U.S.C. § 1452(a), i.e., the federal statute which specifically relates solely to "Removal of Claims Related to Bankruptcy Cases". 28 U.S.C. § 1452(a) states:

**(a)** A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, 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. (emphasis supplied).

The foregoing statute allows a party seeking to remove a matter from state court to the United States Bankruptcy Court, to choose to remove severable claims or causes of action, rather than the entire state court action. Weichman clearly chose to remove the entire state court action, and it is upon this premise that further consideration of the court's jurisdiction is to be based.

The crux of this issue focuses on this court's "related to" jurisdiction with respect to causes of action asserted by Associated against MMDS and Weichman Associates. The parties have stipulated that the sole jurisdictional basis for this court is "related to" jurisdiction under 28 U.S.C. § 1334(b)/28 U.S.C. § 157(a) and (b). The parties have also stipulated that the matters to be removed by Weichman do not constitute "core" proceedings as defined by 28 U.S.C. § 157(b)(2).<sup>5</sup>

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<sup>5</sup> A bankruptcy court has jurisdiction only over "civil proceedings arising under title 11, or arising in or related to cases under title 11", to the extent those cases are referred to it by the district court; *Doctors Hospital of Hyde Park, Inc. v. Desnick, et al.*, 308 B.R. 311, 317 (Bankr. N.D.Ill. 2004); 28 U.S.C. § 1334(b); 11 U.S.C. § 157(a). L.R. 200.1(a)(1) of the Rules of the United States District Court for the Northern District of Indiana refer all cases under Title 11, and any and all proceedings arising under Title 11 or arising in or related to a case under Title 11, to the United States Bankruptcy Court for the Northern District of Indiana. A case "arises under" Title 11 and is within the core jurisdiction of the court when the cause of action is based

The issue of whether or not a matter presented to a United States Bankruptcy Court falls within the “related to” jurisdiction of that court has been narrowly proscribed by the United States Court of Appeals for the Seventh Circuit. In fact, the Seventh Circuit seems to be the most limited of the views expressed by Courts of Appeal with respect to this issue.

As stated in *In re FedPak Systems*, 80 F.3d 207, 213 (7<sup>th</sup> Cir. 1996):

As the U.S. Supreme Court explained recently, “[t]he jurisdiction of the bankruptcy courts, like that of other federal courts, is grounded in and limited by statute.” *Celotex Corp. v. Edwards*, 514 U.S. 300, ----, 115 S.Ct. 1493, 1498, 131 L.Ed.2d 403 (1995).

We begin with the bankruptcy jurisdiction of the district courts, which extends to “all civil proceedings arising under title 11, or arising in *or related to* cases under title 11.” 28 U.S.C. § 1334(b) (emphasis added). Bankruptcy judges “constitute a unit of the district court,” 28 U.S.C. § 151, and the district court may refer to them “any or all proceedings arising under title 11 or arising in or related to a case under title 11.” 28 U.S.C. § 157(a). The jurisdiction of the bankruptcy courts is thus “derivative” because it flows from the statutory grant of jurisdiction to the district courts. *In re K & L, Ltd.*, 741 F.2d 1023, 1028 (7<sup>th</sup> Cir.1984). To summarize, this jurisdiction includes the power to adjudicate proceedings “arising in,” “arising under,” or “related to” a case under title 11. *Zerand-Bernal Group, Inc. v. Cox*, 23 F.3d 159, 161 (7<sup>th</sup> Cir.1994).

The purpose of bankruptcy court jurisdiction is to provide a single forum for resolving all claims to the debtor's assets and extends no farther than that; *In re Doctors Hospital of Hyde Park, Inc.*, 308 B.R. 311, 317 (Bankr. N.D.Ill. 2004). The fact that “two creditors have an internecine conflict is of no moment, once all disputes about their stakes in the bankrupt's property have been resolved”; *In re Doctors Hospital of Hyde Park, Inc.*, *supra.*, at 317, referencing *In re Xonics*, 813 F.2d 127, 131 (7<sup>th</sup> Cir. 1987).

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on a right or remedy expressly provided in the Bankruptcy Code – *Id.*; *In re Kewanee Boiler Corp.*, 270 B.R. 912, 917 (Bankr. N.D.Ill. 2002) – which is not the case here, as the parties both acknowledge. Likewise, the parties agree that the matters addressed by the state court complaint against MMDS and Weichman Associates do not “arise in” a case under Title 11. That leaves a matter “related to” a case under Title 11 as the sole source of the court’s jurisdiction.

The law of the Seventh Circuit is that "related to" jurisdiction exists over a matter when the matter affects the amount of property for distribution to creditors from the debtor's estate, or the allocation of property among creditors; *In re FedPak Systems*, at 213. As stated in *In re FedPak Systems*, at 214:

This circuit has articulated a more limited and, we believe, more helpful definition of the bankruptcy court's "related to" jurisdiction. Our precedents hold that "[a] case is related" to a bankruptcy when the dispute 'affects the amount of property for distribution [i.e., the debtor's estate] or the allocation of property among creditors.' " *In re Memorial Estates, Inc.*, 950 F.2d 1364, 1368 (7<sup>th</sup> Cir.), *cert. denied*, 504 U.S. 986, 112 S.Ct. 2969, 119 L.Ed.2d 589 (1992) (quoting *In re Xonics, Inc.*, 813 F.2d 127, 131 (7<sup>th</sup> Cir.1987)). As we explained recently:

T]he ['related to'] language should not be read . . . broadly. [It] is primarily intended to encompass tort, contract, and other legal claims by and against the debtor, *claims that, were it not for bankruptcy, would be ordinary stand-alone lawsuits between the debtor and others* but that section 1334(b) allows to be forced into bankruptcy court so that all claims by and against the debtor can be determined in the same forum.

*Zerand-Bernal*, 23 F.3d at 161 (emphasis added, citation omitted).

We have interpreted "related to" jurisdiction narrowly "out of respect for Article III" (see discussion *supra*) as well as to prevent the expansion of federal jurisdiction over disputes that are best resolved by the state courts. *Home Ins. Co. v. Cooper & Cooper, Ltd.*, 889 F.2d 746, 749 (7<sup>th</sup> Cir.1989); *see also In re Kubly*, 818 F.2d 643, 645 (7<sup>th</sup> Cir.1987) (the "limited jurisdiction" of the bankruptcy court "may not be enlarged by the judiciary because the judge believes it wise to resolve the dispute."). Additionally, we believe that common sense cautions against an open-ended interpretation of the "related to" statutory language "in a universe where everything is related to everything else." Gerald T. Dunne, *The Bottomless Pit of Bankruptcy Jurisdiction*, 112 *Banking L.J.* 957 (Nov.-Dec.1995).

The United States Supreme Court discussed the scope of a bankruptcy court's "related to" jurisdiction in the case of *Celotex Corporation v. Edwards, et ux.*, 514 U.S. 300 (1995). In *Celotex*, a judgment in the amount of \$281,025.88 was entered against Celotex Corporation in favor of "injured" plaintiffs for asbestos related injuries in April of 1989. In order to stay

execution of the judgment pending an appeal, Celotex posted a \$294,987.88 supersedeas bond obtained from Northbrook Property and Casualty Insurance Company. Subsequently, the appeal was unsuccessful, and Celotex filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. In an exercise of its equitable jurisdiction pursuant to 11 U.S.C. § 105(a), the bankruptcy court issued an injunction staying all proceedings involving Celotex, "regardless of . . . whether the matter is on appeal and a supersedeas bond has been posted by [Celotex]". The injured asbestos plaintiffs sought permission from the district court to execute on the bond, which was allowed. The Fifth Circuit Court of Appeals affirmed this decision and held that, "the integrity of the estate is not implicated in the present case because the debtor has no present or future interest in this supersedeas bond". The issue was whether the injunction order was within the bankruptcy court's "related to" jurisdiction.

The Supreme Court stated that although Congress did not specify the scope of "related to" jurisdiction, the choice of words implies some breadth:

The jurisdictional grant in § 1334(b) was a distinct departure from the jurisdiction conferred under previous Acts, which had been limited to either possession of property by the debtor or consent as a basis for jurisdiction. See S.Rep. No. 95-989, 2nd Sess., pp. 153, 154 (1978) U.S.Code Cong. & Admin.News 1978, pp. 5787, 5939, 5940. We agree with the views expressed by the Court of Appeals for the Third Circuit in *Pacor, Inc. v. Higgins*, 743 F.2d 984 (1984), that "Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate," *id.*, at 994; see also H.R.Rep. No. 95-595, pp. 43-48 (1977), and that the "related to" language of § 1334(b) must be read to give district courts (and bankruptcy courts under § 157(a)) jurisdiction over more than simple proceedings involving the property of the debtor or the estate. We also agree with that court's observation that a bankruptcy court's "related to" jurisdiction cannot be limitless. See *Pacor, supra*, at 994; cf. *Board of Governors, FRS v. MCorp Financial, Inc.*, 502 U.S. 32, 40, 112 S.Ct. 459, 464, 116 L.Ed.2d 358 (1991) (stating that Congress has vested "limited authority" in bankruptcy courts).

*Id.*, at 308. The Supreme Court held that "the issue of whether respondents are entitled to

immediate execution on the bond against Northbrook is at least a question 'related to' Celotex's bankruptcy". *Id.*, at 310. However, this determination was premised upon the bankruptcy court's findings that allowing immediate execution on the bond would have had "a direct and substantial adverse affect on Celotex's ability to undergo a successful reorganization"; *Id.*, at 310. Based upon those findings, and the fact that the underlying bankruptcy case was a reorganization proceeding under Chapter 11 and not a liquidation under Chapter 7, the Supreme Court sustained "related to" jurisdiction with respect to proceedings to immediately execute on the bond.

The facts of *Celotex* are far afield from the material facts of this record.

Weichman posits a universe of potential "related to" jurisdiction in which claims or causes of action asserted against a debtor may be so "intertwined" with claims asserted against parties other than the debtor that somehow the claims asserted against other parties fall within the court's "related to" jurisdiction. Weichman and his co-defendants cite no authority for this proposition, and the court has neither found any authority for this proposition nor endorses any theory with respect to this proposition. As stated in *In re FedPak Systems*, 80 F.3d 207 (7<sup>th</sup> Cir. 1996), the focus of the inquiry is on two concepts:

1. Does the matter affect the amount of property for distribution to creditors from the debtor's estate; or
2. Does the matter affect the allocation of property among creditors.

In the context of three separate causes of action asserted against three separate targets – Weichman, MMDS, and Weichman Associates – let's first look at element one above.

The parties' Stipulation states that Weichman is the sole owner of MMDS and of Weichman Associates. Thus, the interests held by Weichman with respect to those corporations – but not the property owned by those entities – is property of his Chapter 11 bankruptcy estate. There are several scenarios which could play out, none of which is

illuminated by the factual record with respect to the actual value of Weichman's interests in either of the corporations. It isn't difficult to conceive of a circumstance in which a debtor's ownership interest in a closely held corporation has no value to anyone other than the debtor, i.e., one in which no one would pay any meaningful consideration to obtain the stock interests of the debtor in that corporation. Depending upon the nature of the corporation, the business in which it is engaged, its assets and its liabilities – one can also hypothesize a situation in which a debtor's stock interests in a corporation have actualizable value. This record is devoid of any factual foundation for determining anything with respect to the value of Weichman's interests in these two corporations, and based upon the record before the court, the parties did not stipulate to the inclusion of Weichman's bankruptcy schedules into the record. There is thus no basis in this record to value Weichman's stock interests in either of the two defendant corporations. That fact essentially ends the inquiry as to the effect of any adverse judgment against either of the two corporate defendants in relation to Weichman's stock interests in those two corporations.<sup>6</sup>

Based upon the record, and even the extrapolation of the record to include consideration of Weichman's Schedule B filed in his bankruptcy case, the stock interests of Weichman in MMDS and in Weichman Associates are essentially valueless, even apart from consideration of any additional liabilities added to the two corporations by a possible affirmative judgment against them in favor of Associated. The manner in which an adverse judgment against either or both of the two corporations would "affect the amount of property for distribution to creditors from the debtor's (Weichman's) estate", might in part be the diminution

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<sup>6</sup> Schedule B filed by Weichman on November 14, 2008 in case number 08-23482 lists his interests in MMDS, Inc. as having a fair market value of \$470,000.00, but as being used as collateral for an indebtedness of \$715,946.00. Similarly, Weichman's interest in Weichman & Associates, PC is valued at \$105,000.00, but is subject to being utilized as collateral for a loan. As would be expected, the actual assets of the two corporations are not designated in the debtor's schedules.

in value of his stock interests in a corporation arising from the establishment of those liabilities. Based on the record before the court, no ascertainable diminution in value of Weichman's stock interests in MMDS or in Weichman Associates will arise from the establishment of liability of either or both of those corporations to Associated. Thus, in this context, the claims asserted by Associated against the two corporations do not give rise to "related to" jurisdiction of this court.

The record is also devoid of any evidence of the assets of either corporation or of the viability of either one as a target for collection of an adverse judgment. There is thus no basis for any contention that collection of a judgment from one or both corporations would reduce the claim of Associated against Weichman's bankruptcy estate.

The second criteria for "related to" jurisdiction under the tests established by the Seventh Circuit is whether the action affects the allocation of property among creditors. The causes of action asserted by Associated against Weichman and the two corporate entities do not seek to establish any personal liability of Weichman derivatively with respect to actions of either of the corporate entities. Thus, if Associated were successful in establishing liability on the part of both corporations, the corporate liability would not affect anything with respect to claims against Weichman's bankruptcy estate. In a really extreme scenario, if one were to hypothesize that Associated would sustain actions against both of the corporations but not sustain an action against Weichman – or would sustain an action against all three of the defendants – then, depending upon the theory upon which recovery was granted by a court, one might posit a circumstance in which a corporation may have a right of contribution from Weichman. However, there has been no assertion of a cross-claim for contribution or indemnity by either of the two corporations against Weichman in the state court action. Neither of the two corporations has filed a proof of claim in case number 08-23482. Thus, even viewing either or both of the two corporations as a potential creditor of Weichman, causes of action asserted by Associated against either or both of the corporations does not affect the allocation of property

among creditors of Weichman as a debtor.

The court determines that there is no jurisdiction in federal court under 11 U.S.C. § 1334(b) with respect to causes of action asserted by Associated against MMDS and/or Weichman Associates.

The state court action was removed explicitly pursuant to 28 U.S.C. § 1452(a). The parameters of jurisdiction and remand are therefore defined by 28 U.S.C. § 1452(b) and by 28 U.S.C. § 1334(c). The record has been closed, and as the record stands the following circumstances are those applicable to this decision:

a. All causes of action sought to be stated by Associated in case number 45D01-0412-CT-304 in the Superior Court of Lake County, Indiana were removed by Weichman to the United States Bankruptcy Court for the Northern District of Indiana.

b. The court has no jurisdiction over any cause of action asserted by Associated in the state court proceeding against MMDS and/or Weichman Associates under 28 U.S.C. § 1334(b).

c. Because the court has no jurisdiction over the claims of Associated against MMDS and/or Weichman Associates, the causes of action asserted by Associated against those defendants in the state court were not properly removed pursuant to 28 U.S.C. § 1452(a).

d. In terms of federal practice, which now governs the complaint sought to be removed by Weichman, MMDS and Weichman Associates were joined as defendants, and are thus subject to the provisions of Fed.R.Bankr.P. 7019/Fed.R.Civ.P. 19(a)(1) and (b), and of Fed.R.Bankr.P. 7020/Fed.R.Civ.P. 20(a)(2)(A).

e. Neither MMDS nor Weichman Associates has asserted a defense under Fed.R.Bankr.P. 7019(1).

f. No party in this proceeding has sought any relief pursuant to Fed.R.Bankr.P. 7021/ Fed.R.Civ.P. 21. Moreover, in the context of this latter Rule, there was no “misjoinder of

parties” – the problem arises from federal jurisdiction with respect to a removed case, and not with respect to misjoinder arising from proceedings in the state court action.

The causes of action sought to be removed by Weichman *in toto* rise or fall as a package, not as severable claims against Weichman and against the two corporate entities.

The court determines that removal of the causes of action in case number 45D01-0412-CT-304 cannot be sustained under 28 U.S.C. § 1452(a), and that the Motion for Remand should be granted on this basis.

B. Mandatory Abstention Under 28 U.S.C. § 1334(c)(2)

28 U.S.C. § 1334(c)(2) states:

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

Both parties acknowledge the applicability of the foregoing statute; their dispute is with respect to whether or not Associated’s action against the three defendants can be “timely adjudicated” in the Lake Superior Court.

While this issue has been very ably presented to the court by the parties, the court’s determination in the preceding section of this decision causes this issue to be moot. The court therefor declines to adjudicate this issue, as its determination is unnecessary to fully resolve Associated’s motion.

C. Remand Pursuant to 28 U.S.C. § 1452(b)

Although the court’s orders directing the course of further proceedings essentially removed issues under 28 U.S.C. § 1452(b) from determination, particularly Weichman and the two corporate defendants have chosen to defend against this ground as a potential basis for

remand. Based upon the fact that the court has determined that remand is otherwise mandated, the court determines that it is unnecessary to address any issue under 28 U.S.C. § 1452(b).

#### IV. DECISION

Based upon the findings of fact and conclusions of law stated above, the court determines the following:

A. The court has no subject matter jurisdiction with respect to any cause of action asserted by Associated Pathologists of Munster, Indiana, PC against MMDS, Inc. or Weichman & Associates, PC. The Motion for Remand filed by Associated Pathologists of Munster, Indiana, PC must be granted because the court has no jurisdiction for the removal requested by Jack Weichman, to the extent required by 28 U.S.C. § 1452(a).

B. It is unnecessary for the court to address 28 U.S.C. § 1334(c)(2), and the court declines to do so.

C. Considerations of equitable grounds for remand under 28 U.S.C. § 1452(b) are unnecessary.

IT IS ORDERED, ADJUDGED AND DECREED that the entirety of adversary proceeding number 08-2155/case number 45D01-0412-CT-304 filed in the Superior Court of Lake County, Indiana – and all causes of action asserted by Associated Pathologists of Munster, Indiana, PC in that action against Jack Weichman, Weichman & Associates PC, and MMDS, Inc. – are remanded to the Superior Court of Lake County, Indiana for final disposition of those causes of action.

Dated at Hammond, Indiana on March 11, 2010.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

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