

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: : Chapter 11  
: :  
NORTHWESTERN CORPORATION, : Case No. 03-12872 CGC  
: :  
Debtor. : :

---

ROGER ROHR and CAROL ROHR :  
: :  
Plaintiffs, :  
: :  
v. : Civil Action No. 04-110 JJF  
: :  
NORTHWESTERN CORPORATION, :  
: :  
Defendant. : :

---

Noel C. Burnham, Esquire of MONTGOMERY, MCCRACKEN, WALKER &  
RHOADS, LLP, Wilmington, Delaware.  
Of Counsel: Brent R. Cromley, Esquire, Douglas James, Esquire,  
and Thomas A. Mackay, Esquire of MOLTON, BELLINGHAM, LONGO &  
MATHER, P.C., Billings, Montana.  
Attorneys for Plaintiffs.

Charles Michael Terribile, Esquire of GREENBURG TRAURIG, LLP,  
Wilmington, Delaware.  
Attorney for Defendant.

Mark S. Kenney, Esquire, OFFICE OF THE UNITED STATES TRUSTEE,  
Wilmington, Delaware.  
Attorney for United States Trustee.

Charlene D. Davis, Esquire of THE BAYARD FIRM, Wilmington,  
Delaware.  
Attorney for the Official Committee of Unsecured Creditors.

---

**MEMORANDUM OPINION**

April 29, 2004

Wilmington, Delaware

**Farnan, District Judge.**

Presently before the Court is the Motion For Withdrawal Of Reference And Transfer To United States District Court In Judicial District Of Montana, Butte Division filed by Plaintiffs Roger and Carol Rohr (collectively "Plaintiffs"). (D.I. 1.) For the reasons discussed, the Court will grant the Motion.

**BACKGROUND**

On or about June 22, 2002, Roger Rohr was working on a roof when he came into contact with a power line. Due to this contact, Mr. Rohr was knocked off the roof and sustained serious injuries. On or about November 4, 2002, Plaintiffs filed a complaint and requested a jury trial in Montana state court alleging that Mr. Rohr's injury were the result of Northwestern Energy, L.L.C.'s ("Northwestern") negligence.

Northwestern is the successor in interest to Montana Power. Northwestern is a wholly owned subsidiary of Northwestern Corporation, a Delaware corporation currently in Chapter 11 bankruptcy in the United States Bankruptcy Court in the District of Delaware (the "Delaware Bankruptcy"). Northwestern is not a named party in the Delaware Bankruptcy. By their Motion, Plaintiffs move the Court to withdraw the reference and transfer this action to the United States District Court in the Judicial District of Montana, Butte Division (the "Montana District

Court").<sup>1</sup>

## DISCUSSION

### I. Permissive Withdrawal<sup>2</sup>

The Court is persuaded that Plaintiffs have shown sufficient "cause" to justify permissive withdrawal. The first sentence of Section 157(d) provides that a district court may withdraw the reference of any case under this section "for cause." 28 U.S.C. § 157(d). Courts in the Third Circuit have enumerated a number of factors that may constitute "cause," including: the goal of promoting uniformity in bankruptcy administration, whether the action is core or non-core, judicial efficiency, and discouraging forum shopping. In re Pruitt, 910 F.2d 1160, 1168 (3d Cir. 1990) (citing Holland Am. Ins. Co. v. Succession of Roy, 777 F.2d 992, 999 (5th Cir. 1985)); In re G-I Holdings, Inc., 295 B.R. 211, 216 (D. N.J. 2003).

The Court concludes that permissive withdrawal is proper because, pursuant to 28 U.S.C. § 157(b)(5), the Bankruptcy Court is without subject matter jurisdiction over Plaintiffs' claims. Section 157(b)(5) provides:

---

<sup>1</sup> Defendant did not file an opposition brief to Plaintiffs Motion, and therefore, the Court will resolve the instant matter on the limited record before it.

<sup>2</sup> Because Northwestern is not a named party in the Delaware Bankruptcy and only a subsidiary of the Debtor, the automatic stay does not prohibit the Court from addressing the merits of the instant motion. See Maritime Elec. Co., Inc. v. United Jersey Bank, 959 F.2d 1194, 1205 (3d Cir. 1992).

The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

28 U.S.C. § 157(b) (5). The mandate from Section 157(b) (5), that personal injury tort and wrongful death claims be tried by the district court, effectively deprives the Bankruptcy Court of jurisdiction to entertain the instant action. See Hansen v. Borough of Seaside Park, 164 B.R. 482, 485-86 (D. N.J. 1994) (citing Vinci v. Town of Carmel, 108 B.R. 439, 441-42 (Bankr. S.D.N.Y. 1989)); In re Manidis, Bankr. Adv. No. 93-0181, 1994 WL 250072, \*6-7 (Bankr. E.D. Pa. May 27, 1994) (citations omitted). Accordingly, the Court concludes that permissive withdrawal is appropriate in this case. See In re Patterson, 150 B.R. 367, 368 (E.D. Va. 1993).

## **II. Transfer Pursuant To 28 U.S.C. § 157(b) (5)**

The Court also concludes that a transfer to the Montana District Court is appropriate. As cited above, Section 157(b) (5) permits a district court to order personal injury and wrongful death claims to be tried in the district where the bankruptcy action is proceeding or in the district where the claim arose. In the Court's view, the circumstances in this case require the Court to exercise its discretion and order a transfer to Montana.

The events at the heart of this action all occurred in Montana. Also, Plaintiffs have indicated their intention to

consolidate the instant action with the pending Montana state court action if the instant action is transferred to the Montana District Court. (D.I. 2 at 4.) Further, the claims in the instant action involve Montana tort principles and all of the witnesses reside in that state. Id. at 14. Based on these facts, and pursuant to the authority provided by Section 157(b) (5), the Court is persuaded that principles of judicial economy and the convenience of the parties require the Court to exercise its discretion and transfer this action to the Montana District Court.

#### **CONCLUSION**

For the reasons discussed, the Court will grant the Motion to Withdraw and transfer this action to the Montana District Court.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: : Chapter 11  
: :  
NORTHWESTERN CORPORATION, : Case No. 03-12872 CGC  
: :  
Debtor. : :

---

ROGER ROHR and CAROL ROHR :  
: :  
Plaintiffs, :  
: :  
v. : Civil Action No. 04-110 JJF  
: :  
NORTHWESTERN CORPORATION, :  
: :  
Defendant. : :

**ORDER**

At Wilmington, this 29th day of April, 2004, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

- 1) The Motion For Withdrawal Of Reference And Transfer To United States District Court In Judicial District Of Montana, Butte Division filed by Roger and Carol Rohr (D.I. 1) is **GRANTED**;
  - a) The reference to the Bankruptcy Court is **WITHDRAWN** pursuant to 28 U.S.C. § 157(d);
  - b) This matter is transferred to the United States District Court in the Judicial District of Montana, Butte Division.

JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT JUDGE