

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

ROGER DAUB, et al.,	:	
	:	
Plaintiffs,	:	Consolidated Under
	:	MDL DOCKET NO 875
	:	
v.	:	Civil Action
	:	No. 01-md-875
A.P.I., Inc., et al.,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this **12th** day of **February 2010** it is hereby **ORDERED** that, for the cases listed in exhibit "A", attached, Plaintiffs' motion for remand (doc. no. 1405) to North Dakota state district court, Burleigh County, filed on April 13, 1995 is **DENIED.**¹

¹ The cases at issue were filed in North Dakota state district court, Burleigh County, for asbestos-related personal injury and/or wrongful death in 1989 and 1990. The cases were subsequently removed to the United States District Court for the District of North Dakota, Southwestern Division, by defendant Asbestos Corporation, Ltd. ("ACL"). ACL, an instrumentality of a foreign state under 28 U.S.C. § 1603, removed the action under 28 U.S.C. § 1441(d). The cases were then consolidated in the Eastern District of Pennsylvania as part of MDL No. 875. After removal, ACL settled its claims and was dismissed from these cases. Plaintiffs argue that they are entitled to remand because § 1441(d) does not provide for pendent-party jurisdiction over the state claims at issue, and additionally, that federal jurisdiction was lost when ACL settled its claims.

A district court considering a motion to remand "must focus on the plaintiff's complaint at the time the petition for removal was filed . . . [and] must assume as true all factual allegations of the complaint." In re Briscoe, 448 F.3d 201, 218 (3d Cir.

2006). The "party who urges jurisdiction on a federal court bears the burden of proving that jurisdiction exists . . ." Boyer v. Snap-on Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990); see also Steel Valley Auth. v. Union Switch & Signal Div., 809 F.2d 1006, 1010 (3d Cir. 1987), cert. dismissed sub nom. American Standard v. Steel Valley Auth., 484 U.S. 1021 (1988) ("It remains the defendant's burden to show the existence and continuance of federal jurisdiction."). Because the removal of an action from the state court to a federal forum implicates comity and federalism, it is said that "removal statutes are to be strictly construed against removal and all doubts should be resolved in favor of remand." Steel Valley Auth., 809 F.2d at 1010 (citing Abels v. State Farm Fire & Cas. Co., 770 F.2d 26, 29 (3d Cir. 1985)); accord Brown v. Francis, 75 F.3d 860, 865 (3d Cir. 1996); Boyer, 913 F.2d at 111. See Various Plaintiffs v. Various Defendants ("Oil Field Cases"), No. 09-MC-103, 2009 WL 4729906 at *2 (E.D. Pa. Dec. 10th, 2009).

As to Plaintiff's first argument, the Court finds that § 1441(d) provides for pendent-party jurisdiction. Section 1441(d) allows "[a]ny civil action brought in State court against a foreign state . . . [to be] removed by the foreign state to the district court of the United States." The phrase "civil action" means not only the claims against the foreign state, but the entire action, including pendent-parties. Therefore, applying Third Circuit precedent, the FSIA provides for pendent-party jurisdiction. See Trump Taj. Mahal Assoc. v. Costruzioni Aeronautiche Giovanni Augusta S.P.A., 761 F. Supp. 1143, 1153 (D.N.J. 1991) (finding that the "jurisdictional provision of the FSIA is quite broad") (aff'd without opinion by Trump Taj. Mahal Assoc. v. Costruzioni Aeronautiche Giovanni Augusta S.P.A., 958 F.2d 365 (3d Cir. 1992)).

Plaintiff's second argument is also unavailing. Even though ACL is no longer a party to these cases, the continued exercise of jurisdiction under these circumstances is discretionary. The Third Circuit has held that, "[W]here the jurisdiction-conferring party drops out and the federal court retains jurisdiction over what becomes a state law claim between non-diverse parties, the bounds of Article III have not been crossed." New Rock Asset Partners, L.P. v. Preferred Entity Advancements, 101 F.3d 1492, 1506 (3d Cir. 1996). In determining whether to maintain jurisdiction in the absence of the jurisdiction-conferring party, the court should weigh the consideration of "judicial economy, convenience and fairness to litigants." United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966).

AND IT IS SO ORDERED.



Handwritten signature of Eduardo C. Robreno, J.

EDUARDO C. ROBRENO, J.

In the instant case, the considerations of judicial economy, convenience, and fairness to the litigants point squarely in favor of this Court maintaining jurisdiction. This Court has devoted substantial resources to Plaintiffs' cases, and to MDL-875 in general. Each Plaintiff in the instant cases has been referred to Chief Magistrate Judge Thomas J. Rueter for settlement proceedings. Judge Rueter has held several settlement conferences with Plaintiffs' counsel, and has made progress on these claims. Also, each of these Plaintiffs have a second case, based on the same exposure, filed against different Defendants and pending in MDL 875. Exercising jurisdiction over these cases allows the Court and Judge Rueter to conduct consolidated pretrial proceedings as to all claims by these Plaintiffs against all Defendants. This is the most efficient and fair administration of these cases. For the reasons stated above, Plaintiffs' motion to remand is denied.

Exhibit "A"

DISTRICT OF NORTH DAKOTA - MDL 875 - (Pipefitter II Group)

Plaintiff	Decedent/Estate	Transferor Court & Civil Action No.	EDPA Civil Action No.
Mauritz Alm		ND - SW Div. A1-90-024	09-66581
Norman Anvik		ND - SW Div. A1-90-025	09-68082
Alphonse Bailly		ND - NE Div. A2-90-022	09-66687
Willard Borlaug		ND - SW Div. A1-90-026	09-68084
Joseph Bosch		ND - SW Div. A1-90-027	09-66584
Billie Crawford		ND - SW Div. A1-90-028	09-66585
Arnold Dockter		ND - SW Div. A1-90-029	09-66586
Vernon Erickson		ND - SW Div. A1-90-030	09-66587
Leo G. Ferderer		ND - SW Div. A1-90-031	09-68089
Everett Finken		ND - SW Div. A1-90-032	09-66589
Alphonse Fleck		ND - SW Div. A1-90-033	09-68091
Fred Fredrickson		ND - SW Div. A1-90-034	09-66591
Stanley Freidt		ND - SW Div. A1-90-035	09-66592
Herbert Fried		ND - SW Div. A1-90-036	09-66593
Herbert Gartner		ND - SW Div. A1-90-037	09-66594

DISTRICT OF NORTH DAKOTA - MDL 875 - (Pipefitter II Group)

Plaintiff	Decedent/Estate	Transferor Court & Civil Action No.	EDPA Civil Action No.
Byron F. Gaylord	Joseph Gaylord	ND - SW Div. A1-90-038	09-68124
Leo Goldade		ND - SW Div. A1-90-039	09-66596
Glen Griffin		ND - SW Div. A1-90-040	09-66597
Roger Harris		ND - SW Div. A1-90-041	09-66598
Paul Hempel		ND - NE Div. A2-90-023	09-66688
Howard Herberg		ND - SW Div. A1-90-042	09-66599
Helmer Hogleund		ND - SW Div. A1-90-043	09-66600
Howard Holter		ND - SW Div. A1-90-044	09-66601
Allen Huelsman		ND - SW Div. A1-90-045	09-66602
Kenneth Jeffries		ND - SW Div. A1-90-046	09-66603
Svend Jensen		ND - SW Div. A1-90-047	09-66604
Raymond Johnson		ND - NE Div. A2-90-024	
Kenneth Kady		ND - SW Div. A1-90-048	09-66605
Sabastian Kraft		ND - SW Div. A1-90-049	09-66606
Mahlon Lantz		ND - NE Div. A2-90-025	09-66690

DISTRICT OF NORTH DAKOTA - MDL 875 - (Pipefitter II Group)

Plaintiff	Decedent/Estate	Transferor Court & Civil Action No.	EDPA Civil Action No.
Ronald Lucier		ND - SW Div. A1-90-050	09-66607
Arnold Miller		ND - SW Div. A1-90-051	09-66608
Erasmus Monzelowsky		ND - SW Div. A1-90-052	09-66609
Dennis O'Shea		ND - SW Div. A1-90-053	09-66610
Arnold Paschke		ND - NE Div. A2-90-026	09-66691
Albert Rall		ND - SW Div. A1-90-054	
Richard Ramsett		ND - NE Div. A2-90-027	09-66692
James Ruelle		ND - SW Div. A1-90-055	09-66612
Jack Schaff		ND - SW Div. A1-90-056	09-66613
Emanuel Schutt		ND - SW Div. A1-90-057	09-66614
Layman Slavick		ND - SW Div. A1-90-058	09-66615
Raymond Sumpter		ND - NE Div. A2-90-028	09-66693
Lester Wallace		ND - SW Div. A1-90-059	09-66616
Fred Wendt		ND - NE Div. A2-90-029	09-66694

DISTRICT OF NORTH DAKOTA - MDL 875 (AMOCO GROUP)

Plaintiff	Transferor Court & Civil Action No.	EDPA Civil Action No.
Robert Albin	ND - SW Div. - A1-90-235	09-66618
Douglas M. Anvik	ND - SW Div. - A1-90-236	09-68015
Otto Anvik	ND - SW Div. - A1-90-237	09-66619
Norlin O. Backman	ND - SW Div. - A1-90-238	09-66620
Kenneth E. Baudien	ND - SW Div. - A1-90-239	09-66621
William H. Bentley	ND - SW Div. - A1-90-240	09-66622
Raymond W. Birst	ND - SW Div. - A1-90-241	09-66623
Clarence G. Bolken	ND - SW Div. - A1-90-243	09-68020
Emil W. Doerr	ND - SW Div. - A1-90-245	09-66626
Michael W. Ehreth	ND - SW Div. - A1-90-246	09-68022
Leonard J. Ereth	ND - SW Div. - A1-90-242	09-66624
John D. Ewine	ND - SW Div. - A1-90-248	09-66629
Clarence Fateley	ND - SW Div. - A1-90-249	09-66630
Marlin L. Gay	ND - SW Div. - A1-90-250	09-66631
Arnold C. Gilbert, Sr.	ND - SW Div. - A1-90-251	09-66632
Warren W. Guenther	ND - SW Div. - A1-90-252	09-66633
Elmer A. Gustafson	ND - SW Div. - A1-90-253	09-66634
Earl Hall	ND - SW Div. - A1-90-254	09-66635
Lloyd R. Heid	ND - SW Div. - A1-90-255	09-66636
Mike Hilzendeger	ND - SW Div. - A1-90-256	09-66637
Eugene R. Hochhalter	ND - SW Div. - A1-90-257	09-66638
Jerome Jacobs	ND - SW Div. - A1-90-258	09-66639
Boyd F. Jaskoviak	ND - SW Div. - A1-90-259	09-66640

Gerald L. Karch	ND - SW Div. - A1-90-260	09-66641
Ted Kary	ND - SW Div. - A1-90-261	09-66642
Creighton G. Kettleson	ND - SW Div. - A1-90-262	09-66643
Edmund Kindsvogel	ND - SW Div. - A1-90-263	09-66644
Virgil D. Koenig	ND - SW Div. - A1-90-264	09-66645
Joseph T. Leingang	ND - SW Div. - A1-90-265	09-66646
Richard N. Leingang	ND - SW Div. - A1-90-266	09-66647
Martin F. Lipp	ND - SW Div. - A1-90-267	09-66648
Earl F. Lippert	ND - SW Div. - A1-90-268	09-66649
Alvin J. Loebeck	ND - SW Div. - A1-90-269	09-66650
Frank Manolovitz	ND - SW Div. - A1-90-271	09-66652
Lorraine E. McCulley	ND - SW Div. - A1-90-270	09-66651
Alvie E. Nixon	ND - SW Div. - A1-90-272	09-66653
Theodore R. Ost	ND - SW Div. - A1-90-273	09-66654
Wesley A. Perman	ND - SW Div. - A1-90-274	09-66655
Albert J. Petrasek	ND - SW Div. - A1-90-275	09-66656
Walter Quashnick	ND - SW Div. - A1-90-276	09-66657
Thomas M. Rambur	ND - SW Div. - A1-90-277	09-66658
Dale V. Satermo	ND - SW Div. - A1-90-278	09-66659
Victor N. Schiermeister	ND - SW Div. - A1-90-279	09-66660
David L. Schmidt	ND - SW Div. - A1-90-280	09-66661
Joseph F. Schneider	ND - SW Div. - A1-90-281	09-66662
Peter Schneider	ND - SW Div. - A1-90-282	09-66663
Duane Selfors	ND - SW Div. - A1-90-283	09-66664
Joe A. Senger	ND - SW Div. - A1-90-284	09-66665
Russell F. Senne	ND - SW Div. - A1-90-285	09-66666

Earl R. Setterlund	ND - SW Div. - A1-90-286	09-66667
Daryl Sheldon	ND - SW Div. - A1-90-287	09-66668
Gerard M. Sheldon	ND - SW Div. - A1-90-288	09-66669
Melvin E. Skager	ND - SW Div. - A1-90-289	09-66670
Sharon Stimac (Estate of John Stimac)	ND - SW Div. - A1-90-290	09-66671
Donald T. Stumpf	ND - SW Div. - A1-90-291	09-66672
Larry Sullivan	ND - SW Div. - A1-90-292	09-66673
Alan Sundby	ND - SW Div. - A1-90-293	09-66674
Wallace E. Toepke	ND - SW Div. - A1-90-294	09-66675
Gustof Voegele	ND - SW Div. - A1-90-295	09-66676
Milan E. Ward	ND - SW Div. - A1-90-296	09-66677
Clement Wirtz	ND - SW Div. - A1-90-297	09-66678
William B. Woods	ND - SW Div. - A1-90-298	09-66679
DuWayne R. Zachmeier	ND - SW Div. - A1-90-299	09-66680
Richard G. Zachmeier	ND - SW Div. - A1-90-300	09-66681
William R. Zachmeier	ND - SW Div. - A1-90-301	09-66682
James P. Zoller	ND - SW Div. - A1-90-302	09-66683