

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

LEONARD TOW, ET AL.,	:	
	:	
Plaintiffs,	:	Civil Action No. 3:04 CV 560(CFD)
	:	
CREDIT SUISSE FIRST BOSTON	:	
CORPORATION, ET AL.,	:	
	:	
Defendants.	:	

**RULING ON MOTION TO REMAND**

Pending is Plaintiffs’ Motion to Remand [Doc. #13]. A hearing on the motion was held on July 13, 2004.

The Plaintiffs are Leonard Tow individually and as a trustee of The Claire Tow Trust; Claire Tow, individually and as a trustee of The Claire Tow Trust; David Z. Rosenweig, as trustee of The Claire Tow Trust and The Tow Charitable Remainder Unitrust #1; The Leonard And Claire Tow Charitable Trust, Inc.; The Tow Foundation, Inc., and these plaintiffs as successors in interest to The Claire Tow Revocable Trust Created December 10, 1979 (collectively, “Plaintiffs”). They commenced this action against Credit Suisse First Boston Corporation a/k/a Credit Suisse First Boston LLC; Credit Suisse First Boston a/k/a Credit Suisse First Boston-New York Branch; Donaldson, Lufkin & Jenrette Securities Corporation; DLJ Capital Funding, Inc.; and Donaldson, Lufkin & Jenrette, Inc. n/k/a Credit Suisse First Boston (USA) Inc. (collectively, “Defendants”), alleging Connecticut common-law claims of aiding and abetting fraud, civil conspiracy, fraud, and violations of the Connecticut Uniform Securities Act,

Conn. Gen. Stat. § 36b-29, and the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a et seq. Plaintiffs allege that the defendants, who provided underwriting services to Adelphia Communications Corporation (“Adelphia”), participated in a financial fraud concerning the sale of Century Communications Corp. (“Century”) to Adelphia (hereinafter, the “Adelphia/Century Merger”). The plaintiffs allege numerous ways in which the defendants were involved in the alleged fraudulent scheme. The plaintiffs had owned approximately 93% of the combined voting power of the Century Class A common stock and the Century Class B common stock prior to the Adelphia/Century Merger. They allege that they relied on the defendants’ alleged fraudulent concealment of Adelphia’s true financial condition in voting their Century shares in favor of the Adelphia/Century Merger and, as a result of defendants’ conduct, suffered losses in the amount of \$1.5 billion.

Plaintiffs commenced this action in the Superior Court of the State of Connecticut, for the Judicial District of Stamford. The action was removed to this Court by the Defendants pursuant to 28 U.S.C. §§ 1334(b), 1446 and 1452. On May 21, 2004, the Judicial Panel on Multidistrict Litigation issued a conditional transfer order, transferring this action to the United States District Court for the Southern District of New York, which order has been stayed pending resolution of Plaintiffs’ Notice of Opposition to the proposed transfer.

The defendants assert that this Court has jurisdiction because this suit is “related to” Adelphia’s Chapter 11 bankruptcy proceeding in the Southern District of New York. The plaintiffs argue that the Court lacks jurisdiction because their claims are not “related to” the Adelphia bankruptcy. In addition, they argue that even if jurisdiction exists, the Court must abstain from hearing the case under 28 U.S.C. § 1334(c)(2) or, in the alternative, should exercise permissive abstention under 28 U.S.C. §

1334(c)(1). Each of these arguments is addressed below.

### **I. Subject Matter Jurisdiction**

28 U.S.C. § 1334(b) provides that “the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.”

A civil proceeding is “related to” a bankruptcy proceeding if “the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.” In re Pacor, Inc., 743 F.2d 984, 994 (3d Cir. 1984). See also In re Cuyahoga Equipment Corp., 980 F.2d 110, 114 (2d Cir. 1992); Connecticut Res. Recovery Auth. v. Lay, 292 B.R. 464, 470 (D. Conn. 2003); In re Adelpia Communications Corp. Securities and Derivative Litigation, 2003 WL 23018802, \*2

(S.D.N.Y. 2003). In addition, the “conceivable effect” test establishes that:

[T]he proceeding need not necessarily be against the debtor or against the debtor’s property. An action is related to bankruptcy if the outcome could alter the debtor’s rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

Pacor, 743 F.2d at 994. Finally, where the debtor has an obligation to indemnify the non-debtor defendant, a plaintiff’s claim against a non-debtor defendant is “related to” the bankruptcy proceeding because of the conceivable effect on the bankrupt estate. See Pacor, 743 F.2d at 995; In re River Center Holdings, LLC, 288 B.R. 59, 65 (S.D.N.Y. 2003) (“[E]ven if the obligation is not contractual and absolute, ‘related to’ jurisdiction exists if the disputed or conditional indemnity claim has a ‘reasonable legal basis.’”); Gem Commercial Assocs. v. TJX Cos., 2003 WL 21488304, \*2 (D. Conn. 2003) (“[W]here, as here, the non-party debtor has a contractual obligation that would ‘automatically result in indemnification liability [against the debtor]’, the plaintiff’s claim against the non-

debtor defendant is ‘related to’ the debtor’s bankruptcy case.’’) (quoting Pacor, 743 F.2d at 994-96).

The plaintiffs have filed at least 365 Proofs of Claim in Adelphia’s bankruptcy case for losses on their Adelphia stock holdings. At the hearing on this motion, the plaintiffs admitted that recovery in this case would reduce losses represented by their proofs of claim in Adelphia’s bankruptcy case. Thus, this action would conceivably affect the size and administration of the bankruptcy estate. In addition, the defendants have express written indemnification and contribution rights against Adelphia. Even in the absence of defendants’ contractual rights, defendants’ statutory and common law rights of indemnification and contribution could certainly have a conceivable effect on the bankrupt estate. Accordingly, this Court has jurisdiction under 28 U.S.C. § 1334(b).

## **II. Mandatory Abstention**

The plaintiffs assert that the even if the Court has jurisdiction under 28 U.S.C. § 1334(b), the Court must invoke mandatory abstention.

28 U.S.C. 1334(c)(2) provides that where jurisdiction is based on an action “related to” a bankruptcy proceeding, “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.” The court in Worldcom set forth the criteria for mandatory abstention:

A party seeking mandatory abstention must prove each of the following: (1) the motion to abstain was timely; (2) the action is based on a state law claim; (3) the action is "related to" but not "arising in" a bankruptcy case or "arising under" the Bankruptcy Code; (4) Section 1334 provides the sole basis for federal jurisdiction; (5) an action is commenced in state court; (6) that action can be "timely adjudicated" in state court.

In re Worldcom Inc. Securities Litigation, 293 B.R. 308, 331 (S.D.N.Y. 2003); see also

Connecticut Res. Recovery Auth., 292 B.R. at 471 (citing Worldcom factors).

One prerequisite for mandatory abstention is that the action can be timely adjudicated in state court. A “naked assertion is inadequate to carry the point.” Worldcom, 293 B.R. at 331. See also Connecticut Res. Recovery Auth., 292 B.R. at 471-71 (holding that plaintiff had failed to meet mandatory abstention requirements where the plaintiff’s “proof that the action could be timely adjudicated in state court consists of a statement that this is so, without addressing the ramifications of the size and complexity of the litigation, and the judicial efficiency of litigating common issues in courts across the country.”). The plaintiffs assert that this action would be more timely adjudicated in the state court than if transferred to the Southern District of New York with the numerous other cases in the MDL litigation. The plaintiffs claim that the nature of this case would permit its transfer to the Complex Litigation Docket in Connecticut and that since Mr. Tow is over 65 years old, this would be a “privileged” case entitled to an expedited trial in state court. However, these assertions are not enough to show that the action can be timely adjudicated in state court for the same reasons set forth in

Worldcom:

The size of the . . . bankruptcy, the close connections between the defendants in this action and the debtor, and the complexity of this litigation suggest the contrary: remanding to state court could slow the pace of litigation dramatically. If each of the actions removed from state court were remanded, it would lead to duplicative motion practice and repetitious discovery, as well as requiring common issues to be resolved separately by courts across the country.

Worldcom, 293 B.R. at 331. Accordingly, mandatory abstention is not appropriate here.

### III. Permissive Abstention

Finally, the plaintiffs assert that if there is subject matter jurisdiction, the Court should abstain under the permissive abstention provision in 28 U.S.C. § 1334(c)(1), which allows courts to abstain from hearing a case based on “the interest of justice or in the interest of comity with State courts or respect for State law.” 28 U.S.C. § 1334(c)(1). There are a number of factors to consider in determining whether to exercise permissive abstention, including, but not limited to:

1) the effect or lack thereof on an efficient administration of the estate if a court recommends abstention or remand; 2) the extent to which state law issues predominate over bankruptcy issues; 3) comity; 4) prejudice to a party involuntarily removed from state court; 5) the jurisdictional basis, if any, other than 28 U.S.C. Section 1334; and 6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case.

Gem Assocs., 2003 WL 21488304 at \* 3; see also Adelphia, 2003 WL 23018802 at \*2-\*3

(examining these factors and concluding that “economy and efficiency will be served by the exercise of jurisdiction” in the MDL litigation). Here, the equitable factors do not weigh in favor of abstention. The Court adopts the reasoning in Judge McKenna’s decision in Adelphia and will not exercise discretionary abstention.

Accordingly, Plaintiffs’ Motion to Remand [Doc. #13] is DENIED.

SO ORDERED this \_\_\_\_\_ day of July 2004 at Hartford, Connecticut.

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**CHRISTOPHER F. DRONEY**  
**UNITED STATES DISTRICT JUDGE**