

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

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AVIVA LIFE AND ANNUITY COMPANY and  
AVIVA LIFE AND ANNUITY COMPANY OF  
NEW YORK,

Plaintiffs,

vs.

STEVEN H. DAVIS, STEPHEN DICARMINE,  
and JOEL SANDERS,

Defendants.

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**No. 4:12-cv-00603 – JEG**

**O R D E R**

This matter comes before the Court on Motion by Defendants Stephen DiCarmine (DiCarmine) and Joel Sanders (Sanders) to Transfer Venue to the United States Bankruptcy Court for the Southern District of New York (ECF No. 16) and Motion by Defendant Steven H. Davis (Davis) to Transfer Venue to the United States District Court for the Southern District of New York (ECF No. 17). Plaintiffs Aviva Life and Annuity Company and Aviva Life and Annuity Company of New York (collectively, Aviva) resist. A hearing on the motions was conducted on May 21, 2013. Attorneys Alfred Lurey, Helen Michael, and John Clendenin were present on behalf of Aviva. Attorney Matthew Whitaker was present on behalf of DiCarmine, Sanders, and Davis (collectively, Defendants). Attorneys Kathryn Coleman and Christopher Gartman were present on behalf of DiCarmine and Sanders; and Attorney Steven Serajeddini was present on behalf of Davis. The motions are fully submitted and ready for disposition.

**I. BACKGROUND**

**A. Factual Background<sup>1</sup>**

Davis, DiCarmine, and Sanders are former managers of Dewey and LeBoeuf LLP (Dewey). Dewey was created in 2007 and was, until recently, one of the country's largest law

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<sup>1</sup> In accordance with the March 7, 2013, Order of U.S. Magistrate Judge Celeste Bremer, ECF No. 14, adopting the Stipulation of the parties, ECF No. 12, Defendants have not yet answered the Complaint. Consequently, the factual background, which is based upon the allegations set forth in the Complaint, is provided solely to facilitate discussion of the motions currently before the Court and does not constitute factual findings of the Court.

firms. Davis was the Chairman and head of the executive committee and managed Dewey's day-to-day operations along with DiCarmine, the Executive Director, and Sanders, the Chief Financial Officer. Davis was a partner in the law firm, whereas DiCarmine and Sanders were salaried employees.

Shortly after Dewey's inception in 2007, Dewey offered large compensation guarantees to many of the partners without disclosing the guarantees to the public, investors, or the rest of the partners. Dewey failed to meet profit projections in 2008, and as a result was forced to use 2009 revenues to make payments on 2008 compensation guarantees. Profits fell again in 2009, and by 2010, Dewey owed the partners approximately \$100 million. Despite these problems, Dewey continued to provide additional compensation guarantees to their partners.

In 2009 and 2010, Dewey and Defendants sought out institutional investors to purchase notes issued by Dewey. Dewey and Defendants used materials to convince investors to purchase the notes that allegedly did not mention compensation guarantees and materially misrepresented Dewey's true financial situation. On April 16, 2010, Aviva allegedly relied on these misrepresentations and purchased \$35 million in Dewey notes (the Note Purchase Agreement).

In October 2011, DiCarmine disclosed to Dewey's partners that approximately one hundred of Dewey's three hundred partners had compensation guarantees. In January 2012, Davis disclosed that the 2011 profits would not be distributed due to lower than expected profits and the deferred compensation due under the compensation guarantees. The news caused numerous partners to leave Dewey and was quickly followed by additional revelations that Dewey had misstated its 2010 and 2011 financial statements and that Defendants had used Dewey's profits for improper payments to themselves and other partners.

On May 28, 2012, Dewey filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Southern District of New York, No. 1:12-bk-12321-MG (the Dewey Bankruptcy).

The Bankruptcy Court confirmed Dewey's Chapter 11 liquidation plan on February 27, 2013, No. 1:12-bk-12321- ECF No. 144, and the plan became effective on March 22, 2013.

### **B. Procedural Background**

Aviva filed the instant action in this Court on December 14, 2012, claiming Defendants violated various federal and Iowa state securities laws connected with the sale of the Dewey notes. Defendants waived service. Pursuant to a Joint Stipulation, the Court entered an Order on March 7, 2013, allowing Defendants to file a transfer of venue motion that did not constitute an appearance and providing that following the Court's resolution of that motion, Defendants would have thirty days to either answer or move to dismiss Aviva's Complaint. Defendants have not otherwise appeared in this action.

## **II. DISCUSSION**

### **A. Jurisdiction**

Aviva's claims against Defendants arise under §§ 10(b) and 20(a) of the Securities and Exchange Act of 1934, 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated by the Securities and Exchange Commission, 17 C.F.R. § 240.10b-5. This Court has jurisdiction over these claims pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 78aa(a). The Court has supplemental jurisdiction over Aviva's state law claims for violation of Iowa Code §§ 502.509(2) and (7) pursuant to 28 U.S.C. § 1367(a).

### **B. Transfer of Venue to the Bankruptcy Court**

Defendants move to transfer venue to the United States Bankruptcy Court for the Southern District of New York (the Bankruptcy Court)<sup>2</sup> pursuant to 28 U.S.C. § 1412 and Federal Rule of Bankruptcy Procedure 7087. Aviva counters that the Bankruptcy Court cannot exercise

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<sup>2</sup> Although Davis filed a motion to transfer to the United States District Court for the Southern District of New York, at hearing Defendants agreed that transfer should ultimately be made to the United States Bankruptcy Court for the Southern District of New York.

jurisdiction over its suit because the Bankruptcy Court lacks subject-matter jurisdiction over the case under 28 U.S.C. § 1334(b). Aviva also asserts that even if this dispute could be heard by the Bankruptcy Court, Defendants would not be entitled to a transfer of venue because a transfer would serve neither the interest of justice nor the convenience of the parties.

### **1. Bankruptcy Court Jurisdiction**

Title 28 U.S.C. § 1334(a)-(b) provides,

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, 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.

Section 1334(a) confers on federal district courts exclusive jurisdiction over all cases under Title 11, “but § 1334(b) confers on the federal courts ‘original *but not exclusive* jurisdiction of all civil proceedings arising under title 11, or arising in or *related to* cases under title 11.’” In re Athens/Alpha Gas Corp., 715 F.3d 230, 237 (8th Cir. 2013) (quoting § 1334(b)).

Jurisdiction of bankruptcy courts is set forth in 28 U.S.C. § 157(b)(1), which provides that bankruptcy courts “may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11 . . . .” Bankruptcy courts may hear both core proceedings of Title 11 and non-core proceedings related to Title 11. See 28 U.S.C. § 157(c)(1). A core proceeding is any claim “arising under” or “arising in” bankruptcy. Id. § 157(b)(1). A non-core proceeding is any claim “relating to” a bankruptcy proceeding that “could conceivably have an[] effect on the estate being administered in bankruptcy . . . .” In re Farmland Indus., Inc., 567 F.3d 1010, 1017 (8th Cir. 2009) (alterations in original) (quoting Specialty Mills, Inc. v. Citizens State Bank, 51 F.3d 770, 774 (8th Cir. 1995)). Bankruptcy courts have a limited role in non-core proceedings as they may only make “proposed findings of

fact and conclusions of law,” which a district court must review before entering a final judgment. § 157(c)(1).

Claims “arising under” Title 11 are those claims that “involve a cause of action created or determined by a statutory provision of title 11.” In re Farmland, 567 F.3d at 1018 (quoting In re Wood, 825 F.2d 90, 96 (5th Cir. 1987)). It is undisputed that Aviva’s claims do not “arise under” Title 11 as the state and federal securities claims asserted by Aviva are not causes of action created by federal bankruptcy law. Accordingly, the Bankruptcy Court does not have “arising under” jurisdiction over Aviva’s claims.

Claims “arising in” Title 11 are those claims “that are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the bankruptcy.” Id. (quoting In re Wood, 825 F.2d at 97). “Arising in” claims are “claims that by their nature, not their particular factual circumstance, could only arise in the context of a bankruptcy case.” Id. (quoting Stoe v. Flaherty, 436 F.3d 209, 218 (3d Cir. 2006)). Defendants argue Aviva’s claims “arise in” bankruptcy court jurisdiction because they have filed proofs of claims in the Dewey Bankruptcy. Defendants assert that filing proofs of claims subjects them to the Bankruptcy Court’s equitable jurisdiction and triggers the allowance and disallowance of claims, which is a core proceeding under § 157(b)(2)(B). The Court must disagree. Aviva’s securities fraud claims are not causes of action that have no existence outside of bankruptcy nor are they claims that could *only* arise in the context of bankruptcy; therefore, the Bankruptcy Court does not have “arising in” jurisdiction over Aviva’s claims.

As the claims asserted by Aviva are not core proceedings that “arise in” or “arise under” Title 11, the Bankruptcy Court’s sole jurisdictional hook over this controversy must fall under “related to” jurisdiction. The Eighth Circuit has adopted the “conceivable effect” test for determining “related to” jurisdiction under § 157. In re Farmland, 567 F.3d at 1019. Claims are “related to” a bankruptcy proceeding where,

[T]he outcome of that proceeding could *conceivably have any effect on the estate* being administered in the bankruptcy . . . . An action is related to bankruptcy if the outcome could alter the debtor’s rights, liabilities, options, or freedom of action . . . and which in any way impacts upon the handling and administration of the bankruptcy estate.

Id. (alterations in original) (quoting Specialty Mills, 51 F.3d at 774). Claims “related to” bankruptcy proceedings include those claims “between third parties which have an effect on the bankruptcy estate.” Id. (quoting Celotex Corp. v. Edwards, 514 U.S. 300, 307 n. 5 (1995)). The Eighth Circuit has acknowledged that the breadth of jurisdiction under the conceivable effect test is “extremely broad.” Id. (quoting In re Toledo, 170 F.3d 1340, 1345 (11th Cir. 1999)); see also Abramowitz v. Palmer, 999 F.2d 1274, 1277 (8th Cir. 1993) (“The conceivable effect test implements a fairly broad interpretation of the scope of a bankruptcy court’s ‘related to’ jurisdiction . . . .”).

Aviva argues that a “close nexus” between its claims against the Defendants and the Dewey Bankruptcy must be shown for “related to” jurisdiction to exist because the Bankruptcy Court already has confirmed Dewey’s bankruptcy plan. See In re Pegasus Gold Corp., 394 F.3d 1189, 1193-94 (9th Cir. 2005) (adopting the Third Circuit’s close nexus test in In re Resorts Int’l, Inc., 372 F.3d 154 (3d Cir. 2004), which asks whether “matters affecting ‘the interpretation, implementation, consummation, execution, or administration of the confirmed plan will typically have the requisite close nexus’” (quoting In re Resorts, 372 F.3d at 166)); In re Resorts, 372 F.3d at 165 (“At the post-confirmation stage, the claim must affect an integral aspect of the bankruptcy process – there must be a close nexus to the bankruptcy plan or proceeding.”); see also In re DPH Holdings Corp., 448 F. App’x 134, 137 (2d Cir. 2011) (unpublished summary order) (“A party can invoke the authority of the bankruptcy court to exercise post confirmation jurisdiction if the matter has a close nexus to the bankruptcy plan . . . .”), cert. denied, 133 S. Ct. 51 (2012).

The Eighth Circuit, however, has not adopted the close nexus test and has instead applied the conceivable effect test, even in cases where the suit was filed after a plan had been confirmed. See Integrated Health Servs. of Cliff Manor, Inc. v. THCI Co., LLC, 417 F.3d 953, 958 (8th Cir. 2005) (applying the conceivable effect test to a complaint filed post-confirmation). Moreover, for the close nexus test to apply, the dispute must be *filed* or *raised* post-confirmation. See In re Seven Fields Dev. Corp., 505 F.3d 237, 264-65 (3d Cir. 2007) (noting that “the ‘close nexus’ test is applicable to ‘related to’ jurisdiction over any claim or cause of action filed post-confirmation, regardless of when the conduct giving rise to the claim or cause of action occurred”); In re Pegasus, 394 F.3d at 1193-94 (clarifying that it adopted the close nexus test set forth by the Third Circuit in In re Resort, “because it recognizes the limited nature of post-confirmation jurisdiction but retains a certain flexibility, which can be especially important in cases with continuing trusts.”). Aviva filed its Complaint in December 2012, and the Dewey Bankruptcy plan was confirmed months later, in February of 2013; therefore, even if the Eighth Circuit recognized the close nexus test, it would not apply under the facts of this case. Thus, the Court will apply the conceivable effect test to determine whether the Bankruptcy Court has “related to” jurisdiction over Aviva’s claims.

Defendants argue the Bankruptcy Court has “related to” jurisdiction over Aviva’s claims because Defendants are entitled to indemnification from Dewey’s estate, and Dewey’s insurer is covering Defendants under Dewey’s insurance policy and funding the defense costs of this lawsuit. Although Defendants may be entitled to indemnification from Dewey, they have not provided any contractual or statutory proof of indemnification. Whereas a mere possibility of indemnification is insufficient to grant a bankruptcy court “related to” jurisdiction, indemnification claims are no longer speculative once the assets of the bankruptcy estate are used to pay the defendant’s legal fees. In re Farmland, 567 F.3d at 1020 (“[R]elated-to jurisdiction’ exists because the Liquidating Trustee is currently advancing money out of the bankruptcy estate to

[defendants] as they incur legal fees in defending against [plaintiff]’s claims.”). The advancement of defense funds reduces the amount available under the insurance policy, which, in turn, will reduce the amount available to Dewey’s creditors. Regardless of whether the Defendants are able to successfully assert indemnification claims against Dewey, the defense of this lawsuit is already conceivably affecting the Dewey Bankruptcy estate by the advancement of legal fees to Defendants. Accordingly, the Bankruptcy Court has jurisdiction to hear this case under “related to” jurisdiction.

## 2. Transfer of Venue

Having concluded the Bankruptcy Court has “related to” jurisdiction does not end the inquiry; the Court must next determine if the Bankruptcy Court is the proper venue for this case. Defendants seek to transfer venue under 28 U.S.C. § 1412, which governs the transfer of venue in cases “related to” bankruptcy proceedings.<sup>3</sup> “A transfer under § 1412 requires a sufficient showing that granting the transfer *either* will be in the interest of justice *or* for the convenience of the parties.” Creekridge Capital, LLC v. La. Hosp. Ctr., LLC, 410 B.R. 623, 629 (D. Minn. 2009). Transfer of venue under § 1412 requires a case specific analysis, and the district court has broad discretion in deciding whether to transfer. *Id.* As moving parties, Defendants have the

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<sup>3</sup> Although the Eighth Circuit has not had occasion to weigh in on whether § 1412 or § 1404 applies to transfer of venue in cases “related to” bankruptcy proceedings, several district courts in the Eighth Circuit having done so have concluded § 1412 applies in such cases. See Creekridge Capital, LLC v. La. Hosp. Ctr., LLC, 410 B.R. 623, 628 (D. Minn. 2009) (discussing the split of authority as to whether to apply § 1412 or § 1404 to transfer of “related to” bankruptcy cases and concluding that courts in the Eighth Circuit have applied § 1412 to “related to” actions); see also Thys Chevrolet, Inc. v. Gen. Motors LLC, No. 10-CV-46-LLR, 2010 WL 4004328, at \*10 (N.D. Iowa Oct. 12, 2010); Quick v. Viziqor Solutions, Inc., No. 4:06CV637 SNL, 2007 WL 494924, at \*3 (E.D. Mo. Feb. 12, 2007). The Court agrees with the sound reasoning of these district courts and concludes § 1412 applies to transfer of venue in “related to” actions. See 15 Charles Alan Wright, Arthur R. Miller, & Edward H. Cooper, Federal Practice and Procedure § 3843, at 245 (3d ed. 2007) (“[A]lthough bankruptcy matters are governed by their own transfer statute, Section 1412 of Title 28, courts have held that this provision requires essentially the same analysis and turns on the same issues as the transfer of civil actions under Section 1404(a).”).

burden of proving by a preponderance of the evidence that the transfer is warranted in the interest of justice or for the convenience of the parties. Id.

**a. Interest of Justice**

The following list of nonexhaustive factors has been considered by courts in deciding whether a transfer under § 1412 is in the interest of justice:

(1) the economical and efficient administration of the bankruptcy estate, (2) the presumption in favor of the forum where the bankruptcy case is pending, (3) judicial efficiency; (4) the ability to receive a fair trial, (5) the state's interest in having local controversies decided within its borders by those familiar with its laws, (6) the enforceability of any judgment rendered, and (7) the plaintiff's original choice of forum.

Id. (citing In re Bruno's, Inc., 227 B.R. 311, 324-25 (Bankr. N.D. Ala. 1998)). Courts have recognized that the most important factor to consider is whether the transfer would further an economic and efficient administration of the bankruptcy estate. See id. at 630 (citing cases); Quick v. Viziqor Solutions, Inc., No. 4:06CV637SNL, 2007 WL 494924, at \*4 (E.D. Mo. Feb. 12, 2007) (citing cases).

Defendants contend this action should be transferred to the Bankruptcy Court in the interest of justice to promote economic and efficient administration of the Dewey Bankruptcy estate because a transfer would avoid piecemeal litigation by litigating all claims against Dewey and its employees in a single forum. The Court, however, finds that transferring this case to the Bankruptcy Court will have little impact on the economic and efficient administration of the Dewey Bankruptcy. The connection to the Dewey Bankruptcy is contingent only on Defendants establishing they are entitled to indemnification. While this might allow a bankruptcy court to have subject-matter jurisdiction over this case, it does not support a transfer of venue. Liability in this case hinges upon what representations Defendants made to Aviva and whether Aviva reasonably relied on them. These are factual questions unique to this case and have little bearing on the administration of the Dewey Bankruptcy estate. A tentative possibility of indemnification, combined with the fact that an insurer of the debtor is paying Defendants' legal expenses,

is too tenuous to satisfy Defendants' burden to support a transfer of venue in the interest of justice.

A transfer to the Bankruptcy Court also will not promote judicial efficiency. Bankruptcy courts hearing non-core proceedings may only make "proposed findings of fact and conclusions of law," and "any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected." 28 U.S.C. § 157(c)(1). As a non-core proceeding, transferring this case to the Bankruptcy Court will not increase judicial efficiency because any final order will ultimately have to be determined by a district court.

Defendants further assert there is a presumption in favor of transferring to the court where the Dewey Bankruptcy is proceeding under the "home court" presumption. See Thys Chevrolet, Inc. v. Gen. Motors LLC, No. 10-CV-46-LLR, 2010 WL 4004328, at \*10 (N.D. Iowa Oct. 12, 2010) (noting the presumption of placing a related matter in the district court where the bankruptcy is pending). Aviva counters by citing the principle that the plaintiff is generally the master of his own complaint, and there is a presumption in favor of his choice of forum. Because of these competing presumptions, the judicial efficiency factor is in equipoise, and the Court must look to the remaining factors. Creekridge Capital, 410 B.R. at 631.

Aviva claims transferring the case to the Bankruptcy Court will impair Aviva's ability to receive a fair trial because they are unable to obtain a trial by jury in Bankruptcy Court. Although bankruptcy courts are only authorized to conduct jury trials with the consent of all parties, 28 U.S.C. § 157(e), in the record currently before the Court, it appears that Aviva contractually waived their right to a jury trial in any action brought on or with respect to the notes in the Note Purchase Agreement.<sup>4</sup> Accordingly, Aviva's jury demand has no bearing on whether to

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<sup>4</sup> While the Court considers the record currently before it for purposes of the current motions, the Court does not make any findings regarding the validity or enforceability of any contractual provisions.

transfer this action to the Bankruptcy Court; the factor regarding Aviva's ability to receive a fair trial is thus neutral.

Defendants argue that the terms of Defendants' employment contracts contain choice of law provisions designating New York law as the governing law and New York County as the appropriate forum. However, Defendants' consent to resolve disputes with Dewey in New York does not impact Aviva's dispute with Defendants since Dewey is not a party to this action. Similarly, the Note Purchase Agreement indicates that Dewey, not Aviva, "submits to the non-exclusive jurisdiction of any New York State or federal court." Defs.' Rep. Br., Ex. 1 at pp. 48-49, ECF No. 27-1. Therefore, the state's interest factor does not weigh in favor of transfer.

Lastly, Defendants argue that the claims should be transferred to the Bankruptcy Court because the Dewey partners have agreed to consolidate all litigation in one district under the partner contribution plan to preserve the insurance funds and minimize litigation expenses. This argument is unpersuasive. The fact that the Dewey partners have agreed to a contribution plan and to resolve their claims against Dewey in a single forum does not impact where Aviva – not a Dewey partner – can litigate its claims. Defendants point out that the bankruptcy court for the Northern District of California has already transferred a similar suit against the Defendants to the Bankruptcy Court. See Bunsow v. Davis, No. 12-3113 TEC, 2012 WL 5386094 (Bankr. N.D. Cal. Oct. 31, 2012). In Bunsow, however, the plaintiff was a partner in the Dewey firm, not a purchaser of notes who is claiming securities violations. Id. at \*1. Bunsow is inapplicable since the plaintiff in that case was a partner asserting claims against his former firm, which is a wholly different scenario than a non-debtor, note purchaser alleging securities violations against individual non-debtor defendants.

Under the facts of this case, the other interest of justice factors are inapplicable in determining whether the transfer to the Bankruptcy Court is warranted. Accordingly, after weighing the applicable factors, the Court finds that Defendants have not met their burden of proving by a

preponderance of the evidence that it is in the interest of justice to transfer venue to the Bankruptcy Court.

**b. Convenience of the Parties**

Since § 1412 is stated in the disjunctive, a court may transfer venue if it is *either* in the interest of justice *or* for the convenience of the parties. Thys Chevrolet, 2010 WL 4004328, at \*12; Creekridge Capital, 410 B.R. at 629. The following factors are considered when determining if a transfer of venue under § 1412 is in the convenience of the parties: “(1) the location of the plaintiff and the defendant, (2) ease of access to necessary proof, (3) convenience of witnesses, (4) availability of subpoena power for unwilling witnesses, and (5) expenses related to obtaining witnesses.” Creekridge Capital, 410 B.R. at 629.

Defendants contend a transfer is warranted for the convenience of the parties because most of the interested parties reside in New York. The location of Defendants does not warrant a transfer based on the convenience of the parties factor. Aviva Life and Annuity Company is incorporated in Iowa and headquartered in Des Moines, Iowa, which is located in this District. Aviva Life and Annuity Company of New York, although incorporated and headquartered in New York, is a subsidiary of Iowa-based Aviva Life and Annuity Company. Aviva asserts that all diligence performed prior to purchasing the notes and all decisions to purchase the notes were completed in Iowa. Furthermore, according to the record currently before the Court, only two defendants, Davis and DiCarmine, reside in New York; and the third defendant, Sanders, appears to reside in Florida. Moreover, Dewey, the debtor in the bankruptcy proceeding, is not a party to this action. The locations of either Aviva or Defendants does not demonstrate by a preponderance of the evidence that a transfer to the Bankruptcy Court is warranted as a transfer would merely shift the inconvenience from one party to the other. See Terra Int’l, Inc. v. Miss. Chem. Corp., 119 F.3d 688, 696-97 (8th Cir. 1997) (“Merely shifting the inconvenience from one side

to the other . . . is not a permissible justification for a change of venue.” (citation and internal quotation marks omitted)).

Defendants have not identified any other unique hardships or difficulties that would be presented by litigating this case in this District and accordingly have not carried their burden of proving by a preponderance of the evidence that a transfer of venue to the Bankruptcy Court would adequately enhance the convenience of the parties. Although the Bankruptcy Court may have jurisdiction to hear this case, Defendants have not shown sufficient evidence to warrant a transfer of venue in the interest of justice or for the convenience of the parties.

### **III. CONCLUSION**

For the reasons stated, Defendants’ Motions to Transfer Venue, ECF Nos. 16 and 17, must be **denied**.

**IT IS SO ORDERED.**

Dated this 9th day of September, 2013.

  
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JAMES E. GRITZNER, Chief Judge  
U.S. DISTRICT COURT