

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

|                                |   |                         |
|--------------------------------|---|-------------------------|
| IN RE:                         | ) | Chapter 11              |
|                                | ) |                         |
| SAFETY-KLEEN CORPORATION,      | ) | Case No. 00-02303 (PJW) |
|                                | ) |                         |
| Debtor.                        | ) | Jointly Administered    |
| _____                          | ) |                         |
|                                | ) |                         |
| SAFETY-KLEEN (PINWOOD), INC.,  | ) |                         |
|                                | ) |                         |
| Plaintiff,                     | ) |                         |
|                                | ) |                         |
| vs.                            | ) | Adv. Proc. No. 00-1984  |
|                                | ) |                         |
| SUMTER COUNTY, SOUTH CAROLINA, | ) |                         |
|                                | ) |                         |
| Defendant.                     | ) |                         |

**MEMORANDUM OPINION**

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Date: August 27, 2001

**WALSH, J.** /s/ Peter J. Walsh

Before the Court is the motion (Doc. # 6) of defendant, Sumter County, South Carolina ("Sumter County") to abstain, or in the alternative, to transfer venue of this adversary proceeding to South Carolina under 28 U.S.C. § 1334(c) and 28 U.S.C. § 1412 respectively. Plaintiff Safety-Kleen (Pinewood), Inc. ("Pinewood") seeks a declaratory judgment that it is in compliance with a consent order pertaining to the regulation, zoning and capacity of Pinewood's hazardous waste disposal facility in Pinewood, South Carolina. For the reasons discussed below, I find that the convenience of the parties and the interest of justice are best served by transferring this case to the United States District Court for the District of South Carolina (Columbia Division) (the "South Carolina District Court") I will accordingly grant Sumter County's motion.

#### **BACKGROUND**

Pinewood, incorporated and headquartered in South Carolina, operates and co-owns a treatment, storage and disposal facility for hazardous waste (the "Facility"). The Facility is in Pinewood, South Carolina and sits on the headwater shores of Lake Marion. Sumter County is a political subdivision of South Carolina.

Sumter County and Pinewood's predecessor in interest, Laidlaw Environmental Service of South Carolina, Inc., were

involved in state court litigation concerning, inter alia, the zoning and hazardous waste capacity of the Facility. The parties resolved the litigation by entering into a Consent Order, Accompanying Agreement, and Memorandum of Agreement on April 25, 1994 ("Consent Order"). The Consent Order establishes the hazardous waste capacity limit at the Facility.

On June 9, 2000, Safety-Kleen, Corporation and its affiliates, including Pinewood, (collectively, the "Debtors"), filed for voluntary chapter 11 relief in this court. At about the same time, the South Carolina Department of Health and Environmental Control ("DHEC") issued two orders directed at the Facility. The first, issued June 9, 2000, required Pinewood to obtain replacement surety bonds by August 28, 2000 or shut down the Facility. The second, issued June 14, 2000, required Pinewood to shut down the Facility by July 14, 2000, based on the DHEC's interpretation of a ruling by the South Carolina Court of Appeals that the Facility had eclipsed its capacity and was no longer able to accept hazardous waste consistent with its existing licensing arrangements.

In response, on July 7, 2000, the Debtors commenced an adversary proceeding against the DHEC and related parties (the "DHEC Defendants") in this court (Adv. No. 00-698) seeking declaratory and injunctive relief to enjoin enforcement of the DHEC's June 9 and June 14 orders. The Debtors simultaneously moved

to withdraw the reference of the adversary case to the United States District Court for the District of Delaware (the "Delaware District Court"). On July 10, 2000, the Delaware District Court entered an order temporarily restraining the DHEC Defendants from enforcing the DHEC orders pending a hearing on the Debtors' motion for a preliminary injunction. After issuing the temporary restraining order, and at the DHEC Defendants' request, the Delaware District Court transferred venue of that adversary proceeding to the South Carolina District Court. The case is still pending there.

On June 9, 2000, Pinewood filed an application with the DHEC for expanded landfill hazardous waste capacity at the Facility. Sumter County objected to the expansion request as a violation of the Consent Order. In response, on November 30, 2000, Pinewood initiated this adversary proceeding seeking a declaratory judgment that it has neither breached the Consent Order nor exceeded the capacity limit defined in the Consent Order.

Sumter County now moves to abstain or transfer venue of this case to either a state court in South Carolina or to the South Carolina District Court. Sumter County argues it has a significant public interest in the operations at the Facility and that the case involves complex issues of purely state law, specifically, the hazardous waste capacity of the Facility. Sumter County also argues the case is substantially related to the prior litigation in

South Carolina and that consequently, a transfer of venue will not inconvenience Pinewood because Pinewood is headquartered in South Carolina, operates its only asset in South Carolina, and has South Carolina counsel who is intimately familiar with the litigation surrounding the consent Order and the DHEC rulings.

Pinewood opposes transfer primarily because it fears doing so will adversely impact the efficient and economic administration of its bankruptcy estate. It argues that the DHEC and Sumter County will force the closure of the Facility, which would seriously jeopardize if not prevent Pinewood's restructuring efforts. Although Pinewood essentially concedes that state law predominates this case, Pinewood argues that a shut down of the Facility would cause dramatic economic harm to Pinewood, and that this adversary proceeding should therefor properly be considered by this Court in conjunction with Pinewood's underlying bankruptcy proceeding. Finally, Pinewood maintains that transferring this case to South Carolina imposes a significant inconvenience to Pinewood and interested parties, including the Debtors' stockholders and creditors, most of whom it maintains are located in greater proximity to Delaware.

#### **DISCUSSION**

The court may transfer an adversary proceeding or any part thereof to another district pursuant to 28 U.S.C. § 1412. Fed.R.Bank.P. 7087. Section 1412 permits transfer of "a case or

proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties.” 28 U.S.C. § 1412. This is a “broad and flexible standard which must be applied on a case-by-case basis.” Gulf States Exploration Co. v. Manville Forest Prod. Corp. (In re Manville Forest Prod., Corp.), 896 F.2d 1384, 1391 (2d Cir. 1990).

The party moving for change of venue bears the burden of proof by a preponderance of the evidence. In re Emerson Radio Corp., 173 B.R. 490, 495 (D. N.J. 1994). The ultimate decision to transfer venue lies within the sound discretion of the court. Id. Courts in this district generally consider the following four factors when deciding whether to transfer venue:

1. The proximity of the court to the interested parties;
2. The location of the debtor’s assets;
3. The efficient and economic administration of the estate; and
4. The relative economic harm to the debtor and other interested parties.

In re PWS Holding Corp., Bruno's, Inc., et al., Case Nos. 98-212(SLR) through 98-223(SLR), 1998 Bankr. LEXIS 549 at \*5 (April 28, 1998) and cases cited therein; Continental Airlines, Inc. v. Chrysler (In re Continental Airlines, Inc.), 133 B.R. 585, 587-88 (Bankr. D. Del. 1991). Accord e.g., I.R.S. v. CM Holdings, Inc.,

1999 WL 459754 at \*2 - 3 (D. Del. June 10, 1999) (discussing Third Circuit standard); Haworth, Inc. v. Sunarhauserman Ltd., 131 B.R. 359, 362 (Bankr. W.D. Mich. 1991) (including proximity of witnesses as factor); F/S Airlease II, Inc. v. Aerothrust Corp. (In re F/S Airlease II, Inc.), 67 B.R. 428, 432 (Bankr. W.D. Pa. 1986) (including state's interest in having local controversies decided within its borders, enforceability of any judgment rendered, ease of access to necessary proof, and availability of subpoena power for unwilling witnesses as additional factors).

Applying these factors to the record before me, I find that transferring this case to the South Carolina District Court best serves the convenience of the parties and the interest of justice.

The first factor, the proximity of the court to the interested parties, weighs in favor of a transfer. Proximity here is essentially a matter of convenience for the parties which, under the circumstances, I find the most persuasive factor favoring transfer. Pinewood is incorporated and headquartered in South Carolina where it operates a hazardous waste treatment facility. Presumably, the majority of its books and records, the responsible parties, and the relevant witnesses are located in South Carolina. Sumter County claims, and Pinewood does not dispute, that all files and records related to the litigation that gave rise to, and which spawned from, the Consent Order are located there. Furthermore,

Pinewood is actively litigating a closely related matter in the South Carolina District Court. It seems to me that transferring this adversary proceeding to the same court will be convenient for both parties. At a minimum, it will not be an inconvenience to either.

I am not persuaded by Pinewood's argument that Delaware has greater proximity to the interested parties in this case based on the location of Pinewood's parent corporation, Safety-Kleen Corp., and its investors and creditors. The only two parties in this adversary proceeding are Pinewood and Sumter County. Thus, neither the state of incorporation of Pinewood's corporate parent, nor the location of its shareholders, should affect the balance of factors favoring transfer.

Likewise, with regard to Pinewood's concern about the convenience of its creditors in litigating this dispute in South Carolina, I note the complaint does not involve Pinewood's creditors nor does it adjudicate creditor claims or liabilities. Pinewood is seeking a declaratory judgment that it is in compliance with a Consent Order that determines capacity for hazardous waste at the Facility. Litigation therefore does not require creditor involvement and I fail to see how a transfer to South Carolina would inconvenience any of Pinewood or Safety-Kleen's creditor constituencies.

The second factor, the location of the debtor's assets,



also weighs in favor of transferring venue in this case. Although location of assets is generally only significant in a single asset real estate case or liquidation, see, e.g., In re Pic N' Pay Stores, Inc., Case No. 96-182 (PJW) Bench Decision (Bankr. D. Del. Mar. 8, 1996), Pinewood's material asset here is a hazardous waste landfill. Such an operation, with its unique use of real property and attendant impact on surrounding communities, raises local issues not present with a more traditional manufacturing concern that has a more national scope. I am therefore inclined to agree with Sumter County that the location of the Facility within its borders engenders a public policy interest that favors transfer under the circumstances.

Finally, as to the third and fourth factors regarding the economics of administering Pinewood's estate and the relative economic harm to Pinewood and other interested parties, I view them as non-outcome determinative as applied to the facts of this case. It is unlikely that a transfer of venue will have an economic impact on the administration of Pinewood's estate given the case does not involve a claim against the estate or a core bankruptcy matter. The underlying controversy turns on the interpretation of a consent order under state law. Pinewood is already litigating two cases on related matters against the same defendants in that state. It has not proffered any basis for concluding that litigating this adversary proceeding in South Carolina will cause

additional expense, undue economic harm or administrative inconvenience.

Pinewood argues that a transfer to South Carolina will result in dramatic economic harm to Pinewood and other interested parties because the relief it seeks in the adversary proceeding is essential to the continued economic viability of the entire Pinewood corporation. Pinewood argues continued operation of the Facility is necessary for reorganization and that a shut down would mean the end of Pinewood with respect to ownership of the Facility. It concludes a transfer of venue to South Carolina would result in dramatic economic harm because a transfer will result in a shut down of the Facility.

This argument misinterprets the economic harm factor. The proper inquiry is on whether the transfer of the litigation, not its outcome, will cause economic harm to Pinewood. Pinewood may suffer economic harm by an adverse ruling on the merits of its case, i.e., a ruling that would shut down the Facility, but an adverse ruling from this Court would be as detrimental to Pinewood's reorganization efforts as one from a court in South Carolina. Absent compelling evidence to the contrary, I am not persuaded by Pinewood's implicit argument that the court in South Carolina will not properly consider the merits of Pinewood's complaint in conjunction with its underlying bankruptcy proceedings. Pinewood presents no basis on which to conclude that

a transfer of venue alone will result in a shut down of the Facility.

Pinewood does not dispute that the records, prior litigation material, responsible parties, witnesses and evidence are mostly located in South Carolina. Sumter County, on the other hand, plausibly argues that it will incur extensive travel and lodging expenses if forced to litigate in Delaware, given that its legal, environmental and other professionals with knowledge of the dispute are all located in South Carolina.

#### **CONCLUSION**

In sum, I find that the convenience of the parties and the interest of justice are best served by transferring venue of this case to the South Carolina District Court. Transfer is appropriate considering the proximity of the South Carolina court to the interested parties, the location of Pinewood's assets in South Carolina, the nominal economic impact of a transfer on the administration of Pinewood's estate, and the lack of relative economic harm to Pinewood. Because I decide this motion under 28 U.S.C. § 1412, I need not address Sumter County's alternative request for abstention under 28 U.S.C. § 1334.

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| Plaintiff,                     | ) |                         |
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| vs.                            | ) | Adv. Proc. No. 00-1984  |
|                                | ) |                         |
| SUMTER COUNTY, SOUTH CAROLINA, | ) |                         |
|                                | ) |                         |
| Defendant.                     | ) |                         |

**ORDER**

For the reasons set forth in the Court's Memorandum Opinion of this date, the motion (Doc. # 6) of Sumter County, South Carolina to abstain or in the alternative, to transfer venue, is GRANTED. Adversary Proceeding No. 00-1984, currently pending in this Court, is hereby transferred, pursuant to 28 U.S.C. § 1412, to the United States District Court for the District of South Carolina (Columbia Division).

/s/ Peter J. Walsh  
Peter J. Walsh  
United States Bankruptcy Judge

Date: August 27, 2001