

United States Court of Appeals

*For the Seventh Circuit
Chicago, Illinois 60604*

Submitted February 6, 2002

Decided February 15, 2002

Before

Hon. DANIEL A. MANION, Circuit Judge

Hon. MICHAEL S. KANNE, Circuit Judge

Hon. DIANE P. WOOD, Circuit Judge

IN RE: GENERAL MOTORS CORPORATION	)	Petition for a Writ
and DAIMLERCHRYSLER	)	of Mandamus.
CORPORATION, Petitioners.	)	
	)	
No. 02-1273	)	No. 01 C 794
	)	
	)	G. Patrick Murphy,
	)	Chief Judge.

The following is before the court: **PETITION FOR WRIT OF MANDAMUS**, filed on February 4, 2002, by counsel for the petitioners.

The petitioners, General Motors and DaimlerChrysler, ask this court to vacate the order issued by Chief Judge Murphy on January 29, 2002, remanding to Illinois state court 155 personal injury and wrongful death cases. They argue that Chief Judge Murphy lacked the authority to enter the remand order because the cases already had been transferred to the United States District Court for the District of Delaware pursuant to 28 U.S.C. § 157(b)(5), for consideration with a Chapter 11 bankruptcy case pending before the court.

On December 10, 2001, Judge Wolin, sitting by designation in the District of Delaware, entered an order provisionally transferring the cases to the District of Delaware. Judge Wolin also scheduled a hearing to consider the pending motions to transfer and to determine whether federal subject matter jurisdiction exists over the cases. As the Fourth Circuit has acknowledged, a district court can enter a

provisional transfer fixing venue before it and then conduct the necessary inquiries before entering a final transfer order. *A.H. Robins v. Piccinin*, 788 F.2d 994, 1015-16 (4th Cir. 1986)). Such a provisional order brings all the pending suits before the transferee court "for the time being." *Id.* at 1015.

The December 10th provisional transfer order effectively transferred the cases pending in the Southern District of Illinois to the District of Delaware. The order contemplated an immediate transfer, and no further action was necessary to effectuate the transfer. Accordingly, the Southern District of Illinois no longer had jurisdiction over the cases, and Chief Judge Murphy lacked the authority to remand the cases to Illinois state court. The remand order therefore must be recalled as improvidently granted. *See In re Continental Casualty Co.*, 29 F.3d 292, 295 (7th Cir. 1994).

We note that on February 8, 2002, Judge Wolin conducted the contemplated hearing and, like Chief Judge Murphy, determined that the federal courts lack subject matter jurisdiction over the cases. Judge Wolin ordered the cases remanded to the state courts from which they were removed. Because the cases at issue were already before the District of Delaware, the cases are now subject to Judge Wolin's February 8th remand order. The petitioners, however, have appealed the February 8th order, and the Third Circuit has temporarily stayed the remand order.

For the foregoing reasons, **IT IS ORDERED** that the petition for writ of mandamus is **GRANTED**. Chief Judge Murphy shall recall his remand. The cases were transferred to the District of Delaware on December 10, 2001, and are among the cases currently pending before the Third Circuit.