
Nos. 02-1426, 02-1491, 02-1492, 02-1528, 02-1652
02-1664, 02-1688 & 02-1741 (Consolidated)

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

**In re:
Federal-Mogul Global, Inc., *et al.*,
Debtors.**

*On Appeal from the United States District Court
For the District of Delaware
(No. 01-10578, Judge Alfred M. Wolin, by designation)*

**REPLY BRIEF FOR APPELLEES
OFFICIAL COMMITTEE OF ASBESTOS CLAIMANTS
OF FEDERAL-MOGUL GLOBAL, INC.**

Elihu Inselbuch*
Caplin & Drysdale, Chtd.
399 Park Avenue, 27th Floor
New York, NY 10022-4614
(212) 319-7125

*Counsel of Record

Peter Van N. Lockwood
Trevor W. Swett
Albert G. Lauber
Caplin & Drysdale, Chtd.
One Thomas Circle, N.W.
Washington, DC 20005
(202) 862-5000

*Counsel to Official Committee of Asbestos Claimants
of Federal-Mogul Global, Inc.*

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INTRODUCTION

To win reversal of Judge Wolin's decision, appellants would have to persuade this Court to

- somehow avoid the holding of Pacor or overrule it (the latter being something only the *en banc* Court could do);
- ignore the facial defectiveness of appellants' contribution and indemnification claims under applicable state law;
- use those chimerical contribution and indemnification claims as a "hook" for hauling the tens of thousands of underlying asbestos personal claims against non-debtors into the District of Delaware as "related to" the Federal-Mogul bankruptcy;
- ignore the traditional preeminence of state courts in matters of tort law;
- brush aside the diverse rules of evidence and procedure applicable in the many state courts where the removed claims were originally filed and direct Judge Wolin to experiment with an unprecedented global hearing in which the federal rule of evidence announced in Daubert would be brought to bear *as a rule of decision* on multifarious state law causes of action, which causes of action would then be returned to the

state courts for trial if that hearing or further proceedings failed to produce the unlikely outcome desired by appellants;

- disregard Judge Wolin's considered judgment that appellants' program would not promote Federal-Mogul's reorganization but, on the contrary, would spell "disaster for the orderly management of this chapter 11 proceeding," JA 42;
- thereby interfere in a basic case management decision by the seasoned district judge who has been assigned special responsibility, not only for the Federal-Mogul bankruptcy, but also for four other major asbestos-related bankruptcies pending in the same district;
- hold, contrary to the substantial weight of authority, that the abstention doctrine embodied in 28 U.S.C. § 1334(c) does not apply to removed claims; and
- substitute the panel's judgment for Judge Wolin's on his largely discretionary decisions to abstain permissively from exercising jurisdiction over the removed personal injury claims and to remand those claims on equitable grounds.

Appellants would thus face formidable obstacles on the merits of their appeal. This Court, however, cannot reach the merits without first deciding

whether it has jurisdiction over the appeal to begin with. That question is fundamental and the answer clear: based, as it was, on a determination that federal subject-matter jurisdiction does not exist over the removed claims, Judge Wolin's decision remanding those claims to the state courts "is not reviewable on appeal or otherwise." 28 U.S.C. § 1447(d). The alternative equitable grounds for the remand order are likewise exempt from review. See 28 U.S.C. §§ 1334(d), 1452(b).

As provided in the scheduling order, the Official Committee of Asbestos Claimants submits this reply limited to the threshold issue of appellate jurisdiction. The Official Committee is authorized to inform this Court that appellees the Ad Hoc Committee, the Unofficial Committee of Select Asbestos Claimants, and the Waters & Kraus plaintiffs join in this reply.

ARGUMENT

I. BECAUSE THE REMAND ORDER WAS BASED ON LACK OF SUBJECT-MATTER JURISDICTION, SECTION 1447(c) AND (d) MAKE THE ORDER UNREVIEWABLE BY THIS COURT

By obtaining orders provisionally transferring the removed claims to the District of Delaware over appellees' strenuous objections, appellants presented the issues of federal subject-matter jurisdiction and remand to that court for decision. Under the governing statute, those issues are two sides of the same

coin, for remand is the mandatory consequence of a finding that subject-matter jurisdiction is absent: “If at any time before final judgment it appears that the district court lacks subject-matter jurisdiction, the case *shall be remanded*.” 28 U.S.C. § 1447(c) (emphasis added). The provisional transfer orders placed these issues in Judge Wolin’s hands, since “[f]ollowing the change of venue the District of [Delaware] had the same authority with respect to disposition of the case as” the removal district courts had possessed before those orders were entered. Bloom v. Barry, 755 F.2d 356, 358 (3d Cir. 1985) (quoting 28 U.S.C. § 1447(d)). Indeed, appellants procured from the Fifth and Seventh Circuits orders on mandamus prohibiting the removal district courts from deciding those issues, on the ground that, once Judge Wolin entered his provisional transfer order, the removal courts “no longer had jurisdiction over the cases.” Order, In re General Motors Corp. et al., No. 01 C 794 (7th Cir. Feb. 15, 2002) (reproduced at JA 1017-18); see Order, In re DaimlerChrysler Corp., et al., Nos. 02-10029 etc. (5th Cir. March 8, 2002) (reproduced at JA 1019-23).

After briefing and argument, Judge Wolin squarely ruled that subject-matter jurisdiction was lacking under Pacor v. Higgins, 743 F.2d 984 (3d Cir. 1984). Upon making that decision, Judge Wolin came under § 1447(c)’s commandment to “remand” the claims, that is, to return them to the state courts.

He had no authority to send them elsewhere. “The only remand contemplated by the removal statute is a remand ‘to the State court from which [the matter] was removed.’” Bloom, 755 F.2d at 358.

Judge Wolin’s decision finding no subject-matter jurisdiction brought into play § 1447(d). With an exception not relevant here, this section provides: “An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise * * *.” 28 U.S.C. § 1447(d). As explained in our principal brief, the Supreme Court has left no doubt that this statutory prohibition insulating remand orders from review in the courts of appeal is unyielding when such orders are based, as here, on the absence of subject-matter jurisdiction:

As long as the district court’s remand is based on a timely raised defect in removal procedure or a lack of subject-matter jurisdiction — the grounds for remand recognized by § 1447(c) — a court of appeals lacks jurisdiction to entertain an appeal of the remand order under § 1447(d).

Things Remembered, Inc. v. Petrarca, 516 U.S. 124, 127-28 (1995) (emphasis added).

Thus, the statute and the Supreme Court prescribe the reasoning that applies here: section 1447(d) forecloses review “on appeal or otherwise” of

remand orders that are based on lack of subject-matter jurisdiction.¹ Judge Wolin remanded for lack of subject-matter jurisdiction, and it follows that these appeals must be dismissed. This Court would exceed its own jurisdiction if it were to take up the merits of the appeals in the face of the statutory bar.²

Appellants attempt to deflect § 1447(d) and Things Remembered by arguing that Judge Wolin's remand order was not authorized by § 1447(c) and therefore does not invoke § 1447(d)'s prohibition of review. They cite Thermtron Prods., Inc. v. Hermansdorfer, 423 U.S. 336 (1976);³ but their

¹ It is settled that §§ 1447(c) and (d) apply with full force to cases removed from state court pursuant to the bankruptcy removal statute, 28 U.S.C. § 1452. See Things Remembered, Inc. v. Petrarca, 516 U.S. 124, 129 (1995). Appellants do not contend otherwise.

² A motion to dismiss and request for expedited consideration have been pending since February 15, 2002. Insofar as this appeal and the temporary stay have already postponed by several months the implementation of Judge Wolin's remand order, appellants have thwarted "Congress' purpose * * * to prevent the additional delay which a removing party may achieve by seeking appellate reconsideration of an order of remand." Thermtron Prods., Inc. v. Hermansdorfer, 423 U.S. 336, 354 (1976) (Rehnquist, J., dissenting). Such delay is particularly devastating to the families of those who have died of asbestos-related disease since Judge Wolin ruled, such as Waters & Kraus's client Elmer Brainerd, a mesothelioma victim. Many more have lost their trial dates in state courts as a result of the unwarranted removals and must expect to die of asbestos-related diseases before their cases can be restored to the trial calendars of the state courts.

³ Reply/Answering Brief for Appellants DaimlerChrysler et al. at 8, 11 (hereinafter cited as "Automakers' Reply").

reliance on Thermtron is unavailing, and their strained effort to paint Judge Wolin's remand order as exceeding his authority under § 1447(c) has no merit.

Thermtron, it is true, put a gloss on § 1447(d) by reading its seemingly unqualified pronouncement that a remand order "is not reviewable" as circumscribed by the grounds for remand set forth in § 1447(c) *i.e.*, the presence of a timely raised procedural defect in removal or the absence of subject-matter jurisdiction as determined at any time before final judgment. Things Remembered echoed Thermtron, stating that "§ 1447(d) must be read *in pari materia* with § 1447(c), so that only remands based on grounds recognized in § 1447(c) are immune from review under § 1447(d)." Things Remembered, 516 U.S. at 127 (citing Thermtron, 423 U.S. at 345-46).

Thermtron is no help to appellants, because a finding that "the district court lacks subject-matter jurisdiction," which was the ground of Judge Wolin's remand order, is one of the grounds for remand specifically listed in § 1447(c). See State of Rio de Janeiro v. Philip Morris Inc., 239 F.3d 714, 715 (5th Cir. 2001) ("the remand order was expressly based on a lack of subject-matter jurisdiction in the core of section 1447(d) and is not subject to the Thermtron exception"). Indeed, § 1447(c) *compels* remand when subject-matter jurisdiction is lacking. Things Remembered and Thermtron both teach that "remand orders

issued under § 1447(c) and invoking the grounds specified therein that removal was * * * *without jurisdiction* are *immune from review* under § 1447(d).”

Thermtron, 423 U.S. at 346 (emphasis added); see also Things Remembered, 516 U.S. at 127-28. What Things Remembered added to Thermtron was simply the recognition that this immunity applies even when the removal takes place under the bankruptcy removal statute instead of the general removal statute. As the Court in Things Remembered succinctly put it (516 U.S. at 129):

If an order remands a bankruptcy case to state court because of a timely raised defect in removal procedure or a lack of subject-matter jurisdiction, then a court of appeals lacks jurisdiction to review that order under § 1447(d), regardless of whether the case was removed under § 1441(a) or § 1452(a).

The Automakers’ lengthy string cite at pages 9 and 10 of their Reply serves only to confirm that § 1447(d) does not necessarily bar review of remand orders that are based on grounds *other than* the two grounds spelled out in § 1447(c). That proposition is both undisputed and irrelevant.

Appellants insist, however, that Judge Wolin’s order is reviewable despite § 1447(d) because it was a “cross-jurisdictional” remand. According to them, § 1447(c) did not authorize the District of Delaware, as a transferee court, to remand claims directly to the state courts from which they were removed, and the Judge Wolin had no alternative but to return those claims to the outlying removal

courts across the country. (Automakers' Reply at 18.) Appellants concede that Judge Wolin's jurisdictional ruling would have been binding on the removal courts. (Ibid.) Under the procedure they espouse, the removal courts would have received the subject claims on the rebound from the District of Delaware but, lacking subject-matter jurisdiction, would themselves have been obliged to remand the claims to the state courts where they were filed in the first instance. According to appellants, when Judge Wolin chose the more direct alternative of returning the claims to the state courts by means of his own remand order, he not only took an erroneous procedural short-cut, but acted outside of the authority of § 1447(c), and thus outside of the sphere protected from review by § 1447(d).

Appellants made no such argument in Judge Wolin's court. It is an afterthought they seize upon as an excuse for the Court of Appeals to ignore § 1447(d)'s clear prohibition of review — after having argued successfully below that Judge Wolin was the only district judge who could decide the jurisdictional issues. But the excuse has no basis in law, logic, or policy.

To begin with, § 1447(c)'s command that any removed matter "shall be "remanded" if it appears that "the district court lacks subject matter jurisdiction" is not diluted by any qualification or exception pertaining to the not-unusual situation in which transfer follows removal. Congress could have written § 1447(c) to say:

“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded to the state court, *except that if the case was transferred to that court following removal, it shall be re-transferred to the transfer district court and then remanded to the state court.*” By the same token, the drafters might have specified in § 1447(d) that, “An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, *provided, however, that this immunity shall not apply if the case was transferred after removal and the district court purporting to remand it is the transferee district court rather than the district court to which it was removed.*” Yet, Congress did nothing of the kind. The provisions it *did* write dictate in clear and forceful terms that lack of jurisdiction must lead to remand, and give no hint that any intermediate procedural steps may be permitted — much less required — to postpone that disposition. This is hardly surprising, given that § 1447(c) and (d) embody a longstanding policy to “prevent delay in the trial of remanded cases by protracted litigation of jurisdictional issues,” Thermtron, 423 U.S. at 351 (majority opinion), and thereby to diminish the ability of “the party opposing a remand order * * * to frustrate justice.” Id. at 356 (Rehnquist, J., dissenting).

As shown at pages 24 and 25 of our principal brief, this Court and others have recognized that, in circumstances comparable to those involved here, it is entirely appropriate for a remand order pursuant to § 1447(c) to return a matter

directly to the state court where it originated, rather than routing it through a removal/transferor court as suggested by the appellants. See Abels v. State Farm Fire & Cas. Co., 770 F.2d 26, 27, 34 (3d Cir. 1985); Bloom v. Barry, 755 F.2d 356, 358 (3d Cir. 1985); In re Ciprofloxacin Hydrochloride Antitrust Litig., 166 F. Supp. 2d 740, 742-43 (E.D.N.Y. 2001); In re Tobacco/Governmental Health Care Costs Litig., 100 F. Supp. 2d 31, 33-34, 41 (D.D.C. 2000); In re Best Reception Sys., Inc., 219 B.R. 988, 990-91, 996 (Bankr. E.D. Tenn. 1998); In re Missouri Properties, Ltd., 211 B.R. 914, 919 (Bankr. W.D. Mo. 1996); In re Danbury Square Associates, 150 B.R. 544, 549 (Bankr. S.D.N.Y. 1993).

Within the last few weeks, the Court of Appeals for the District of Columbia Circuit dismissed for lack of jurisdiction an appeal from an order by which the district court there remanded certain cases to a state court in Florida. Republic of Venezuela v. Philip Morris, Inc., Nos. 00-7213 etc., 2000 WL 728034 (D.C. Cir. April 26, 2002). The cases had come to the District of Columbia via transfer from the removal district court in Florida, but the transferee district court did not hesitate to remand them directly to the Florida state court, and the Court of Appeals saw no reason on that account to disregard § 1447(d)'s prohibition on appellate review.

Appellants say that the courts in such cases failed to “consider[] the source of the alleged authority to remand directly across jurisdictional lines” (Automakers’ Reply at 16 n.4), but their assertion cannot be squared with this

Court's reasoning in Bloom. Bloom involved a suit for breach of warranty that was removed to federal district court in Florida and was then transferred to the District of New Jersey. This Court observed that, "[f]ollowing the change of venue the District of New Jersey had the same authority with respect to the disposition of the case as had the District Court for the Southern District of Florida." Bloom, 755 F.2d at 358. The opinion located that authority squarely in "28 U.S.C. § 1447(c)," ibid; and this was no mere dictum, as appellants wrongly suppose, but a legal determination necessary to this Court's decision. In other words, the transferee court stood in the shoes of the removal court for purposes of remand under § 1447(c). So, too, in the instant case, Judge Wolin stood in the shoes of each of the district courts to which asbestos personal injury claims against appellants were removed and from which those claims were transferred to the District of Delaware.⁴

⁴ The problem with the remand order in Bloom, and the reason why appellate review was proper in that case, was that the District of New Jersey did not remand the case to the Florida state court, but rather sent it to a state court in New Jersey. Not only was this not a "remand" as properly understood for purposes of § 1447(c), but the order fell outside the express limits of the prohibition of appellate review under § 1447(d), which insulates only "[a]n order remanding a case *to the State court from which it was removed*." 28 U.S.C. § 1447(d) (emphasis added); see Bloom, 755 F.2d at 357. Appellants' suggestion that this is the "flipside" of the situation here is misplaced. There is no comparable language in § 1447(d) confining its scope to remand orders issued by removal courts as distinct from transferee courts in the federal system.

Thus, nothing in the statutes supports the idea that a “cross-jurisdictional” remand takes the matter outside the authority of subparagraph § 1447(c) or deprives a remand order of the protections of § 1447(d). Appellants’ argument is also foreign to the cases they rely on, beginning with Thermtron. Whether a remand order enjoys the authority of § 1447(c) depends on the “ground” of the district court’s decision, Thermtron, 423 U.S. at 343, not on mere collateral considerations. As noted above, there are two “grounds for remand recognized by § 1447(c),” namely, “a timely raised defect in removal procedure * * * [and] lack of subject-matter jurisdiction.” Things Remembered, 516 U.S. at 127. “As long as a district court’s remand is based on” one of those “grounds,” then, by virtue of § 1447(d), “a court of appeals lacks jurisdiction” to review the order. Ibid. Here, it is beyond dispute that Judge Wolin’s remand order rested on the ground of lack of subject-matter jurisdiction. It follows, under § 1447(d) and the relevant caselaw, that the remand order is not subject to review.

Thus, in arguing that Judge Wolin lacked authority to remand, appellants contradict the express command of § 1447(c) and disregard the reasoning of Bloom, Thermtron, and Things Remembered. Worse yet, they ignore the provisional transfer order that appellants themselves sought and obtained for the purpose of bringing the removed claims before Judge Wolin. Upon granting provisional transfer, Judge Wolin undertook to decide all “matters involving

subject matter jurisdiction, abstention, and remand” pertaining to the removed claims. JA 602, 609. Some of the appellees argued that those issues should remain before the removal courts, but appellants took the contrary view that provisional transfer left those issues in Judge Wolin’s hands to the exclusion of all other district courts. Appellants prevailed in that debate. As noted above, appellants even procured orders on mandamus from the Fifth and Seventh Circuits blocking remands by removal courts on the ground that, by reason of the provisional transfer order, the removal courts “no longer had jurisdiction over the cases.” Order, In re General Motors Corp. et al., No. 01 C 794 (7th Cir. Feb. 15, 2002) (reproduced at JA 1017-18); see Order, In re DaimlerChrysler Corp. et al., Nos. 02-10029 etc. (5th Cir. March 8, 2002) (reproduced at JA 1019-23). Appellants’ turnabout on appeal can provide no warrant for this Court to ignore the clear limitations on its own authority as set out in § 1447(d).

Having carried out the provisional transfer, Judge Wolin then took up appellants’ motion to make the transfer final. In that task, he addressed himself first — as every federal court is obliged to do — to the question of subject-matter jurisdiction. And when Judge Wolin determined that subject-matter jurisdiction over the removed claims did not exist, the statutory command came into effect, dictating that each removed claim “shall be remanded.” 28 U.S.C. § 1447(c).

As this Court made clear in Bloom, when §§ 1447(c) and (d) speak of “remand,” they mean “[a]n order remanding [the claims] to the State court[s] from which [they were] removed.” 28 U.S.C. § 1447(d). And because subject-matter jurisdiction and remand are inseparably linked under these statutes — remand being the ineluctable consequence of a determination that subject-matter jurisdiction is absent — appellants’ suggestion that Judge Wolin’s order is a transfer decision “masquerading” as a remand is simply frivolous. (Automakers’ Reply at 21.) To the contrary, once Judge Wolin remanded for lack of subject-matter jurisdiction, appellants’ motion for final transfer became moot. The merits of that motion as distinct from Judge Wolin’s jurisdiction to decide the merits, are not at issue on appeal.

Appellants’ theory that Judge Wolin should have returned the removed claims to the removal district courts for them in turn to remand the claims to the state courts (Automakers’ Reply at 18) not only contradicts the imperative of § 1447(c) and (d) and the teaching of Bloom, but is also irrelevant. The procedural *route of remand* supplies no valid reason to ignore § 1447(d)’s prohibition against reviewing the substantive *ground* of Judge Wolin’s remand order, which was his finding of no subject-matter jurisdiction. This is not a case in which a reviewable order “in logic and in fact * * * preceded that of

remand.” City of Waco v. United States Fidelity Guaranty, 293 U.S. 140, 143 (1934). For example, the absence of subject-matter jurisdiction was not the consequence of a prior ruling dismissing a party or a claim. See Carr v. American Red Cross, 17 F.3d 671, 684 (3d Cir. 1994). Before Judge Wolin could take up the merits of appellants’ motion for final transfer, he had a duty to decide the threshold question of subject-matter jurisdiction, and that question fell squarely in the category of “the routine jurisdictional determinations that Congress has entrusted to the district courts.” Id. at 682. Judge Wolin did not manufacture the absence of subject-matter jurisdiction by striking down a jurisdictional statute on constitutional grounds, see In re TMI Lit. Cases Consol. II, 940 F.2d 832, 843-44 (3d Cir. 1991), or by substituting one party for another. See Carr, 17 F.3d at 682; Aliota v. Graham, 984 F.2d 1350, 1353 (3d Cir. 1994). And because remand to the state courts followed *automatically* as a matter of law upon the finding of no subject-matter jurisdiction, the jurisdictional ruling is not “separable” from the substance of the remand. Carr, 17 F.3d at 682.

Thus, nothing in the precedents of this Court, the other courts of appeals, or the Supreme Court supplies any principled rationale for overcoming § 1447(d)’s prohibition of review with respect to Judge Wolin’s remand order

grounded on lack of subject-matter jurisdiction.⁵ Stated differently, appellants' arguments for reviewability would have this Court torture the precedents, dishonor longstanding policies of the Congress, and leave § 1447(d) a dead letter.

This Court cannot properly accept appellants' half-hearted invitation to review Judge Wolin's decision on jurisdiction and remand by way of mandamus. The statute precludes review "on appeal *or otherwise*," 28 U.S.C. § 1447(d) (emphasis added), and the Supreme Court has recognized that a remand order based on lack of subject-matter jurisdiction "is not subject to challenge in the court of appeals by appeal, *by mandamus*, or otherwise." Thermtron, 423 U.S. at 343 (emphasis added). Indeed, if the statutory prohibition of review "otherwise" than by appeal did not foreclose mandamus, the word "otherwise" would be superfluous. See In re U.S. Brass Corp., 110 F.3d 1261, 1266 (7th

⁵ When the Sixth Circuit took appellate jurisdiction over the question whether breast implant claims were "related to" the Dow-Corning bankruptcy, it briefly addressed appealability under the collateral order doctrine of Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949), but made no mention of § 1447(c) or (d). See In re Dow Corning Corp., 86 F.3d 482, 487-88 (6th Cir. 1996). Abstention, not lack of jurisdiction, was the basis for the district court's later remand of those claims, so the mandamus proceeding that followed did not implicate § 1447(c) or (d), but rather 28 U.S.C. § 1334(c). See In re Dow Corning Corp., 113 F.3d 565, 569 (6th Cir. 1997). In the end, the Sixth Circuit refused mandamus to compel the district court to adjudicate the claims against non-debtors who, like appellants here, had no corporate affiliation with the debtor. Mandamus issued only as to claims against shareholders of the debtor. See id. at 571.

Cir. 1997) (construing the similar proscription of review “by appeal or otherwise” in 28 U.S.C. § 1452(b) as forbidding mandamus). Even if mandamus were not unavailable as a matter of law, appellants are far from having shown entitlement to an extraordinary writ that could never be granted in the absence of a “clear and indisputable” right. In re Collins, 233 F.3d 809, 812 (3d Cir. 2000).

Under the plain mandate of § 1447(d), Judge Wolin’s remand order grounded on his finding of no subject-matter jurisdiction is not subject to review. Accordingly, the appropriate disposition by this Court is to dismiss the appeals for lack of appellate jurisdiction.

II. THE EQUITABLE REMAND PROVISIONS OF 28 U.S.C. § 1452(b) PROVIDE NO BASIS FOR REVIEW

Judge Wolin remanded the removed claims not only on jurisdictional grounds, but also on the basis of equitable considerations under 28 U.S.C. § 1452(b). JA 41. That statute provides that when a claim or cause of action is removed pursuant to alleged bankruptcy jurisdiction, “[t]he court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground.” 28 U.S.C. § 1452(b). Appellants interpret the subject of that sentence to mean that only a remand order entered by a removal court comes within § 1452(b)’s further provision that

“[a]n order entered *under* this subsection remanding a claim or cause of action, or a decision not to remand, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.”⁶

28 U.S.C. § 1452(b). (See Automakers’ Reply at 18-19.) The argument is ironic, to say the least, in view of the provisional transfer that appellants themselves procured.

As already discussed, this Court has held that, in the context of the general removal and transfer statutes, the transferee district court has “the same authority with respect to disposition of the case as” the removal district court, including “statutory authority under 28 U.S.C. § 1447(c)” to determine federal subject-matter jurisdiction. Bloom, 755 F.2d at 358. There is no reason why the same analysis should not apply in the context of equitable remand under § 1452(b). By transfer, the transferee court becomes, in effect, “[t]he court to which such claim

⁶ See Things Remembered, 516 U.S. at 129 (noting that § 1452(b) “authoriz[es] remand ‘on any equitable ground’ and preclud[es] appellate review of any decision to remand or not to remand on this basis”); Hernandez v. Brakegate, Ltd., 942 F.2d 1223, 1226 (7th Cir. 1991) (dismissing appeal pursuant to § 1452(b) and observing that, “if the district court gives a reason [for remand] authorized by statute, courts of appeals may not inquire whether the court erred.”).

or cause of action [was] removed” for purposes of exercising the equitable discretion to remand. In this respect, it makes no difference whether the transfer is final or provisional: provisional transfer does not *extinguish* the power to remand on equitable grounds; it merely passes that power from the remand court to the transferee court. Judge Wolin correctly recognized that the transferee court “stands in the shoes of the transferor district” (JA 49), which is precisely the role that appellants, over objection, urged him to take on. Indeed, they insisted that Judge Wolin assert exclusive authority in the matter “to prevent,” as they put it, “an untenable free-for-all, where plaintiffs will request numerous district courts around the country to remand the removed actions to state courts under 28 U.S.C. § 1452(b).” JA 475.

Even setting aside the soundness of Judge Wolin’s interpretation of § 1452(b), appellants’ argument leads nowhere in this case. The phrase from that statute on which they pin their hopes does not appear in § 1447(c), which, as noted above, applies with full force to claims removed under § 1452. See Things Remembered, 516 U.S. at 129. Nor does that language exist in 28 U.S.C. § 1334, the bankruptcy jurisdiction statute. The latter makes clear that bankruptcy jurisdiction, no matter how broadly it may be construed, does not “prevent[] a district court in the interest of justice, or in the interest of comity

with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.” 28 U.S.C. § 1334(c)(1).

As an alternative ground for his order, Judge Wolin permissively abstained under § 1334(c)(1). JA 41. That aspect of his ruling is unreviewable pursuant to 28 U.S.C. § 1334(d), which states: “Any decision to abstain or not to abstain made under this subsection [with a single irrelevant exception] is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.” There is no reason to suppose that the unreviewability of “[a]ny decision to abstain” depends on whether that decision emanates from a removal court or instead from a transferee court. Bankruptcy jurisdiction is vested on a non-exclusive basis in all of “the district courts,” 28 U.S.C. § 1334(b), and each of those courts has statutory authority to abstain from hearing any “particular proceeding * * * related to a case under title 11.” Id. § 1334 (c)(1). Thus, even supposing that § 1452(b) does not prevent review of equitable remand orders issued by transferee courts, as distinct from removal courts, this would not affect the transferee courts’ authority to abstain

permissively under § 1334(c)(1), or qualify § 1334(d)'s prohibition on review of abstention decisions emanating from *any* district court.

It should be noted, furthermore, that the substantive factors that inform a district court's exercise of its large discretion to abstain under § 1334(c)(1) are substantially identical to those that guide the equally large discretion to remand on equitable grounds.⁷ See 6 William L. Norton, Jr., Norton Bankruptcy Law and Practice 2d § 147:4 & n.31 (2002). For this Court to take jurisdiction to review Judge Wolin's equitable remand ruling would thus be a pointless exercise, as his decision to abstain on essentially the same grounds would remain unreviewable in any event. Section 1452(b) cannot create appellate jurisdiction over Judge Wolin's abstention decision, any more than it can create appellate jurisdiction over his finding of no subject-matter jurisdiction.

Finally, appellants suggest that references to § 1291 and § 1292 in § 1334(d) and § 1452(b), and the absence there of any reference to the All Writs Act, § 1651(a), must mean that only review by appeal is forbidden, and not

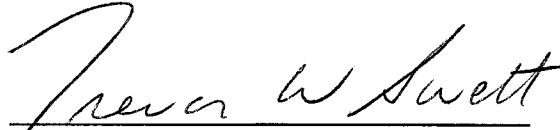
⁷ A commentator on whom appellants place heavy reliance has emphasized the discretion embodied in the abstention provisions of § 1334. See R. Brubaker, On the Nature of Federal Bankruptcy Jurisdiction: A General Statutory and Constitutional Theory, 41 Wm. & Mary L. Rev. 743, 886 (2000); *id.* at 884 (noting that "the third-party personal injury claim at issue in Pacor presented an appropriate case for permissive or even mandatory abstention").

review by mandamus. (Automakers' Reply at 21 n.7.) The argument overlooks that both § 1334(d) and § 1452(b) forbid review "by appeal *or otherwise*" of orders authorized by those statutes. Notices of appeal and petitions for mandamus are the avenues to the courts of appeals in federal practice. If the prohibitions on review "otherwise" than by appeal do not sweep in mandamus, then that word would be meaningless. See In re U.S. Brass Corp., 110 F.3d 1261, 1266 (7th Cir. 1997). Neither appellants nor the case on which they rely, In re Dow Corning Corp., 113 F.3d 565, 569 (6th Cir. 1997), offers any answer to this basic point. See supra note 7. Appellants' selective reading of the statutes thus violates the basic canon of construction under which this Court must interpret § 1334(c)(1) and § 1452(b) in such a way "that every word has some operative effect," United States v. Nordic Village, Inc., 503 U.S. 30, 35-36 (1992), "so that no part will be inoperative or superfluous, void, or insignificant." ErieNet, Inc. v. Velocity Net, Inc., 156 F.3d 513, 516 (3d Cir. 1998) (internal quotation marks omitted).

CONCLUSION

For all the reasons set forth above, these appeals should be dismissed for lack of appellate jurisdiction. If this Court takes jurisdiction, the judgment of the District Court should be affirmed.

Respectfully submitted,



Trevor W. Swett

Peter Van N. Lockwood

Albert G. Lauber

Caplin & Drysdale, Chtd.

One Thomas Circle, N.W. Suite 200

Washington, D.C. 20005

Tel: (202) 862-5000

Elihu Inselbuch*

Caplin & Drysdale, Chtd.

399 Park Ave., 27th Floor

New York, N.Y. 10022

Tel: (212) 319-7125

*Counsel of Record

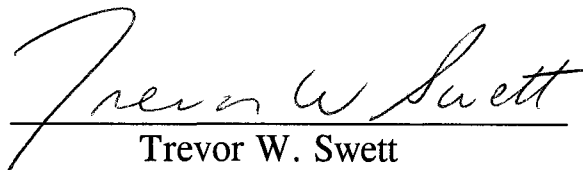
*Counsel to Official Committee of Asbestos
Claimants of Federal-Mogul Global, Inc.*

Date: May 16, 2002

CERTIFICATE OF COMPLIANCE

I hereby certify that the Reply Brief For Appellees Official Committee of Asbestos Claimants of Federal-Mogul Global, Inc. ("Appellee's Reply Brief") complies with the type-volume limits as required by Federal Rule of Appellate Procedure ("FRAP") 32 and Third Circuit Local Appellate Rule 32, and by Order of this Court.

As required by FRAP 32, Appellee's Reply Brief is in 14-point proportionally-spaced type including serifs. In compliance with the Court-ordered 7,000 word limitation, the word-processing system used to prepare Appellee's Brief indicates that the text contains 5,486 words.


Trevor W. Swett

CERTIFICATE OF SERVICE

I hereby certify that, on May 16, 2002, an electronic version of the Reply Brief of Appellees Official Committee of Asbestos Claimants of Federal-Mogul Global, Inc. was sent by electronic mail to the following:

Counsel for Appellants

David M. Bernick, Esq. (david_bernick@chicago.kirkland.com)
John Donley, Esq. (john_donley@chicago.kirkland.com)
Douglas G. Smith, Esq. (douglas_smith@chicago.kirkland.com)
Christopher Landau, Esq. (christopher_landau@dc.kirkland.com)
Eric B. Wolff, Esq. (eric_wolff@dc.kirkland.com)

Counsel for other Appellants:

Honeywell:

William A. Slaughter (slaughter@ballardspahr.com)

International Automakers:

David Wilks (wilksd@whitewms.com)
Chris Singewald (singewaldc@whitewms.com)

Official Unsecured Creditors Committee:

Robert B. Millner (RMillner@sonnenschein.com)

Hennessy Indus., Inc.:

Paul Day (paul.day@piperrudnick.com)
Henry A. Heiman (hheiman@hagblaw.com)

Holman Enterprises, B.F. Goodrich, Salvo Auto Parts:

Lee Baylin (leebaylin@baylinlaw.com)
Michael A. Stover (mstover@wtplaw.com)
Douglas F. Murray (dmurray@wtplaw.com)

Counsel for Appellees:

Ad Hoc Committee of Asbestos Claimants

Alan Rich (arich@baronbudd.com)
Charles S. Siegel (siegel@awpk.com)
Robert T. Haefele (rhaefele@wilentz.com)
Nancy Davis (ndavls@nmlrp.com)

Kaeske-Reeves Claimants - Beaty, Salter, and Sturdevant

Kay Reeves (kreeves@kaeske-reeves.com)
J. Bradshaw (jbradshaw@kaeske-reeves.com)
Michael B. Pullano (mpullano@mccarter.com)

Waters & Kraus plaintiffs [Unofficial Committee of Select Asbestos Claimants]

Charles S. Siegel (siegel@awpk.com)

Counsel for Federal-Mogul:

Laura Davis Jones (ljones@pszyj.com)

***Amicus Curiae* Counsel**

Washington Legal Foundation

Daniel J. Popeo (dpopeo@wlf.org)
Paul D. Kamenar (pkamenar@wlf.org)

Cadwalader, Wickersham & Taft

Bruce R. Zirinsky (bruce.zirinsky@cwt.com)

John H. Bae (john.bae@cwt.com)

Edward A. Smith (edward.smith@cwt.com)

I further certify that on May 16, 2002, two copies of the Reply Brief of Appellees Official Committee of Asbestos were served by Federal Express on the following:

Counsel for Appellants

David M. Bernick, Esq.

John Donley, Esq.

Douglas G. Smith, Esq.

Kirkland & Ellis

200 East Randolph Drive

Chicago, IL 60601

(312) 861-2000

Christopher Landau, Esq.

Eric B. Wolff, Esq.

Kirkland & Ellis

655 Fifteen Street N.W.

Washington, DC 20005

(202) 879-5000

Counsel for other Appellants:

Honeywell:

William A. Slaughter, Esq.

Ballard Spahr Andrews & Ingersoll, LLP

1735 Market St.

Philadelphia, PA 19103

(215) 864-8114

International Automakers:

David Wilks, Esq.
White & Williams
824 North Market St., Suite 902
Wilmington, DE 19801-4938
(302) 654-0424

Official Unsecured Creditors Committee:

Robert B. Millner, Esq
Sonnenschein Nath & Rosenthal
Suite 8000 Sears Tower
233 South Wacker Dr.
Chicago, IL 60606
(312) 876-8000

Hennessy Indus., Inc.:

Paul Day, Esq.
Piper Marbury Rudnick & Wolfe LLP
6225 Smith Ave.
Baltimore, MD 21209-3600
(410) 580-4133

Henry A. Heiman, Esq.
Heiman, Aber, Goldlust & Baker
702 King St., Suite 600
Wilmington, DE 19801
(302) 658-1800

Holman Enterprises, B.F. Goodrich, Salvo Auto Parts:

Lee Baylin, Esq.
Law Office of Lee A. Baylin, P.A.
502 Washington Ave., Suite 810
Towson, MD 21204
(410) 825-8200

Douglas F. Murray, Esq.
Michael A. Stover, Esq.
Whiteford, Taylor & Preston, LLP
Seven Saint Paul St., Suite 1400
Baltimore, MD 21202-1626
(410) 347-8700

Counsel for Appellees:

Ad Hoc Committee of Asbestos Claimants

Alan Rich, Esq.
Baron & Budd, PC
3102 Oak Lawn Ave., Suite I 100
Dallas, TX 75219
(214) 521-3605

Charles S. Siegel, Esq.
Waters & Kraus, LLP
3219 McKinney Ave., Suite 3000
Dallas, TX 75204
(214) 357-6244

Robert T. Haefele, Esq.
Wilentz, Goldman & Spitzer
90 Woodbridge Center Drive
Suite 900, Box 10
Woodbridge, NJ 07095
(732) 636-8000

Nancy Davis, Esq.
Ness, Motley, PA
8 Bridgeside Boulevard, P.O. Box 1792
Mount Pleasant, SC 29465
(843) 216-9000

Kaeske-Reeves Claimants - Beaty, Salter, and Sturdevant

Kay Reeves, Esq.
Kaeske-Reeves, LLP
6301 Gaston Ave., Suite 735
Dallas, TX 75214
(214) 821-1221

Michael B. Pullano, Esq.
McCarter & English, LLP
One Commerce Square
2005 Market St., Suite 3600
Philadelphia, PA 19103
(215) 557-7700

Counsel for Federal-Mogul:

Laura Davis Jones, Esq.
Pachulski, Stang, Ziehl, Young & Jones
919 North Market St., 16th floor
P.O. Box 8705
Wilmington, DE 19899

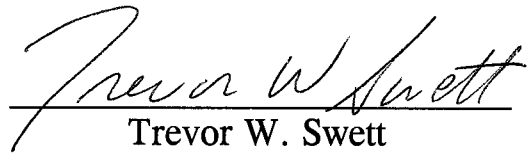
***Amicus Curiae* Counsel**

Washington Legal Foundation

Daniel J. Popeo
Paul D. Kamenar
Washington Legal Foundation
2009 Massachusetts Ave., NW
Washington, DC 20036
(202) 588-3202

Cadwalader, Wickersham & Taft

Bruce R. Zirinsky
John H. Bae
Edward A. Smith
Cadwalader, Wickersham & Taft
100 Maiden Lane
New York, NY 10038
(212) 504-6000


Trevor W. Swett