



1 The estate's complaint against defendants/cross-complainants  
2 has been resolved. The non-debtor defendants/cross-complainants  
3 now seek to have the remainder of the adversary proceeding,  
4 consisting solely of the cross-complaint against non-debtor  
5 cross-defendants, remanded to the court from whence it came. The  
6 Court finds that equitable grounds exist to warrant remand and  
7 thus grants defendants/cross-complainants' motion.

8 This Court has subject matter jurisdiction pursuant to 28  
9 U.S.C. § 1334 and General Order No. 312-D of the United States  
10 District Court for the Southern District of California. This is  
11 a non-core "related to" proceeding under 28 U.S.C. § 157(c).

12 **DISCUSSION**

13 The adversary proceeding stems from a complaint filed in the  
14 San Diego Superior Court by AMC Partners, LLC (Debtor) against  
15 David Gaines and Trevor Abney (Gaines and Abney) alleging, among  
16 other things, breach of fiduciary duty and conversion. The  
17 complaint prompted a cross-complaint by Gaines and Abney against  
18 the Debtor and Thomas A. Waltz, T. Waltz, Steven Salisbury and  
19 the Waltz Family Limited Partnership (Waltz-Defendants) alleging  
20 similar causes of action.

21 In January 2006 the Debtor filed the petition commencing  
22 this bankruptcy case. Shortly thereafter Debtor had this matter  
23 removed to this Court. In December 2007 the case was converted  
24 and Gerald Davis was appointed chapter 7 trustee.

25 In February 2009 this Court granted the Trustee's motion to  
26 settle the estate's claims against Gaines and Abney. The

1 settlement included dismissal of the estate's claims against  
2 Gaines and Abney in this adversary proceeding and a subordination  
3 of Gaines and Abney's claims against the estate.

4       The only remaining claims in this adversary proceeding are  
5 those of Gaines and Abney against the non-debtor Waltz-Defendants  
6 set out in the cross-complaint. Gaines and Abney have moved the  
7 Court to remand the remainder of this proceeding to the court  
8 from whence it came pursuant to 28 U.S.C. § 1452(b).

9       Section 1452(b) states "the court to which such claim or  
10 cause of action is removed may remand such claim of cause of  
11 action on any equitable ground." The "any equitable ground"  
12 standard was recently and ably applied by Judge Adler in In re  
13 Roman Catholic Bishop of San Diego, 374 B.R. 756 (Bankr.S.D.Cal.  
14 2007):

15             The "any equitable ground" standard is not  
16 statutorily defined. Accordingly, case law has imported  
17 the "factors" governing discretionary abstention to  
18 assist with the remand decision. The imported factors  
19 are:(1) the effect or lack thereof on the efficient  
20 administration of the estate if the Court recommends  
21 [remand or] abstention; (2) extent to which state law  
22 issues predominate over bankruptcy issues; (3)  
23 difficult or unsettled nature of applicable law; (4)  
24 presence of related proceeding commenced in state court  
25 or other nonbankruptcy proceeding; (5) jurisdictional  
26 basis, if any, other than § 1334; (6) degree of  
relatedness or remoteness of proceeding to main  
bankruptcy case; (7) the substance rather than the form  
of an asserted core proceeding; (8) the feasibility of  
severing state law claims from core bankruptcy matters  
to allow judgments to be entered in state court with  
enforcement left to the bankruptcy court; (9) the  
burden on the bankruptcy court's docket; (10) the  
likelihood that the commencement of the proceeding in  
bankruptcy court involves forum shopping by one of the  
parties; (11) the existence of a right to a jury trial;  
(12) the presence in the proceeding of nondebtor

1 parties; (13) comity; and (14) the possibility of  
2 prejudice to other parties in the action.

3 While these factors assist a court's remand decision,  
4 they do not control it. The standard remains "any  
5 equitable ground."

6 Id. at 761-62 (citations omitted).

7 The Court is convinced that an application of the factors to  
8 the case at hand justifies remand of this matter to the court  
9 from which it sprung.

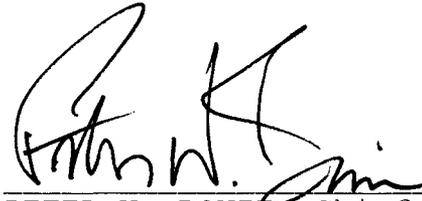
10 Though the Court is capable of resolving this dispute, the  
11 administration of the underlying bankruptcy case would be eased  
12 by remand and the state court is perhaps better suited to handle  
13 the matter as the causes of action are based in state law and  
14 there are no bankruptcy issues. So far as the Court can tell,  
15 there are no difficult or unsettled legal issues. If there are,  
16 however, they would be state law issues with which the state  
17 court is well equipped to deal. Since the estate has no interest  
18 in the adversary, it is not related to the main bankruptcy case.  
19 This is not a core proceeding. There are no bankruptcy matters  
20 which would have to be severed from the state law claims. Though  
21 this case is not a particular burden on the bankruptcy court's  
22 docket, the Court does have many other matters to which it can  
23 address its attention. The Court is not convinced that Gaines  
24 and Abney are forum shopping since the case would simply be going  
25 back to the court from which it originated against them. Gaines  
26 and Abney do assert a right to a jury trial. There are only  
nondebtor parties. Comity is observed by returning this case to

1 the court of its origin. Finally, the Court is not convinced  
2 that remand will prejudice the Waltz-Defendants.

3 **CONCLUSION**

4 For the foregoing reasons, the Court is satisfied that  
5 equitable grounds support remand of this adversary proceeding.  
6 Therefore, Gaines and Abney's motion to remand is granted unless  
7 the District Court, upon timely *de novo* review, holds otherwise.

8 DATED: ~~JUL 17 2000~~

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10  
11 PETER W. BOWIE, Chief Judge  
United States Bankruptcy Court

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