Dated: August 13, 2013
The following is SO ORDERED:

David S. Kennedy
UNITED STATES CHIEF BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re

B. J. WADE,

Debtor.

SSN: xxx-xx-2004

Case No. 13-21432-K

Chapter 7

GLASSMAN, EDWARDS, WYATT,
TUTTLE & COX, P.C.,

Plaintiff,

vs.

B. J. WADE,

Defendant.

Adv. Proc. No. 13-00197 and
Adv. Proc. No. 13-00208

MEMORANDUM AND ORDER RE MULTIPLE PENDING CORE PROCEEDINGS COMBINED WITH RELATED ORDERS AND NOTICES AND NOTICE OF THE ENTRY THEREOF

I. Introduction

The following core proceedings[1] were heard by the court on August 7, 2013, and taken under submission:

- Motion of the above-named chapter 7 debtor/defendant, B.J. Wade ("Mr. Wade"), in Adv. Proc. No. 13-00197 for mandatory proceeding abstention under 28 U.S.C. § 1334(c)(2) or alternatively for permissive proceeding abstention under 28 U.S.C. § 1334(c)(1) and FED. R. BANKR. P. 5011(b), for remand of Adv. Proc. No. 13-00197 regarding the removed Shelby County Tennessee Chancery Court ("Chancery Court") under 28 U.S.C. § 1452(b) and FED. R. BANKR. P. 9027(d), and the objections thereto filed by the plaintiff, Glassman, Edwards, Wyatt, Tuttle, & Cox, P.C. ("Law Firm");
- Motion of Mr. Wade in Adv. Proc. No. 13-00208 seeking permissive proceeding abstention under 28 U.S.C. § 1334(c)(1) and the Law Firm's objection thereto regarding the Law Firm's non-dischargeability complaint under 11 U.S.C. § 523(a)(2), (4), and (6);
- Motion of Mr. Wade to quash the Rule 2004 examination order previously obtained by the Law Firm in accordance with Local Bankruptcy Rule ("LBR") 2004(a)(1) and to abstain from discovery issues involving the Law Firm and the objection thereto filed by the Law Firm;
- Bifurcated hearing on Mr. Wade's motion to amend the Rule 2004 examination order previously obtained by the Chapter 7 Trustee in accordance with LBR 2004(a)(1) and for protective order and the objection thereto filed by the Law Firm;[2]
- Bifurcated hearing on Mr. Wade's motion to modify the § 362(a) automatic stay, the objection thereto filed by the Law Firm, and Mr. Wade's response to the Law Firm's

[1] See 28 U.S.C. § 157(b)(2)(A), (B), (G), (I), and (J).

[2] It is noted that Mr. Wade's request to amend this order was previously denied, and Mr. Wade's request for a protective order was bifurcated and is dealt with in this Memorandum and Order.

objection;[3]

- Motion of the United States Trustee for Region 8 ("U.S. Trustee") seeking to extend the time to object to Mr. Wade's discharge under 11 U.S.C. § 727(a) and FED. R. BANKR. P. 4004(b)(1);[4] and
- Pretrial conferences on the Law Firm's two above-referenced complaints filed by the Law Firm against Mr. Wade, being Adv. Proc. Nos. 13-00197 and 13-00208.

The above-mentioned pending multiple core proceedings are the subject of this Memorandum and Order. Based on the entire case as a whole and the two above-captioned adversary proceedings records as a whole, the following shall constitute the court's findings of fact and conclusions of law in accordance with FED. R. BANKR. P. 7052.

II. Background: Pre-bankruptcy Facts and Procedural History

On May 4, 2011, the Law Firm filed separate lawsuits in the Shelby County, Tennessee, Chancery Court against Mr. Wade, a former partner of the Law Firm, and Ms. Shannon Crowe ("Ms. Crowe"), a former paralegal at the Law Firm, alleging fraud, breach of fiduciary duty, conversion, and conspiracy. Mr. Wade and Ms. Crowe each filed motions to dismiss or in the alternative to compel arbitration and to stay proceedings pending resolution of the arbitration proceedings. Mr. Wade and the Law Firm disagree as to whether arbitration should be compelled in this litigation. The Chancery Court consolidated the two pre-bankruptcy lawsuits involving Mr. Wade and Ms. Crowe and stayed all discovery except as to whether Mr. Wade and Ms. Crowe could successfully compel arbitration. The Chancery Court also ordered the parties to engage in mediation in connection with the consolidated actions and also to disclose "all necessary

[3]Mr. Wade's request to modify the automatic stay to allow the Tennessee Supreme Court to issue its opinion was granted earlier and all other matters therein are before the court and are dealt with in this Memorandum and Order.

[4]FED. R. BANKR. P. 4004(b)(1) provides:

> On motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in subdivision (b)(2), the motion shall be filed before the time has expired.

documents to conduct a meaningful attempt at resolution" despite the prior order limiting discovery. Mr. Wade and Ms. Crowe filed motions in the Chancery Court to vacate this order that was denied by the Chancellor, and they then sought an extraordinary appeal before the Tennessee Supreme Court. Before the Tennessee Supreme Court could address the extraordinary appeal, Mr. Wade filed an original chapter 7 petition under the Bankruptcy Code on February 10, 2013, which, by virtue of the § 362(a) automatic stay, had the effect of staying all actions before the Tennessee Supreme Court and also the Chancery Court.

III. Post-bankruptcy Facts and Procedural History

As noted, on February 10, 2013, Mr. Wade filed an original petition under the Bankruptcy Code which commenced this chapter 7 "no-asset" case.[5] Lynda F. Teems, Esquire, was appointed by the U.S. Trustee as the Chapter 7 Trustee of this § 541(a) estate ("Trustee"). James E. Bailey, III, Esquire ("Mr. Bailey") was appointed as the attorney for the Trustee. May 17, 2013, was fixed by the bankruptcy court as the bar date for the filing of § 523(c) nondischargeability complaints and also objections to Mr. Wade's discharge under § 727(a) which, if granted, would render all debts of Mr. Wade to be unaffected by a discharge (*i.e.*, in essence, nondischargeable debts). Mr. Wade's Schedule F lists the Law Firm as being a "disputed," "unliquidated" claimant in the amount of $3 million. Mr. Wade's Schedules also list approximately $1.4 million in other creditor claims. Mr. Wade's § 341(a) meeting of creditors was conducted and concluded on April 16, 2013.

Ten days after his chapter 7 petition was filed, Mr. Wade moved for relief from the § 362(d)(1) automatic stay to allow the Tennessee Supreme Court to hear and determine the extraordinary appeal; the Law Firm objected thereto to which Mr. Wade then responded. At the initial hearing on Mr. Wade' § 362(d) motion, this court bifurcated Mr. Wade's motion for relief from the stay, and modified the stay to allow the

[5]A chapter 7 case originally may be filed as a "no-asset" case (*i.e.*, a case without non-exempt assets available for distribution). At such time as assets are discovered, if at all, the Trustee will provide notice to the bankruptcy court clerk that the filing of proof of claims by creditors will be necessary. This notice has the effect of turning a "no-asset" case into an "asset" case. See FED. R. BANKR. P. 3002(c)(5). Mr. Wade's Schedules reflect approximately $2.4 million in assets on Schedule B. At the time of these hearings on August 7, 2013, the Trustee is in the process of conducting a Rule 2004 examination of Mr. Wade and has not yet filed a notice that would cause this case to be changed from a no-asset case to an asset case, pending the outcome of discovery.

Tennessee Supreme Court to address the extraordinary appeal, and held the remaining requests for relief from the stay in abeyance until the August 7, 2013, hearing. On April 30, 2013, the Tennessee Supreme Court vacated the Chancery Court's mediation order and remanded the case for a determination by the Chancery Court on the motions to compel arbitration and limited discovery regarding the issue of whether arbitration should be compelled.[6] Subsequent to the Tennessee Supreme Court's decision, the Law Firm voluntarily dismissed its Chancery Court case against Ms. Crowe; therefore, the remaining case in the Chancery Court regarded only Mr. Wade.

On May 2, 2013, the Law Firm filed a motion in the bankruptcy court for a Rule 2004 examination of Mr. Wade and for production of certain documents by Mr. Wade. The motion was granted by an order entered on May 6, 2013, in accordance with the applicable Local Bankruptcy Rule. Before the Rule 2004 examination was conducted, Mr. Wade filed a motion to quash such order, and the Law Firm objected thereto.

On May 10, 2013, the Law Firm removed the Chancery Court lawsuit against Mr. Wade to this bankruptcy court under 28 U.S.C. § 1452(a) and FED. R. BANKR. P. 9027(a). By virtue of FED. R. BANKR. P. 7001(10), the removed action was given an adversary proceeding number by the bankruptcy court clerk, being Adv. Proc. No. 13-00197. On June 18, 2013, Mr. Wade filed a motion seeking remand and mandatory proceeding abstention or, alternatively, permissive proceeding abstention. *See* 28 U.S.C. §§ 1452(b) and 1334(c); FED. R. BANKR. P. 9027(d). The Law Firm objected to Mr. Wade's remand and abstention motion.

On May 16, 2013, the Law Firm filed in the bankruptcy court a complaint to determine the dischargeability of its unliquidated, disputed claims against Mr. Wade under 11 U.S.C. § 523(a)(2), (4), and (6), being Adv. Proc. No. 13-00208. On June 18, 2013, Mr. Wade filed a motion to abstain under 28 U.S.C. § 1334(c) and FED. R. BANKR. P. 5011(d), and the Law Firm objected thereto.

On June 3, 2013, the Trustee filed a motion for a Rule 2004 examination of Mr. Wade in accordance

[6] *Glassman, et al. v. Wade*, slip opinion No. W2012-00321-SC-S10CV (Tenn. April 30, 2013).

with LBR 2004(a)(1). An order granting this motion was entered on June 4, 2013. Before the Rule 2004 examination was conducted, Mr. Wade filed a motion seeking to amend this order by limiting the time frame and production of documents and lists and, also, seeking a protective order that, if granted, would prohibit the Trustee from disclosing documents and information to third parties (*e.g.*, the Law Firm). The Law Firm objected thereto. At the original hearing on this motion, the court, acting with the consent of the parties, bifurcated the motion, denied Mr. Wade's request to limit the time frame and production of documents and lists, and held in abeyance Mr. Wade's request for a protective order until the August 7, 2013 hearing.

IV. U.S. Trustee's Motion Pursuant to FED. R. BANKR. P. 4004(b)(1)

The U.S. Trustee timely moved for the bankruptcy court, pursuant to FED. R. BANKR. P. 4004(b)(1), to extend his time to object to Mr. Wade's discharge under 11 U.S.C. § 727(a) through and including 90 days from the date the hearing was conducted on this motion (*i.e.*, 90 days from August 7, 2013). This court fixed June 28, 2013, as the bar date for Mr. Wade to object. No objection was filed. Accordingly, this motion is unopposed and appears reasonable under the totality of the particular facts and circumstances given the ongoing disputes and allegations; therefore, the court grants the motion and orders that the deadline for the U.S. Trustee to object to discharge under § 727(a) be extended to November 5, 2013.[7]

In addition, as noted below, at the August 7, 2013 hearing, the Trustee and counsel for Mr. Wade consented to amending a prior order dated June 13, 2013, which had previously set September 10, 2013, as the deadline for the Trustee to object to discharge under § 727(a) and object to Mr. Wade's claimed exemptions pursuant to FED. R. BANKR. P. 4003(b)(1). By consent, this prior order is amended to extend the September 10, 2013, deadline to November 5, 2013; thus, coordinating the deadlines for the U.S. Trustee and

[7]It is noted that heretofore the court entered an order pursuant to FED. R. BANKR. P. 4004(b)(1) and 4003(b) granting the combined motion of the Trustee and extended the time to September 10, 2013, for the Trustee to object to Mr. Wade's discharge under 11 U.S.C. § 727(a) and also to Mr. Wade's claim of exemptions listed in Schedule C pursuant to FED. R. BANKR. P. 4003(b)(1). At the August 7, 2013 hearing on the U.S. Trustee's Rule 4004(b)(1) motion, Mr. Wade, through counsel, agreed to extend the deadline for the Trustee from September 10, 2013 to November 5, 2013 which will parallel the U.S. Trustee's time period pursuant to Rule 4004(b)(1). Counsel for the Trustee (Mr. Bailey) will submit a separate order amending the June 13, 2013 Order enlarging the time from September 10, 2013 to November 5, 2013, for the Trustee to file objections to Mr. Wade's discharge and/or claim of exemptions.

the Trustee to act.

V. Mr. Wade's Motion for Mandatory or Alternatively for Permissive Abstention and Remand of Adv. Proc. No. 13-00197 and Motion for Permissive Abstention of Adv. Proc. No. 13-00208

On May 4, 2011, the Law Firm filed separate complaints in the Chancery Court against Mr. Wade and Ms. Crowe. These two complaints were subsequently consolidated into one case by the Honorable Walter L. Evans, Chancellor of the Shelby County Chancery Court. At times relevant here, Mr. Wade was an employee (*i.e.*, a practicing attorney) and a named partner in the Law Firm; and Ms. Crowe was a paralegal at the Law Firm. On November 5, 2010, the Law Firm apparently terminated Mr. Wade's employment for asserted cause. On November 16, 2010, Mr. Wade's name was removed from the Law Firm's name. The gravamen of the Chancery Court lawsuit alleges, inter alia, that Mr. Wade ran a "shadow law firm" that diverted attorney fees earned in cases away from the Law Firm and instead kept the fees for himself. If true, these actions would violate, inter alia, Mr. Wade's fiduciary duty to the Law Firm to act solely for the benefit of the Law Firm. The Law Firm seeks compensatory damages arising from Mr. Wade's asserted breach of fiduciary duty, a forfeiture of all compensation during the period that he diverted fees, punitive damages for Mr. Wade's intentional breach of fiduciary duty, an award of expenses including attorney fees and internal costs associated with the investigation and prosecution of Mr. Wade's conduct, and an award of pre-judgment interest.

On June 3, 2011, Mr. Wade filed in the Chancery Court a motion to dismiss or in the alternative to compel arbitration and stay proceedings pending resolution of the arbitration matter. A similar motion was filed by Ms. Crowe in the Chancery Court lawsuit. These motions were pending after the Tennessee Supreme Court vacated the Chancery Court's mediation order and remanded the case to the Chancery Court to determine the arbitration issue. After this remand by the Tennessee Supreme Court, the Law Firm, as noted earlier, removed the Chancery Court lawsuit[8] to the bankruptcy court under 28 U.S.C. § 1452(a) and pursuant

[8]Mr. Wade's motion to dismiss or in the alternative to compel arbitration and stay proceedings pending resolution of the arbitration matter is included in the removed lawsuit as a removed proceeding .

to FED. R. BANKR. P. 9027(a). In addition, the Law Firm voluntarily dismissed the lawsuit against Ms. Crowe. Presumably, the removal action filed by the Law Firm to the bankruptcy court involved the lawsuit concerning Mr. Wade only and not Ms. Crowe (*i.e.*, the consolidated lawsuit). Shortly thereafter, Mr. Wade filed a motion seeking mandatory proceeding abstention under 28 U.S.C. § 1334(c)(2) or permissive proceeding abstention under 28 U.S.C. § 1334(c)(1) and remand under 28 U.S.C. § 1452(b) and FED. R. BANKR. P. 9027(d). The Law Firm's removed complaint and Mr. Wade's remand motion are properly before this court in Adv. Proc. No. 13-00197.

In addition to the removed claim, the Law Firm has filed in the bankruptcy court a timely nondischargeability complaint under 11 U.S.C. § 523(c)(2), (4), and (6); and this complaint is before the court in Adv. Proc. no. 13-00208. Furthermore, in addition to filing a motion seeking proceeding abstention regarding the removed action in Adv. Proc. No. 13-00197, Mr. Wade also seeks permissive proceeding abstention regarding the dischargeability complaint in Adv. Proc. No. 13-000208.

This court has concurrent subject matter jurisdiction with the Chancery Court over the removed claim regarding the underlying liability and damages issues. See 11 U.S.C. § 1334(b). Separate and apart from the liability and damage issues, determinations on dischargeability of § 523(c) claims, however, are judgments reserved for the exclusive jurisdiction of the federal bankruptcy courts. See 11 U.S.C. § 523(c); *Grogan v. Garner*, 498 U.S. 279 (1991). The Law Firm's claims, as mentioned above, are currently unliquidated and disputed; therefore, as a precondition for a determination as to the dischargeability of the Law Firm's claims, the claims must be liquidated and resolved in the Chancery Court by arbitration, or in the bankruptcy court. Such resolution and liquidation of claims ordinarily are traditional proceedings undergone in the bankruptcy claims allowance process, therefore, the removed claim is a core proceeding arising in a case under title 11.[9]

[9]A proceeding can be connected to the bankruptcy case in one of three ways: 1) the proceeding is a statutory claim arising under title 11, 2) the proceeding though not a statutory claim under title 11 is a claim that arises in the case under title 11, or 3) the proceeding is related to the title 11 case but is neither a statutory claim under title 11nor a claim arising in the case under title 11. 28 U.S.C. § 157(a) and (b)(1). The first two types of proceedings are core proceedings and a non-exhaustive list of core proceedings is provided at 28 U.S.C. § 157(b)(2). Related proceedings are non-core proceedings dealt with in 28 U.S.C. § 157(c)(1)-(2).

See 28 U.S.C. § 157(b)(2)(A)-(B) and 11 U.S.C. §§ 501-511 with concurrent jurisdiction existing under 28 U.S.C. § 1334(b) on the underlying liability issues.

Though the bankruptcy court has subject matter jurisdiction over the removed claim as a core proceeding, FED. R. BANKR. P. 9027(d) and 28 U.S.C. §1452(b), nonetheless, allow the bankruptcy court to remand a removed claim or cause of action in appropriate cases "on any equitable ground."[10] Under the doctrine of mandatory proceeding abstention, a bankruptcy court *shall* abstain from hearing a State law claim that is related to a case under title 11 but not arising in or under a case in title 11. 28 U.S.C. § 1334(c)(2). Comparatively, under the doctrine of permissive proceeding abstention, a bankruptcy court *may* abstain from hearing a particular proceeding arising in, under, or related to a case under title 11 in the interest of justice or in the interest of comity with State court or respect for State law. 28 U.S.C. § 1334(c)(1).[11] Here, mandatory proceeding abstention under 28 U.S.C. § 1334(c)(2) is not appropriate because the removed claim clearly is a core proceeding under 28 U.S.C. § 157(b) arising in a case under title 11; therefore, the court will consider whether, under the totality of the particular facts and circumstances and applicable law, permissive proceeding abstention under 28 U.S.C. § 1334(c)(1) would further the interests of justice, comity, and/or respect for State law and State law issues.

In the normal course, remand is sought by motion pursuant to FED. R. BANKR. P. 9027(d). Motions for remand should be filed with and heard by the bankruptcy court. *See* FED. R. BANKR. P. 9027(d) and Advisory Committee Note (1991 amendment); *Bankruptcy Clerks' Manual* § 6(B)).

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[10]The bankruptcy remand power under 28 U.S.C. § 1452(b) and procedural rule FED. R. BANKR. P. 9027(d) are distinguishable from the general remand power under 28 U.S.C. § 1447(c). The bankruptcy specific remand power has no statutory or procedural time limits and requires only an equitable determination. Accordingly, the court must exercise discretion by factoring equitable considerations and reasonableness under the particular facts and totality of the circumstances of a case to determine whether remand is appropriate. In comparison, 28 U.S.C. § 1447(c) establishes a 30-day period for a motion to remand for "any defect" in the removal under 28 U.S.C. § 1446. In addition 28 U.S.C. § 1447(c) requires a court without subject matter jurisdiction to remand and no time limitations apply. Both 28 U.S.C. § 1452 and § 1447 apply to the bankruptcy context. *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 129 (1995) (citing *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253 (1992)). Here, the bankruptcy court is acting under 28 U.S.C. § 1452 (b) and FED. R. BANKR. P. 9027(d); therefore, there was no 30 day time limitation regarding the motion to remand.

[11]Under 28 U.S.C. § 1334(c)(1) the district court (*i.e.*, the bankruptcy court by virtue of 28 U.S.C. § 157(a)) may abstain from hearing a particular matter/proceeding "in the interest of justice, or in the interest of comity with State courts or respect for State law." This court has broad latitude to determine whether equity dictates that the court abstain in favor of another court.

As discussed, 28 U.S.C. § 1452(b) allows for remand "on any equitable ground." Courts have developed many relevant factors to consider when exercising discretion regarding whether to remand. These factors under 28 U.S.C. § 1452(b) mirror the factors considered in making proceeding abstention decisions under 28 U.S.C. § 1134(c). They include:

(1) The effect or lack thereof on the efficient administration of the estate if the court recommends abstention;

(2) The extent to which state law issues predominate over bankruptcy issues;

(3) the difficult or unsettled nature of applicable law;

(4) the presence of related proceedings commenced in state court or other non-bankruptcy proceedings;

(5) any jurisdictional bases, if any, other than 28 U.S.C. § 1334;

(6) the degree of relatedness or remoteness of the proceeding to the 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 of the bankruptcy court's docket;

(10) the likelihood that 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 parties;

(13) comity; and

(14) the possibility of prejudice to other parties in the action.

See, for example, Archer v. Nissan Motor Acceptance, 324 F. Supp. 2d 805, 809 (S.D. Miss. 2004); *see also Sowell v. U.S. Bankr Nat'l Ass'n*, 317 B.R. 319, 322-23 (E.D.N.C. 2004) (using an eleven-factor test); *C & A, S.E. v. P.R. Solid Waste Mgmt. Auth. (In re C & A, S.E)*, 360 B.R. 12, 18 (Bankr. D. P.R. 2004) (using a seven-factor test); *aff'd*, 369 B.R. 87 (D.P.R. 2007); *In re Best Reception Sys., Inc*., 220 B.R. 932 (Bankr. E.

D. Tenn. 1998) (using an eleven-factor test).

The action concerning Mr. Wade's liability for, *inter alia*, breach of fiduciary duty was pending in the Chancery Court from May 2011 until May 2013 (the date of removal to the bankruptcy court). No meaningful discovery, however, was ever conducted on the substantive matters regarding the Law Firm's underlying claims in the State court and no meaningful discovery has been conducted regarding the arbitrability issue. As mentioned earlier, an extraordinary appeal to the Tennessee Supreme Court was sought in the State court action. This appeal caused the Chancery Court case to appear to be older than it is when in actuality or reality it remains in its early infant stages. The Chancery Court made no substantive findings and took no meaningful steps towards arbitration. Therefore, the bankruptcy court is working on a relatively, if not entirely, clean litigation slate.

Here, the Law Firm's alleged actions, for example, that underlie the disputed claims against Mr. Wade for intentional breach of fiduciary duty are basically the same actions that give rise to the § 523(c) complaint to determine nondischargeabilty and would likely be related, to an extent, to any potential actions, if any, regarding 11 U.S.C. § 727(a) filed by the U.S. Trustee and/or the Trustee. The nature of all of these disputed claims and underlying alleged facts are inextricably intertwined. Findings of fact in any of these complaints may be applicable to the other complaints such that the doctrine of issue preclusion or collateral estoppel may apply to some degree.

What is clear is that the determinations of nondischargeability under 11 U.S.C. § 523(a)(2), (4), and (6) are exclusive to the bankruptcy court and cannot be remanded to or decided by the State Court or subject to arbitration. *See* 11 U.S.C. § 523(c)*; Brown v. Felson*, 442 U.S. 127, 129-130, 136 (1979); *Grogan v. Garner*, 498 U.S. 279, 284 n.10 (1991). Therefore, a remand and/or arbitration of the removed claim will not necessarily resolve all the factual and legal issues that are currently pending. Such a remand and/or arbitration will bifurcate the trial of the facts regarding the various, intertwined claims here. The State Court Chancellor, arbitrator, and bankruptcy judge will all be tasked with determining factual issues arising out of

the same background facts – many will overlap.

Mr. Wade is the party seeking to limit the bankruptcy jurisdiction via remand and abstention procedures; whereas, oftentimes it is the creditor who raises and asserts such abstention and remand issues attempting to circumvent bankruptcy jurisdiction. This distinction is interesting here because Mr. Wade's filing of a voluntary chapter 7 petition under 11 U.S.C. § 301 initiated the instant chapter 7 bankruptcy case and brought all of these financial affairs before the bankruptcy court. The Law Firm's actions against Mr. Wade in the Chancery Court were stayed under § 362; and the Law Firm now comes to the bankruptcy court and consents to its jurisdiction. Now, after voluntarily coming to the bankruptcy court, Mr. Wade seeks to go back to the Chancery Court and compel arbitration against the Law Firm regarding only a portion of the legal disputes that now exist between the parties. The Law Firm, having come and consented to bankruptcy court jurisdiction, contests and objects to being forced to go back to the State court. Mr. Wade's actions inevitably (and perhaps innocently) frustrate, to an extent, the bankruptcy judicial goal set forth in Fed. R. Bankr. P. 1001, which indicates that bankruptcy judges are tasked with the goal of "securing the just, speedy, and inexpensive determination of every case and proceeding."

Mr. Wade essentially seeks ping-pong jurisdiction by decentralizing litigation. He, first, sought to compel arbitration in lieu of the State court jurisdiction; then sought bankruptcy protection and jurisdiction; now seeks to go back to the State court's jurisdiction; where he will again seek to compel arbitration and remove State and bankruptcy court jurisdiction; afterwards he will come back to the bankruptcy court for ultimate dischargeability relief. All of this jurisdictional hopping concerns allegations that he committed actions of intentional breach of fiduciary duty, fraud generally, fraud in a fiduciary capacity, and willful and malicious injury against another's property. These are very serious charges. In addition to undoing the bankruptcy purpose of centralization of disputes and as a practical matter, this jurisdictional ping-pong seems to frustrate the Law Firm's attempt to get a final, prompt and less expensive resolution regarding its claims. Furthermore, this jurisdictional ping-pong perhaps is the least speedy and most expensive approach to

resolving the Law Firm's claims and concomitantly providing Mr. Wade with certainty and finality to his affairs.

Also, it may be argued that the bankruptcy court under these particular circumstances could look beyond the arbitration agreement and hear and decide the underlying claim on the substantive merits; whereas, the State court perhaps could not. *See, for example, In the Matter of Eber*, 687 F.3d 1123 (9th Cir. 2012); *In re F & T Contractors, Inc.*, 649 F.2d 1229 (6th Cir. 1981); *In the Matter of Muskegon Motor Specialities Co.*, 313 F.2d 841 (6th Cir. 1963), *cert. de. sub. nom., Int'l Union UAW v. Davis*, 375 U.S. 832 (1963). If this court were to adopt the reasoning of these cases, the bankruptcy court may very well be able to hear and determine the removed lawsuit and also the nondischargeability complaint without being required to compel arbitration. Avoiding arbitration under the circumstances in this case arguably would further centralize the adjudication of all claims and seemingly reduce the cost, time, and litigation needed to resolve the Law Firm's core claims against Mr. Wade. Although an arbitrator frequently will offer special expertise and be able to resolve a dispute quickly and with less cost, this case, however, seems to be absent of these benefits.

It is emphasized that the Law Firm and Mr. Wade dispute whether arbitration agreements even exists and, if so, whether they are enforceable. Resolution of this dispute could involve considerable discovery and an evidentiary trial; costs and time could dramatically escalate over an ancillary issue to the asserted removed claim. Given any discovery disputes perhaps must first be resolved before arbitration can even be compelled, it may serve the interests of justice and the parties to avoid arbitration and allow the bankruptcy court to resolve all pending matters involving these parties. The court is not prepared at this time to determine whether it has the authority to discretionarily determine whether to deny or compel arbitration; however, this issue will have to be resolved in the future as a threshold matter in association with a determination regarding Mr. Wade's motion to compel arbitration.

Having the Law Firm's claims against Mr. Wade resolved under the same procedure and in the same

forum is a significant equitable concern of this court in attempting to achieve the judicial goal set forth in FED. R. BANKR. P. 1001. The facts and circumstances in these matters arguably support one adjudication in consolidated proceedings in one court that fosters judicial economy. The Chancery Court (or possibly an arbitrator) has concurrent jurisdiction to hear and determine only the liability issues; whereas, the bankruptcy court has jurisdiction over all the issues. Furthermore, the bankruptcy court has jurisdiction over any potential related § 727 objections to discharge that may be filed by the U.S. Trustee or the Trustee, § 548(a) fraudulent conveyance actions that may arise, or objections to claimed exemptions; whereas, the State court would not. The centralization of all claims and potential claims in one forum is a primary consideration here, especially since the Law Firm consented to the bankruptcy jurisdiction after Mr. Wade invoked the protections of the bankruptcy court.[12] Every case has particular facts and circumstances that will affect the decision to abstain and remand differently; a blanket, *ipso facto*, approach does not suffice.

This court under other circumstances and facts has not hesitated to abstain and remand a State law case where it serves the interest of justice, comity with the State court, or regards an unsettled area of state law, among other considerations. Here, the removed claim regards State law issues; however, such claims of fraud and breach of fiduciary duty, etc. are far from unsettled law and are rather ordinary State law claims that are commonly resolved in federal bankruptcy courts that exercise the concurrent jurisdiction under 28 U.S.C. § 1334(b). Furthermore, since resolution of the removed lawsuit is in its early infant stages, the bankruptcy court would not disrupt any actions of the Honorable Chancery Court, thus, greatly diminishing the concerns of comity. Were this case further and farther developed in the Chancery Court or was the case against Ms. Crowe still pending, this court may very well have remanded and abstained in the interests of

[12]In the event a complaint objecting to Mr. Wade's general discharge is subsequently filed by either or both the U.S. Trustee or the Trustee, the bankruptcy court would have exclusive jurisdiction to hear and determine such proceeding(s). 11 U.S.C. § 727(a); FED. R. BANKR. P. 9001(4); FED. R. BANKR. P. 9002(4). Also in the event this no-asset chapter 7 case is later determined to be an asset case, creditors, including the Law Firm, will be so notified pursuant to FED. R. BANKR. P. 3002(c)(5). If the Law Firm's claim is still disputed, the Chapter 7 Trustee may object to such claim. See 11 U.S.C. § 704(a)(5); FED. R. BANKR. P. 3007(a). In this event, a contested matter, pursuant to FED. R. BANKR. P. 9014, would arise and the Trustee, alongside Mr. Wade, would become a party in interest. See 11 U.S.C. §§ 502 and 521(a)(3) and FED. R. BANKR. P. 4002(a)(4) and 7017. The bankruptcy court would be a better centralized forum under the circumstances to coordinate these multiple proceedings.

comity with the Chancery Court. But, those are not the facts here. After discretionarily weighing all abstention/remand factors as they relate to the particular facts and totality of the circumstances, this bankruptcy court is convinced that centralizing all the claims discussed above in one forum best serves the interests of justice and the judicial considerations pursuant to Rule 1001. Only the bankruptcy court has jurisdiction to sit as the centralized forum of all claims.

The federal bankruptcy court, considering a totality of the particular facts and circumstances and applicable/relevant law, denies Mr. Wade's motions for permissive abstention under 28 U.S.C. § 1334(c)(1) in Adv. Proc. Nos. 13-00197 and in 13-00208 and also denies the request for remand under 28 U.S.C. § 1452(b) and FED. R. BANKR. P. 9027(d) in Adv. Proc. No. 13-00197. Accordingly, this court will hear and determine the removed claim and the nondischargeability action on a consolidated basis.[13] See FED. R. BANKR. P. 7042, infra. In these proceedings the better road here (*i.e.*, the better forum) leads to bankruptcy court adjudication of these issues in a centralized forum.

Since the bankruptcy court will hear and determine both the removed claim and also the § 523(c) nondischargeability complaint and since both adversary proceedings involve common questions of background facts and law, the court, pursuant to FED. R. BANKR. P. 7042, orders Adv. Proc. Nos. 13-00197 and 13-00208 to be consolidated and joined for purposes of discovery, hearings, trial, and possible appeal.

VI. Bifurcated Hearing on Mr. Wade's Motion to Amend and for Protective Order and Objection Thereto by the Law Firm

On June 3, 2013, the Trustee filed a motion seeking a Rule 2004 examination of Mr. Wade. An order granting this motion was entered on June 4, 2013 in accordance with the Local Bankruptcy Rules. Before the Rule 2004 examination was conducted, Mr. Wade filed a motion seeking to amend this Rule 2004 order

[13] *Grogan v. Garner*, 498 U.S. 279, 284 n.10 (1991) ("The 1970 amendments [to the Bankruptcy Act] took jurisdiction over certain dischargeability exceptions, including the exceptions for fraud, away from the state courts and vested jurisdiction exclusively in the bankruptcy courts") (citing *Brown v. Felson*, 442 U.S. 127, 129-130, 136 (1979)).

by limiting the time frame and production of documents and lists and also seeking a protective order that would prohibit the Trustee from disclosing documents and certain information to third parties, specifically the Law Firm. Not surprisingly, the Law Firm objected thereto. At the hearing on this motion, the court bifurcated the motion, denied Mr. Wade's request to limit the time frame and production of documents, and with the consent of the parties held in abeyance the request for a protective order until the August 7, 2013, hearings.[14] The Trustee has been authorized to conduct a Rule 2004 examination of Mr. Wade and request the production of documents and lists for the six years preceding the date of Mr. Wade's chapter 7 petition in addition to documents and lists related to the time of the pending chapter 7 case. The Trustee has statutory duties to investigate the financial affairs of the debtor, generally manage the § 541(a) bankruptcy estate, and furnish appropriate information concerning the estate to parties in interest that request it unless the court orders otherwise. See 11 U.S.C. § 704(a)(1), (4), and (7). The Trustee and her attorney are highly qualified, experienced, and competent professionals in such matters.

The statutory duties of the Trustee (and the U.S. Trustee) exist independent of the Law Firm's asserted claims. Therefore, it is appropriate for the Trustee to conduct a Rule 2004 examination of Mr. Wade and request and review documents of Mr. Wade during the pendency of the removed action. The Trustee may, if appropriate, file a timely complaint under 11 U.S.C. § 727(a) seeking an objection to Mr. Wade's discharge, seek to exert her avoidance powers under §§ 544, 545, 547, 548, or 549, or object to the Law Firm's proof of claim, if filed. A decision whether to do so requires an investigation of Mr. Wade's financial affairs by the Trustee.

Relief from an examination of the debtor ordered in this judicial district under FED. R. BANKR. P. 2004 is generally requested by filing a motion to vacate or modify the order, to limit the examination, or to quash the subpoena; or by requesting some other form of protective order. These motions usually are based on the following grounds:

[14]See the July 25, 2013 "Order Denying Motion to Amend Order rand for Examination Pursuant to Fed. R. Bankr. P. 2004."

- The requested examination is an abuse or harassment of the proposed examinee. *In re Mittco, Inc.*, 44 B.R. 35, 36 (Bankr. E.D. Wis. 1984).

- The requested examination focuses on matters outside the scope of the examination authorized by Rule 2004 (*i.e.*, it has no relationship to the debtor's affairs or the administration of the estate).

- The examinee has no knowledge of the debtor's financial affairs. *In re GHR Energy Corp.*, 35 B.R. 534, 537 (Bankr. D. Mass. 1983).

- The requested examination is directed exclusively at matters involving pending litigation. *In re Bennett Funding Grp., Inc.*, 203 B.R. 24, 28-29 (Bankr. N.D.N.Y. 1996).

- The requested examination seeks information on secret, confidential, scandalous, or defamatory matters. Bankruptcy Rule 9018 authorizes the bankruptcy court to enter any protective order necessary to prevent an unjust result.

- A plan has been confirmed or the case has been closed, and there is no compelling reason to conduct the exam. *In re Good Hope Refineries, Inc.*, 9 B.R. 421, 423 (Bankr. D. Mass. 1981).

If a party requests a protective order or other form of relief, the party who requested the examination must show that "good cause" exists for taking the discovery. *See, for example, In re Kelton*, 389 B.R. 812, 820 (Bankr. S.D. Ga. 2008) (citing *In re Buick*, 174 B.R. 299, 304 (Bankr. D. Colo. 1994)). "Generally, good cause is shown if the [Rule 2004] examination is necessary to establish the claim of the party seeking the examination, or if denial of such request would cause the examiner undue hardship or injustice." *ePlus Inc. v. Katz (In re Metiom, Inc.)*, 318 B.R. 263, 268 (S.D.N.Y. 2004) (quoting *In re Dinubilo*, 177 B.R. 932, 943 (E.D. Cal. 1993)). This showing requires no testimony or affidavit; an attorney's unsworn statements may be sufficient. *Id*. at 269. The court should deny the examination, however, "if the cost and disruption to the examinee attendant to a requested examination outweigh the benefits to the examiner." *In re Express One Int'l*, 217 B.R. 215, 217 (citing *In re Eagle-Picher Indus., Inc.*, 169 B.R. 130, 134 (Bankr. S.D. Ohio 1994)).

It is noted that when an adversary proceeding is pending, a request for a FED. R. BANKR. P. 2004 examination may be viewed as an attempted by some as an "end run" around normal discovery rules. Some courts have said it is improper for a party to use a Rule 2004 examination as a substitute for, or in addition

to, discovery under Bankruptcy Rules 7026 to 7037 concerning pending or contemplated litigation. *In re Enron Corp*., 281 B.R. 836, 840-41 (Bankr. S.D.N.Y. 2002); *In re Szadkowski*, 198 B.R. 140, 142 (Bankr. D. Md. 1996). Using Rule 2004 in pending litigation may be an attempt to gain an advantage by bypassing the procedural safeguards provided by the discovery rules of the Federal Rules of Civil Procedure. *Intercontinental Enters., Inc. v. Keller (In re Blinder, Robinson & Co.)*, 127 B.R. 267, 274 (D. Colo. 1991), *aff'd on other grounds sub nom. Secs. Inv. Protection Corp. v. Blinder, Robinson & Co.,*, 962 F.2d 960 (10th Cir. 1992); *In re Bennett Funding Grp., Inc.*, 203 B.R. at 28-29; *First Fin. Sav. Ass'n v. Kipp (In re Kipp)*, 86 B.R. 490, 491 (Bankr. W.D. Tex. 1988); *In re Silverman*, 36 B.R. 254, 259 (Bankr. S.D.N.Y. 1984); *In re GHR Energy Corp.*, 35 B.R. 451, 538 (Bankr. D. Mass. 1983).

Rule 2004 may be used to investigate matters unrelated to the pending litigation, *In re Bennett Funding Grp., Inc.*, 203 B.R. at 29; *see also In re M4 Enters.*, 190 B.R. 471, 475 (Bankr. N.D. Ga. 1995); and entities that are not party to the litigation are still subject to a Rule 2004 examination because they fall outside the Civil Rules' safeguards. *In re Blinder, Robinson & Co.*,127 B.R. at 275; *In re Buick*, 174 B.R. 299, 305 (Bankr. D. Colo. 1994).

Under the circumstances existing here, the court finds no reason that a blanket protective order would be appropriate here. Like the Trustee, a creditor has standing to pursue a timely § 727(a) complaint (or to seek to discover assets). Put simply, the Law Firm's interests extend beyond merely adjudicating the removed/remanded and nondischargeability claims. The totality of the particular facts and circumstances of this Chapter 7 case warrant the Law Firm being allowed to, at the least, participate at this time in a limited manner in the Trustee's ongoing Rule 2004 examination of Mr. Wade so as not to prejudice its ability to file appropriate motions, claims, or complaints in this case.

The court's holdings today allow the parties in interest to the chapter 7 case to cause the ordinary bankruptcy process and procedure to continue and be effected in order to accomplish the judicial goal set forth in FED. R. BANKR. P. 1001: "to secure the just, speedy, and inexpensive determination of every case and

proceeding." The Law Firm and the U.S. Trustee may freely communicate with the Trustee's attorney (and vice versa) about all matters relating to the Trustee's Rule 2004 examination. Accordingly, Mr. Wade's request for a protective order is denied on a limited basis. The Trustee is directed to allow the Law Firm and the U.S. Trustee to attend and observe at the Rule 2004 examination of Mr. Wade and also observe and review the documents and lists produced consistent with this court's July 25, 2013 Order. The Law Firm is prohibited, without the consent of all parties, from directly asking any questions at the examination to Mr. Wade or requesting Mr. Wade to produce any documents and lists other than those already produced for the Trustee. Accordingly, the Trustee may share Rule 2004 examination testimony and documents with the Law Firm and the U.S. Trustee in accordance with § 704(a)(7). However, the Law Firm and the U.S. Trustee are directed NOT, at this time, to share or disclose such information with other parties absent bankruptcy court approval, after notice to Mr. Wade and an opportunity for a hearing.

VII. Mr. Wade's Motion to Quash the Law Firm's Rule 2004 Examination Order and to Abstain from Discovery and the Law Firm's Objection Thereto

On May 2, 2013, the Law Firm filed a motion for a Rule 2004 examination of and production of documents by Mr. Wade. This motion was granted by an order entered on May 6, 2013, in accordance with the Local Rules of Bankruptcy Procedure. Before the Rule 2004 examination was conducted, Mr. Wade filed a motion objecting to the order and to quash the subpoena and also requested the court to abstain from any discovery issues between the parties. The Law Firm objected thereto.

Rule 2004 of the Federal Rules of Bankruptcy Procedure allows the bankruptcy court to order, for example, the debtor (*e.g.*,Mr. Wade) to appear and be examined by a party in interest (*e.g.*, the Law Firm). The Rule 2004 examination procedure is distinguishable from traditional discovery conducted pursuant to the Federal Rules of Civil Procedure. In general, the scope of a Rule 2004 examination is very broad. Rule 2004 allows for a large latitude of inquiry that has been called "a fishing expedition." *See, for example, Chereton v. U.S.*, 286 F.2d 409, 413 (6th Cir. 1961). However, courts have been somewhat reluctant to

circumvent the protections of the Federal Rules of Civil Procedure when an adversary proceeding is pending. Instead, courts have limited the scope of the Rule 2004 examinations and required the parties to proceed under the traditional discovery rules. *See, for example, In re Kipp*, 86 B.R. 490, 491 (Bankr. W.D. Texas 1988). The court, having extensively discussed Rule 2004 in the prior section, now, incorporates that discussion in ruling on this instant motion.

The bankruptcy court under the particular facts and circumstances here grants Mr. Wade's motion to quash the Rule 2004 examination regarding the Law Firm at this time and directs all discovery motions and requests regarding the removed claim be presented to the court in accordance with the Federal Rules of Civil Procedure. A Rule 2004 examination is not disallowed by law once a complaint is filed; however, the court believes here that limiting the Law Firm's participation at this time to the Rule 2004 examination to be conducted by the Trustee is the most prudent course of action under all of these circumstances. The court will reconsider the scope and limitations of any future motions for Rule 2004 examinations to discover assets, if the Trustee is found not to be adequately pursuing her duties and responsibilities. See also FED. R. BANKR. P. 9024. Furthermore, as was explained in the preceding section, the Law Firm and the U.S. Trustee are authorized to attend the Trustee's Rule 2004 examination of Mr. Wade but their participation at this time will be limited in accordance with the foregoing unless all the parties consent to expanded participation. The court notes that the Trustee (Ms. Teems) and her attorney of record herein (Mr. Bailey) are both highly experienced and competent in such matters.

VIII. Mr. Wade's Motion for Relief from Stay, the Law Firm's Objection Thereto and Mr. Wade's Response Thereto

As mentioned above, ten days after the chapter 7 case was filed, Mr. Wade moved for relief from stay under § 362(d)(1) to allow the Tennessee Supreme Court to address the extraordinary appeal and allow the Chancery Court to proceed to final judgment, and the Law Firm objected thereto to which Mr. Wade then responded. At the initial hearing before this court on this matter, the court bifurcated the motion for relief from stay, modified the stay to allow the Tennessee Supreme Court to address the extraordinary appeal, and

held the remaining requests for relief in an abeyance by consent of the Law Firm and Mr. Wade awaiting the August 7, 2013 hearings. In accordance with the court's prior order modifying stay, the Tennessee Supreme Court has issued its opinion as discussed earlier. Now, all that remains is how the court should address Mr. Wade's motion seeking relief from stay to allow the Chancery Court to proceed to final judgment.

This is seemingly somewhat of an odd request now because no Chancery Court action exists after the remand and abstention rulings and the fact the automatic stay under 11 U.S.C. § 362(a) operates as a stay against an entity from commencing or continuing a judicial action "against the debtor" rather than "for the debtor." Under the circumstances, Mr. Wade's § 362(d)(1) motion, therefore, has now been rendered unnecessary. Section 362(a) does not stay Mr. Wade from commencing or continuing a judicial action. This court, however, is mindful that the Chancery Court action has been removed to this court (Adv. Proc. No. 13-00197) and the request for proceeding abstention by Mr. Wade has been denied. Since the Chancery Court case no longer exists, Mr. Wade's § 362(d) motion for relief from the stay is, in essence, now moot.

IX. Conclusions and Related Matters

Based on all the foregoing and the case record as a whole, **IT IS CONCLUDED, SO ORDERED, AND NOTICE IS HEREBY GIVEN THAT:**

1. The U.S. Trustee's Rule 4004(b)(1) "Motion to Extend Time to Object to Discharge" is granted; and the deadline for the U.S. Trustee to object to Mr. Wade's discharge under 11 U.S.C. § 727(a) is extended to November 5, 2013;
2. The bankruptcy court denies Mr. Wade's motion for mandatory proceeding abstention under 28 U.S.C. § 1334(c)(2), for permissive proceeding abstention under 28 U.S.C. § 1334(c)(1), and for remand under 28 U.S.C. § 1452(b) regarding the Law Firm's asserted claims in Adv. Proc. No. 13-00197;
3. The bankruptcy court denies Mr. Wade's motion for permissive proceeding abstention under 28 U.S.C. § 1334(c)(1) regarding the Law Firm's dischargeability complaint in Adv. Proc. No. 13-00208;

4. The bankruptcy court, pursuant to FED. R. BANKR. P. 7042, orders the above-referenced adversary proceedings, Adv. Proc. Nos. 13-00197 and 13-00208 to be consolidated and joined for purposes of discovery, hearings, and trial. A pretrial regarding these consolidated complaints shall be scheduled on Monday, September 9, 2013, at 10:15 a.m. in the United States Bankruptcy Court, Courtroom No. 945, 200 Jefferson Ave., Memphis, TN 38103.

5. The bankruptcy court grants, in part, Mr. Wade's motion to quash the Law Firm's Rule 2004 order and denies, in part, Mr. Wade's motion for the court to abstain from any discovery issues; and

6. Mr. Wade's request for a protective order regarding the Trustee's Rule 2004 examination is denied. The Trustee is directed to allow the Law Firm and the U.S. Trustee to attend and observe at her Rule 2004 examination of Mr. Wade and also review the documents and lists produced consistent with this court's July 25, 2013 Order and above. The Law Firm is prohibited without the consent of all parties from directly asserting any questions to Mr. Wade or requesting Mr. Wade to produce any documents and lists other than those already produced for the Chapter 7 Trustee.[15]

NOTICE OF STATUS AND PRETRIAL CONFERENCES

The Bankruptcy Court Clerk is authorized to schedule a status conference under 11 U.S.C. § 105(d) on Monday, September 9, 2013, at 10:15 a.m. in the United States Bankruptcy Court, Courtroom No. 945, 200 Jefferson Ave., Memphis, TN, regarding Mr. Wade's motion to dismiss the removed complaint, Adv. Proc. No. 13-00197, or in the alternative to compel arbitration and to stay proceedings pending resolution of arbitration.

The purpose of this status conference is to, among other things, preliminarily discuss the following

[15]Nothing in this Memorandum and Order is to be construed as prohibiting the parties from consolidating discovery in the removed action under the Federal Rules of Civil Procedure with the Trustee's Rule 2004 examination if all parties consent. Such consolidation seemingly would be in the economic best interests of all parties and promote judicial economy.

questions pertaining to Mr. Wade's motion to compel arbitration: 1) whether the bankruptcy court has authority and discretion to deny or compel arbitration of an otherwise enforceable arbitration agreement considering the Federal Arbitration Act, 9 U. S. C. § 1 et seq. (2002), and the policies and provisions of the Bankruptcy Code; 2) whether *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220 (1987), overrules *In re F & T Contractors, Inc.*, 649 F.2d 1229 (6th Cir. 1981), *In the Matter of Muskegon Motor Specialties Co.*, 313 F.2d 841 (6th Cir. 1963) and/or any other 6th Circuit case law in existence; 3) whether the court should adopt the reasoning *In the Matter of Eber*, 687 F.3d 1123 (9th Cir. 2012); and 4) whether the court should exercise, as a matter of law, discretion under the circumstances to deny arbitration without the necessity to factually determine or conduct discovery as to whether the arbitration agreements are enforceable. The parties are invited but not ordered to file any briefs and/or other documents as may be necessary to respond to these questions or resolve Mr. Wade's pending removed motion. No dispositive rulings will be made at this status conference.

The Bankruptcy Court Clerk shall cause docket entries to be made of this Memorandum, Order, and Notice in the main case and the two above-referenced adversary proceedings and also cause copies of this Memorandum, Order, and Notice to be sent to:

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