IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re:	§	**Case No. 05-21207**
	§	
ASARCO LLC, *et al.*	§	**Chapter 11**
	§	
Debtors.	§	**(Jointly Administered)**
	§	

REPORT AND RECOMMENDATION ON
MOTION TO WITHDRAW THE REFERENCE

On this day came for consideration the Parent's Motion for Withdrawal of the Reference Pursuant to 28 U.S.C. § 157(d) with Respect to the Debtors' Motion Under Bankruptcy Rule 9019 for Order Approving Settlement of Environmental Claims (the "Environmental 9019 Motion") and Parent's Objection Thereto (the "Motion to Withdraw the Reference" or "Motion"). Pursuant to Rule 5011 of the Bankruptcy Local Rules, the Bankruptcy Court issues the following report and recommendation:

BACKGROUND

On August 9, 2005, ASARCO LLC ("ASARCO") filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in this Court. On April 11, 2005, several of ASARCO's wholly owned direct or indirect subsidiaries including, without limitation, Lac d'Amiante du Québec Ltée; Lake Asbestos of Quebec, Ltd.; LAQ Canada, Ltd. ("LAQ"); CAPCO Pipe Company, Inc. ("CAPCO"); and Cement Asbestos Products Company (collectively the "Asbestos Subsidiary Debtors") filed their voluntary petitions in this Court (the "Asbestos Subsidiary Cases"). Later in 2005, several of ASARCO's other wholly owned direct or indirect subsidiaries (the "2005 Subsidiary Debtors") filed petitions for relief in this Court. On December 12,

2006, three more ASARCO subsidiaries (the "2006 Subsidiary Debtors") filed petitions for relief with this Court. On April 21, 2008, six more direct or indirect ASARCO subsidiaries (the "2008 Subsidiary Debtors" and, together with ASARCO, the Asbestos Subsidiary Debtors, the 2005 Subsidiary Debtors, and the 2006 Subsidiary Debtors, the "Debtors") filed petitions for relief with this Court. The Debtors' cases are collectively referred to as the "Reorganization Cases."

The Debtors remain in possession of their property and are operating their businesses as Debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. Official committees of unsecured creditors relating to the asbestos claimants were appointed in the Asbestos Subsidiary Cases (the "Asbestos Subsidiary Committee") and in the Reorganization Cases (the "Asbestos Claimants' Committee" and, together with the Asbestos Subsidiary Committee, the "Asbestos Committee"). An official committee of unsecured creditors has also been appointed in ASARCO's case (the "ASARCO Committee"). Robert C. Pate was appointed as Future Claims Representative for the future asbestos claimants of the Debtors (the "FCR"). No trustee has been appointed in any of the Reorganization Cases.

From the date of filing, the Debtors' estate was burdened with billions of dollars of environmental claims and it was clear to all parties that these claims had to be determined, estimated, or settled before confirmation. ASARCO formally began the claims allowance process regarding environmental claims over two years ago, on January 30, 2007, when it filed a motion asking the Bankruptcy Court to estimate environmental claims for all purposes. On March 23, 2007, after extensive negotiations with the federal and state governments and potentially responsible parties, the Bankruptcy Court entered a

case management order (the "CMO") establishing agreed-upon procedures for estimation of ASARCO's environmental claims at 21 sites. The asserted liabilities at these sites accounted for approximately $6.1 billion of the $6.5 billion in environmental claims asserted in determined amounts, along with the most significant environmental claims asserted in undetermined amounts. The CMO divided the covered sites into five groups, and set discovery and trial timetables for each group. The Parent was actively involved in the claims allowance process for these environmental claims from the beginning.

As a result of the process initiated by the CMO, and after much discovery and the trial concerning several of the larger sites, certain settlements were reached prior to scheduled estimation hearings as to all or part of 19 environmental sites, whereby $3 billion of environmental claims were resolved for approximately $530 million in allowed unsecured claims or cash (the "Previously Settled Environmental Claims"). The Parent was active in these settlement proceedings, yet did not file any motion to withdraw the reference to the District Court for any of these settlement motions. Three estimation hearings were held as to the Omaha, Nebraska site and portions of the Coeur d' Alene, Idaho and Tacoma, Washington sites (the "Residual Environmental Settlement Sites"), which represent approximately $3 billion of the environmental claims (the "Residual Environmental Claims"). The Parent participated in these hearings, retained and presented experts, cross-examined the opposing side's environmental experts, and argued their position -- never mentioning that the Parent believed that the Bankruptcy Court could not enter a final judgment estimating the allowed amount of these environmental claims.

Toward the end of the schedule established by the CMO, a mediation was held in connection with estimation of the asbestos-related claims against the Asbestos Subsidiary Debtors (the "Mediation"). Mediation began in October 2007 and continued in November, December, and January 2008. The Parent participated. The discussions at the Mediation ultimately resulted in development of an agreement in principal, regarding, *inter alia*, the Debtors' environmental liabilities, which provided the framework for the Debtors' plan of reorganization that was filed in July 2008. At that time, the Debtors and the Department of Justice asked the Bankruptcy Court to defer hearings and rulings on the Environmental Claims estimation. The Parent participated in those hearings and never mentioned that it believed that the Bankruptcy Court could not enter any such final judgment or entertain a global settlement.

This agreement in principle was incorporated into the proposed plan of reorganization filed by the Debtors on July 31, 2008 (a copy of which was then furnished to the Parent), and amended on September 12, 2008, and September 25, 2008. The plan, among other things, settled and allowed environmental claims and divided the environmental claims into three classes: (a) the Previously Settled Environmental Claims; (b) the Miscellaneous Federal and State Environmental Claims; and (c) the Residual Environmental Claims. The Debtors' plan also provided for certain property of the Debtors to be transferred to environmental custodial trusts, which would be funded with sufficient cash to pay for remediation and restoration costs and for administration costs of the trusts.

On March 14, 2008, the Debtors filed their Second Motion for Case Management Order Regarding Environmental Claims for Potentially Responsible Parties,

In Aid of Motion to Estimate Environmental Liabilities (the "PRP Motion"). In the PRP Motion the Debtors sought, *inter alia*, to (a) implement a procedure for handling Environmental Claims made by PRPs and (b) disallow the PRP's claims for future environmental costs based on both (i) the "contribution protection" afforded in settlements reached with the EPA, and under the application of section 502(e)(1)(B) of the Bankruptcy Code; and (ii) the application of 502(e)(1)(B) to sites where the government has not filed a claim (the "PRP CMO"). The Court granted the PRP Motion and on May 9, 2008, entered a second Case Management Order Establishing Procedures for Disallowance or Estimation of the Debtors' Environmental Liabilities to Potentially Responsible Parties (the "PRP-Only Claimants"). The asserted liabilities at the sites included in the PRP CMO accounted for approximately $117 million in environmental claims asserted in determined amounts, along with the most significant environmental claims asserted in undetermined amounts. Of the nineteen PRP-Only Claimants that were the subject of the PRP CMO, all resulted in settlements in principle with the Debtors or were disallowed, and to date none have been contested. In addition, outside of the PRP CMO, three additional PRP-Only claims were allowed or estimated -- Arkema and General Metal's claims at the Hylebos site, and BNSF Railway Co.'s claims at East Helena (unowned portion). Not once did the Parent, nor any PRP, file a motion to withdraw the reference with regard to any of these estimation or 9019 motions.

On August 26, 2008, the Parent itself asked the Bankruptcy Court to estimate the environmental liabilities. At that time the Parent did not mention that there were any jurisdictional issues with such a request nor did it ask that the reference be withdrawn.

On August 26, 2008, the Parent also filed its plan of reorganization, which was amended on September 20, 2008, and September 25, 2008.

On October 20, 2008, the Bankruptcy Court suspended the solicitation procedures and balloting regarding the proposed plan due to the withdrawal of Sterlite (U.S.A.) Inc.'s offer to purchase substantially all of ASARCO's operating assets. After the suspension of the solicitation procedures, the Debtors and the settling parties decided to move forward with the environmental settlements and seek approval of the remaining environmental settlements outside the context of a plan, through the same 9019 process used to resolve the prior thirty site settlements. This process sought essentially the same approval of settlement through the 9019 process as was sought through the original plan confirmation process. The same settlement issues would be litigated at the confirmation hearing as at the 9019 settlement hearing.

The settlement of an environmental claim in bankruptcy requires two parallel tracks. One track was initiated when the Debtor filed its original plan of reorganization and subsequently reinstated when the Debtor filed its motion under bankruptcy rule 9019. As with any motion, parties seeking to object are allowed discovery, in this case into matters bearing on whether, viewed objectively, the compromise should be approved under the standards of *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968). In the case of the residual sites, the discovery is limited to only material developments that have occurred since the estimation hearing, if any. The court will then hold an evidentiary hearing on May 18 and 19, 2009, to determine whether the *Protective Committee*

standards are met, with special attention to whether the settlements are fair to the estate in that they do not require the estate to pay too much under the circumstances.

The second track began in March, 2009, when the United States published notices of each of the settlement agreements in the Federal Register and requested written public comments on them pursuant to environmental law. Discovery does not take place in this statutory process. *Arizona v. Motorola, Inc*., 139 F.R.D. 141, 148-49 (D. Ariz. 1991). Instead, the United States will consider all comments received during the thirty day public comment period in deciding whether to seek approval of the settlement under CERCLA. In this case, if, after receiving public comments, the United States decides to go forward with the settlements, it will file a response and seek this Court's approval.

After the public comment period, the United States is to consider any written comments received and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. *See*, *e.g*, ¶ 47, Amended Settlement Agreement and Consent Decree Regarding Residual Environmental Claims for the Coeur d' Alene, Idaho, Omaha, Nebraska, and Tacoma, Washington Environmental Sites [Docket No. 10541].

With these parallel tracks in mind, on March 12, 2009, the Debtors filed the Motion Under Bankruptcy Rule 9019 for Order Approving Settlement of Environmental Claims (the "Environmental 9019 Motion"). On the last day set for "objections" to the Environmental 9019 Motion the Parent, for the first time, filed a motion to withdraw the reference to the District Court.

DISCUSSION

I. Overview of Withdrawal of the Reference

District Courts may refer to the bankruptcy courts all cases under Title 11 and proceedings arising under Title 11 or arising in or related to a case under Title 11. 28 U.S.C. § 157(a). Bankruptcy courts may hear and determine all cases under Title 11 and all "core" proceedings arising under Title 11 which are referred by the District Court. 28 U.S.C. § 157(b)(1). Bankruptcy judges may enter final orders in such matters. *Id.* The Southern District of Texas, General Order No. 2005-6, *General Order of Reference*, entered March 10, 2005, automatically refers this case to the Bankruptcy Court. CERCLA is not an area of Federal law where congress limited bankruptcy court jurisdiction, such as in personal injury and wrongful death cases. 28 U.S.C. § 157(B)(5). Moreover, no jury trial issues are present here. As discussed below, bankruptcy courts have handled many matters under environmental laws.

> Section 157(d) of title 28 provides:
>
> > The district court may withdraw, in whole or in part, any case or proceeding referred to under this section . . . on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

- - 28 U.S.C. §(157(d).

The statute contains both mandatory and permissive provisions. In either circumstance, the motion for withdrawal of the reference must be timely.

II. The Parent's Motion to Withdraw the Reference is Untimely

The Parent did not file its Motion to Withdraw the Reference "as soon as possible after the moving party has notice of the grounds for withdrawing the reference," *In re Marina Assoc.*, 1989 WL 206465, *19-20 (N.D. Ill. June 7, 1989), or "at the first reasonable opportunity." *In re Baldwin-United Corp.*, 57 B.R 751, 753 (S.D. Ohio 1985). Timeliness plays an important role at this sensitive stage in the Debtors' reorganization case, when the Debtors are moving to confirm their plan of reorganization. *Baldwin-United*, 57 B.R. at 754-55. The Parent waited to file its Motion until more than two years after ASARCO filed a motion requesting that the Bankruptcy Court estimate governmental environmental claims, two years after the Debtors pursued estimation of claims relating to potentially responsible parties ("PRP"), after the Debtors have sought approval of, and the Bankruptcy Court has approved, at least thirty environmental settlements, eighteen months after the Bankruptcy Court held thirteen days of estimation hearings on Tacoma, Coeur d' Alene, and Omaha, seven months after the Parent asked the Bankruptcy Court to estimate environmental claims, and seven months after the Debtors filed a plan of reorganization incorporating essentially the same settlements as those set forth in the Environmental 9019 Motion. Such a lengthy delay is indeed untimely and the Parent has waived its rights under 28 U.S.C. § 157(d).

True, the Motion to Withdraw the Reference was filed within twenty days after the Debtor filed its Environmental 9019 Motion. However, the Parent has consistently acquiesced to this Court's jurisdiction in all prior environmental claims matters as set forth above. The Parent certainly cannot argue that they had no prior notice of this issue. The Debtor's first plan of reorganization contemplated bankruptcy court entry of a final

order settling environmental claims. BNSF raised the jurisdiction objection at the time. The Debtor disclosed in its disclosure statement that BNSF objected to jurisdiction and would seek withdrawal of the reference. Although BNSF never filed a motion to withdraw the reference and thus waived the right to seek withdrawal, the Parent knew about the issue and did nothing.

The Parent's last minute attempt to remove this case to District Court cannot be viewed as anything more than forum shopping and delay tactics. The timeliness requirement of motions to withdraw the reference is specifically designed to avoid such litigation tactics. Here, the Court is dealing with a case that is now four years old, involving a business reliant on the volatile commodities market. For this company to survive and reorganize, confirmation must occur soon. Delay favors no one except the Parent. The Court has recently approved a bid procedure process based on a new plan of reorganization involving purchase by Sterlite. The bid procedure process and plan confirmation contains negotiated deadlines for confirmation of the plan. The Parent has indicated that it intends to file a competing plan. The Court's experience in this case suggests that the parties' feet must be held to the fire to move the case along. If the Parent can delay the process and cause the Sterlite deal to fall apart, the Parent will arguably be the only contender for the Debtor. The Parent's motion to withdraw the reference is simply another delay tactic aimed at knocking out competitive bidders.

III. The 9019 Motion does not Require "Substantial and Material" Consideration of CERCLA

The Parent argues that the reference must be mandatorily withdrawn; however, the Parent's request should be denied because approval of the Environmental 9019 Motion does not require "substantial and material" consideration of CERCLA. In

determining whether to approve the settlements that are the subject of the Environmental 9019 Motion, the Bankruptcy Court will conduct a two step process -- a review of the settlements under *Protective Committee for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968), followed by a review of the settlements under environmental law. In the first instance, the Bankruptcy Court's consideration of the environmental settlements under the *Protective Committee* standard involves at best a "tangential" consideration of CERCLA.

In the second instance, the Bankruptcy Court's consideration of the settlements under environmental law requires only the "'straightforward application of [CERCLA] to [these settlements].'" *Southern Pac. Transp. Co. v. Voluntary Purchasing Groups, Inc.*, 252 B.R. 373, 382 (E.D. Tex. 2000) (quoting *American Tel. & Tel. Co. v. Chateaugay Corp.*, 88 B.R. 581, 584 (S.D.N.Y. 1988) (quoting *United States v. Johns-Manville Corp.* (*In re Johns-Manville Corp.*), 63 B.R. 600, 602 (S.D.N.Y. 1986))). "[M]andatory withdrawal is required only when [the non-title 11] issues require the interpretation, as opposed to mere application, of the non-title 11 statute, or when the court must undertake analysis of significant open and unresolved issues regarding the non-title 11 law." *In re Vicars Ins. Agency, Inc.*, 96 F.3d 949, 954 (7th Cir. 1996)(emphasis added).

Indeed, to adopt the Parent's argument would require the vast majority of bankruptcy litigation be heard by the District Court. Bankruptcy courts routinely apply non-bankruptcy federal laws such as tax, labor, security, and environmental. "Overwhelmingly courts and commentators agree that the mandatory withdrawal provision cannot be given its broadest literal reading, for sending every proceeding that

required passing "consideration" of non-bankruptcy law back to the district court would 'eviscerate much of the work of the bankruptcy courts.'" *In re Vicars Ins. Agency, Inc.*, 96 F.3d at 952.

The Parent cites *Southern Pacific Transp. Co. v. Voluntnary Purchasing Groups*, 252 B.R. 373 (E.D. Tex. 2000), for the proposition that settlement of environmental claims requires mandatory withdrawal of the reference. *Southern Pacific* is distinguishable from the case at bar. The Parent has throughout these proceedings contended that environmental claims and settlements are too high. The Parent's objection to the environmental settlements is quite different from the situation in *Southern Pacific* where responsible party railroads whose claims for contribution were being cut off by a settlement, contended that an environmental settlement with the debtor was not recovering enough to meet the requirements of environmental law. 252 B.R. at 379, 382-83. The Parent's objection in contrast contends that the Debtors are paying too much under the environmental settlements that are the subject of the Environmental 9019 Motion. The Parent has never contended, and its motion does not identify, any issue under environmental law that an environmental settlement is not recovering enough to meet the public interest in cleanup of environmental sites, which is the purpose of CERCLA. The Parent has thus failed to meet its burden of identifying any unsettled or difficult issue of environmental law (or conflicts between bankruptcy and environmental law) that justifies withdrawal of the reference. Indeed the Parent's objections to the settlement go the *Protective Committee* standards, not to environmental law questions.

While it is true that the amounts of the settlements are significant, they do not involve any novel or unsettled issues of either bankruptcy law or CERCLA. The

standards for approval of a bankruptcy settlement are well-established. *Protective Committee for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, supra.* The application of CERCLA to the environmental track of the settlement process is straight forward and does not require interpretation of the law. [1]

To the extent that *Southern Pacific* is read to require withdrawal of the reference of all environmental settlements, then this Court respectfully recommends that it not be followed. No court has cited *Southern Pacific* for the proposition that settlement of all environmental claims must be withdrawn to the district court. While it may be true that all environmental claims involve substantial and material issues,[2] the vast majority of cases interpret 28 U.S.C. §157(d) to require a substantial and material consideration of unsettled law. Even the *Southern Pacific* Court held that "[w]ithdrawal is not mandatory in cases that require only the 'straightforward application of a federal statute to particular set of facts.' Rather, withdrawal is in order only when litigants raise 'issues requiring significant interpretation of federal laws that Congress would have intended to [be] decided by a district judge rather than a bankruptcy judge.'" 252 B.R. at 382, *citing AT&T v. Chateaugay Corp*., 88 B.R. 581, 584 (S.D.N.Y. 1986). Both the Protective Committee track and the CERLA track of this settlement procedure require only the application of the facts to well-settled CERCLA and bankruptcy law – a task performed by bankruptcy courts on a daily basis in claims litigation, adversary proceedings, claims

[1] *Southern Pacific* is also distinguishable in that the environmental settlements arose in the context of plan confirmation. Despite its approval of the plan of reorganization and hence the settlements, the Bankruptcy Court in *Southern Pacific* recommended withdrawal of the reference, an inconsistent position. *Southern Pacific* also differs in that the parties in that case stipulated to the timeliness of the motion to withdraw the reference.

[2] In fact it could be argued that all causes of action arising out of Federal statutes involving interstate commerce involve substantial and material issues.

estimation, and plan confirmation proceedings, involving not only CERCLA, but labor law, tax law, communications law, securities law, and other federal statutes.

Moreover, there are many instances where a bankruptcy court has approved an environmental settlement agreement. *See, e.g., In re Phillips Services Corp*., No. 03-37718-H2-11 (Bankr. S.D. Tex. Aug. 15, 2004) (Docket Nos. 3385, 3099) (bankruptcy court approves environmental bankruptcy settlement); *In re Eagle Picher Indus*., 197 B.R. 260, 271 (S.D. Ohio 1996) (bankruptcy court approves environmental settlement), *aff'd*, 1997 U.S. Dist. LEXIS 15436, No. 1-96-821 (S.D. Ohio July 14, 1997); *In re U.E. Systems, Inc*., 1992 WL 472113 (Bankr. N.D. Ind. Sept. 28, 1992) (bankruptcy court approves environmental settlement); *In re Adelphia Commc'ns Corp*., Case No. 02-41729 (Bankr. S.D.N.Y. July 24, 2006) (Order Pursuant to Bankruptcy Rule 9019 Approving Settlement Agreement with the United States of America, on Behalf of the United States Environmental Protection Agency); *In re Solutia, Inc*., Case No. 03-17949 (Bankr. S.D.N.Y. Jan. 27, 2005) (Order Approving (A) Certain Environmental Contribution Settlements and (B) Procedures for the Approval of Future Contribution Settlements); *In re Safety-Kleen Corp*., Case No. 00-0203 (Bankr. D. Del. Oct. 17, 2000) (Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 9019 Approving Consent Agreement Between Certain Debtors and United States Environmental Protection Agency). Therefore, the Parent's request for mandatory withdrawal of the reference should be denied.

IV. The Parent Failed to Demonstrate that its Motion to Withdraw the Reference Should be Granted "for Cause Shown"

The reference to Bankruptcy Court may also be withdrawn by the District Court "for cause shown." 28 U.S.C. § 157(d). "[T]he cause standard requires more

compelling support than a sound discretion standard would." *Citicorp N. Am. v. Finley* (*In re Washington Mfg. Co.*), 133 B.R. 113, 116 (M.D. Tenn. 1991). "Only *compelling cause* warrants withdrawal from the automatic reference to bankruptcy courts under the non-mandatory provision." *Id.* (emphasis added); *see also Chrysler Credit Corp. v. Fifth Third Bank of Columbus* (*In re Onyx Motor Car Corp*.), 116 B.R. 89, 91 (S.D. Ohio 1990) ("without *truly exceptional and compelling circumstances*, a motion for withdrawal of the reference will not be well received") (emphasis added).

"Cause" has generally been determined by weighing the factors of whether the proceeding is core in nature, judicial economy, uniformity in bankruptcy administration, preserving the parties' resources, forum shopping, and avoiding confusion. *Holland Am.* Ins. *Co. v. Succession of Roy*, 777 F.2d 992, 999 (5th Cir. 1985); *In re Coral Petroleum, Inc*., 249 B.R. 721, 734 (Bankr. S.D. Tex. 2000). Application of the above factors to this case indicates that the reference should not be withdrawn. The Environmental 9019 Motion is core in nature. 28 U.S.C. § 157(b)(2)(B), (O). Thus, the Bankruptcy Court may hear and determine the Environmental 9019 Motion under the standing order of reference issued by the United States District Court for the Southern District of Texas under 28 U.S.C. § 157. That the Environmental 9019 Motion is a core proceeding weighs against permissive withdrawal of the reference. *Mugica v. Helena Chemical Co*. (*In re Mugica*), 362 B.R. 782, 787 (Bankr. S.D Tex. Feb. 7, 2007); *Enron Corp. v. Lay* (*In re Enron Corp*.), 295 B.R. 21, 26 (Bankr. S.D.N.Y. 2003).

Withdrawal of the reference in this instance will waste judicial resources. The Environmental 9019 Motion will involve both factual and legal issues that are familiar to the Bankruptcy Court. Judicial economy will be disserved by withdrawing the

reference at this time. The two most significant sites in terms of size of the settlements that are part of the Environmental 9019 Motion, and the two that the Parent has objected to, include Coeur d' Alene and Tacoma. As to each of these two sites the Bankruptcy Court has held robust discovery and conducted four-day evidentiary hearings at which all participants were offered a full and complete opportunity to introduce any evidence. The Parent has also objected to the Omaha settlement, which was the subject of five days of hearings. The Bankruptcy Court, having heard all arguments and reviewed all of the evidence for purposes of estimating the claims relating to these sites, is in the best position to evaluate any settlement with regard to them. Moreover, after approving more than two dozen environmental settlements to date, the Bankruptcy Court is familiar with the issues arising under CERCLA and bankruptcy law in regards to such settlements.

As one court noted, "[i]f a bankruptcy court is already familiar with the facts of the underlying action, then allowing that court to adjudicate the proceeding will promote uniformity in the bankruptcy administration." *Veldekens v. GE HFS Holdings, Inc.* (*In re Doctors Hosp.*), 351 B.R. 813, 867 (Bankr. S.D. Tex. 2006) (citing *Palmer & Palmer v. U.S. Trustee* (*In re Hargis*), 146 B.R. 173, 176 (N.D. Tex. 1992); *Kenai Corp. v. Nat'l Union Fire Ins. Co.*, 136 B.R. 59, 61 (S.D.N.Y. 1992) (finding that "[g]iven [the bankruptcy judge's] familiarity with the bankruptcy case involving [the debtor], [the bankruptcy judge] is in the best position to monitor all the proceedings related to the bankruptcy, including this adversary proceeding")). The Bankruptcy Court is particularly well-suited to resolve the issues presented in the Environmental 9019 Motion.

Additionally, the environmental claims allowance process is at a very late stage. For the most part discovery has been completed, mediation has taken place, and

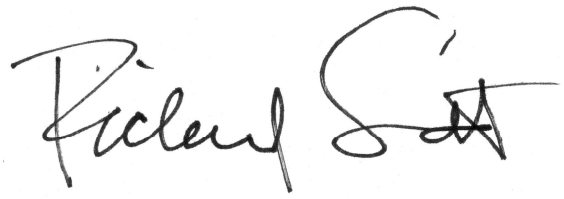
the Court has heard witness testimony and oral arguments. This Court has a record of the claims allowance process in this case already before it. Having familiarity with the facts and the parties, the Court is well-equipped to handle the issues that will arise in the hearing on the Environmental 9019 Motion. Further, to the extent the legal issues are connected with the bankruptcy matters, this Court has particular expertise and familiarity with those issues.

Withdrawal if the reference in this instance will further clog the District Court's overburdened docket and will serve no one. If the reference is withdrawn now, the parties will have to educate another tribunal on the facts and background of a rather complex claims allowance process. Conversely, the Bankruptcy Court is familiar with the facts of this case and can expeditiously and efficiently reach a conclusion, especially considering the extensive trial time spent on claims estimation. This Court has spent weeks hearing estimation of environmental claims. To withdraw the reference at this late date would be a complete waste of judicial resources and would jeopardize the confirmation process in this case.

CONCLUSION

For the reasons set forth above, the Court respectfully recommends that the Motion to Withdraw the Reference be denied.

Dated: 04/24/2009



RICHARD S. SCHMIDT
United States Bankruptcy Judge