

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

PIERRE RICHARD AUGUSTIN,

Plaintiff,

v.

CASE NO. 4:08mc30-RH/WCS

NEW CENTURY TRS HOLDING INC.,
NEW CENTURY LIQUIDATING TRUST,

Defendants.

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ORDER OF DISMISSAL

This matter is before the court on the magistrate judge's report and recommendation (document 6) and the objections (document 7). I have reviewed *de novo* the issues raised by the objections.

This matter began in this district with the filing of an "emergency motion to request the issuance of notices to produce documents & subpoena duces tecum re deposition to non-parties witnesses in case 07-10416-KJC in Delaware Bankruptcy Court." (Document 1 (capitalization altered).) The movant, Pierre Richard Augustin, specifically directed the motion to a district judge, thus seeking a ruling from the court, not simply the issuance of a subpoena by the clerk of the court. The magistrate judge construed the filing as an attempt to state a claim in this

district and recommended that it be dismissed as frivolous. As an attempted claim, the filing is indeed frivolous. The report and recommendation will be accepted, and this case will be dismissed.

Mr. Augustin apparently is a party to a proceeding pending in the United States Bankruptcy Court for the District of Delaware. If that is so, this ruling will not prevent Mr. Augustin from conducting a deposition in this district, or from obtaining documents in this district, as part of the ongoing discovery in the Delaware proceeding. Mr. Augustin may be able to do so by complying with any scheduling orders or other procedures applicable in the Delaware proceeding and by following the applicable rules for the scheduling of a deposition and the issuance of a subpoena in a district other than the district where a case is pending. *See* Fed. R. Bankr. P. 9016 (making Fed. R. Civ. P. 45(a)(3) applicable to bankruptcy proceedings). But Mr. Augustin may not achieve this result by filing an original proceeding before a judge in the Northern District of Florida—and this is especially so when he has not given notice to the other parties to the Delaware case.

For these reasons,

IT IS ORDERED:

The report and recommendation is **ACCEPTED** and adopted as the opinion of the court. This proceeding is dismissed. The clerk must enter judgment and

must close the file.

SO ORDERED on December 9, 2008.

s/Robert L. Hinkle
Chief United States District Judge