

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

GOODRICH CORPORATION,)	
)	CASE NO. 5:14CV0578
Plaintiff,)	
)	
v.)	JUDGE BENITA Y. PEARSON
)	
POLYONE CORPORATION, <i>et al.</i> ,)	<u>MEMORANDUM OF OPINION</u>
)	<u>AND ORDER</u>
Defendants.)	[Resolving ECF No. 11]

Seeking injunctive relief, Plaintiff Goodrich Corporation filed a Verified Complaint ([ECF No. 1-1](#)) against Defendants PolyOne Corporation (“PolyOne”); Westlake Chemical Corporation (“Westlake”)¹; and Gordon Doerfer, Eric Van Loon, and William Hartgering (“Panel Defendants”), in the Summit County, Ohio Court of Common Pleas, being Case No. CV-2014-03-1308 on March 13, 2014. Westlake removed the case to this Court on March 17, 2014, on the basis of diversity jurisdiction. *See* Notice of Removal ([ECF No. 1](#)) at ¶ 10.²

There are five motions pending before the Court in the case at bar. Although there are several disputed issues in the briefs, the parties agree on at least one thing—they want this case to

¹ Westlake argues that Westlake Vinyls, Inc. is the proper party to this action. *See e.g.*, [ECF No. 13 at PageID #: 174 n. 1](#).

² Westlake subsequently maintained that a federal question is also presented in this case pursuant to the Federal Arbitration Act (“FAA”), [9 U.S.C. § 1 et seq.](#), and the Supremacy Clause, [U.S. CONST. ART. IV CL. 2](#), because its rights, provided by federal law under the FAA are being interfered with by Plaintiff’s and PolyOne’s attempt to seek relief under state law in a state court that conflicts with the rights and remedies provided by the FAA. [ECF No. 13 at PageID #: 183](#); [ECF No. 22](#).

(5:14CV0578)

be elsewhere. Plaintiff wants the case remanded to the Summit County, Ohio Court of Common Pleas, where it was originally filed. Westlake wants the Court to transfer the case to the United States District Court for the Western District of Kentucky (Paducah Division) because the parties agreed to that forum in the Settlement and Release Agreement (ECF No. 16 filed under seal) entered in [Westlake Vinyls, Inc. v. Goodrich Corporation, No. 5:03-CV-00240-TBR \(W.D. Ky. filed October 16, 2003\)](#). The Settlement and Release Agreement provides in pertinent part:

3.4 . . . Westlake shall be entitled to periodically inspect and copy all non-privileged information in PolyOne's possession or under its control pertaining to the Allocable Costs . . . , *including but not limited to all information about any reimbursements received or recovered by PolyOne . . . ; provided, however, that PolyOne shall not assert any privilege over information regarding insurance recoveries. . . .*

* * *

11.2 Subject to [the provisions that allow for arbitration], each of the Parties hereby submits to the *exclusive jurisdiction* of the United States District Court for the Western District of Kentucky (Paducah Division) in any action or proceeding *arising out of or relating to* this Agreement, and agrees that all claims in respect of the action or proceeding may be heard and determined in such court, *Each party also agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court.* Each Party waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought. Each Party acknowledges and agrees that there may be no adequate remedy at law for certain breaches of this Agreement, and that such breach by a Party could result in irreparable injury to the other Parties. . . . *[T]he Parties further agree and acknowledge that any Party may, in addition to the other remedies which may be available to it in law or equity, file suit to enjoin the other Parties from such breach, and consents to the issuance of injunctive relief to enforce this Agreement.*

(Emphasis added.)

Plaintiff seeks a preliminary injunction against Defendants enjoining PolyOne from producing Plaintiff's privileged, confidential, or otherwise protected documents to Westlake, preventing Westlake from seeking those documents, and preventing the Panel Defendants from

(5:14CV0578)

enforcing its discovery ruling. In response to the case at bar, Westlake Vinyls, Inc. filed [Westlake Vinyls, Inc. v. Goodrich Corporation, C.A. No. 5:14-cv-00041-TBR \(W.D. Ky. filed March 18, 2014\).](#)

The Court has been advised, having reviewed the record, the parties' briefs and the applicable law. The Court has also considered the oral arguments of counsel offered during the hearing conducted on the record on March 20, 2014. *See* Transcript ([ECF No. 21](#)).

Contrary to Plaintiff's strained argument, the Court finds that the case at bar arises out of a discovery dispute in an arbitration between Westlake and PolyOne convened pursuant to the terms of the Settlement and Release Agreement. Furthermore, the Settlement and Release Agreement contains a forum selection clause under which the parties specifically agreed to the "exclusive jurisdiction" of the United States District Court for the Western District of Kentucky (Paducah Division) for all disputes "arising out of or relating to" the Settlement Agreement. Accordingly, Westlake's Motion to Transfer Venue to the United States District Court for the Western District of Kentucky ([ECF No. 11](#)) is granted. [Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp., 549 U.S. 422, 425 \(2007\)](#) (a district court may transfer a case before considering subject matter jurisdiction); [Atlantic Marine Constr. Co., Inc. v. U.S. Dist. Court for the Western Dist. of Texas, 134 S.Ct. 568, 583 \(2013\)](#) (court has an obligation to enforce a forum selection clause agreed to by the parties).

The Court, however, retains jurisdiction over PolyOne's Motion to Seal Notice of Removal and Exhibits Attached Thereto ([ECF No. 10](#)). In light of the "strong presumption in favor of public access to judicial proceedings" in considering a motion to seal court records, *see*

(5:14CV0578)

[EEOC v. Nat'l Children's Ctr., Inc., 98 F.3d 1406, 1409 \(D.C. Cir. 1996\)](#), on or before April 18, 2014, the parties shall file a Supplemental Brief(s) that addresses PolyOne's request to seal the entire record. See [ECF No. 21 at PageID #: 342-44](#). The Supplemental Brief(s) shall discuss whether certain parts of the record should be sealed (*e.g.*, Transcript ([ECF No. 21](#))), if the Court does not seal the entire record.

IT IS SO ORDERED.

April 8, 2014
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge