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Mills v. Evenflo

CHARLES MILLS, both individually, and as Administrator of the Estate of ARYN MILLS, a Minor, Deceased, and as Parent and Natural Guardian of: AMBER MILLS, a minor, CHARLIE MILLS, a minor, JESSICA MILLS, a minor, and MEGAN MILLS, a minor; and DARLA JOHNS, Individually, and SHELCEY MELLOT, both Individually and as a Parent and Natural Guardian of: BLAKE MELLOT, a minor, and ASIA LEMIER, a minor, Plaintiffs, v. EVENFLO COMPANY, INC., EVENFLO JUVENILE FURNITURE CO., INC., SPALDING HOLDINGS CORPORATION, SPALDING AND EVENFLO COMPANIES, INC., SPALDING SPORTS WORLDWIDE, INC., RUSSELL CORPORATION, INC., DAIMLER CHRYSLER, WAL-MART, INC., KEYSTONE AUTO SALES & SERVICE, AND MAGNA INTERNATIONAL OF AMERICA, INC., Defendants

Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action — Law, No. 2010–415

Trial; Severance; Discretion of Court. Bankruptcy; Automatic Stay; Purposes. Bankruptcy; Automatic Stay; Scope. Bankruptcy; Automatic Stay; Effect on other parties. Bankruptcy; Automatic Stay; Extraordinary circumstances. Products liability; Elements and Concepts; Automobiles; Foreseeable and intended uses. Products liability; Particular products; Automobiles; Crashworthiness in general. Products liability; Particular products; Automobiles; Crashworthiness distinctions. Products liability; Particular products; Automobiles; Crashworthiness; Elements. Bankruptcy; Automatic Stay; Collateral Estoppel; Non-debtors.

1. Trial courts have broad discretion in the severance of causes of action and separate issues at trial.

2. The bankruptcy code provides for an automatic stay upon the filing of a bankruptcy complaint against the commencement or continuation of any judicial proceeding. Two (2) purposes are served by granting an automatic stay pursuant to 11 U.S.C. §362. First, the automatic stay permits an orderly liquidation of the bankruptcy estate by preventing one creditor from obtaining payment of its claim to the detriment of other creditors. Secondly, the automatic stay allows the debtor to have a "breathing spell."

3. Absent extraordinary circumstances, the automatic stay protections afforded a debtor under 11 U.S.C. §362 do not apply to non-debtor third parties. Courts have extended the protections of the stay to non-debtors under "unusual circumstances."

4. There are two (2) categories under which courts have extended the automatic stay to apply to a non-debtor. First, where stay protection is essential to the debtor's efforts of reorganization. Second, where there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor.

5. Extraordinary circumstances do not exist to justify extending the bankruptcy stay to Defendant Evenflo, an infant seat manufacturer, when the car seats are designed to be used in any vehicle regardless of the type of vehicle or the safety features of the vehicle.

6. In products liability actions, the question arises, whether the responsibility is not shifted to the assembler. If a product is substantially changed before it reaches the consumer, the manufacturer or seller will not be held strictly liable.

7. Crashworthiness means the protection that a motor vehicle affords its passenger against personal injury or death as a result of a motor vehicle accident.

8. Crashworthiness is also known as the enhanced injury doctrine or second collision doctrine, which, as used in the definition of a crashworthiness of a motor vehicle in products liability cases, generally refers to the collision of the passenger with the interior part of the vehicle after the initial impact or collision.

9. The crashworthiness doctrine is merely a subset of a Section 402A products liability action. Crashworthiness is

distinguished from a Section 402A action in that crashworthiness extends the liability of manufacturers and sellers to situations in which the defect did not cause the accident or initial impact, but rather increased the severity of the injury over that which would have occurred absent the design defect. Crashworthiness imposes a legal duty upon manufacturers to design products that include accidents among its intended uses.

10. There are three (3) elements to a crashworthiness doctrine case. First, the Plaintiff must demonstrate that the design of the vehicle was defective. Second, that when the design was made, an alternative, safer, practicable design existed. Third, the plaintiff must prove what injuries were attributable to the defective design.

11. Defendant Magna Seating did not install the seats within the finished 1996 Chrysler Town and Country and was not responsible for dynamic vehicle crash tests or compliance with occupant restraint vehicle safety standards. The integrity of a vehicle seat is just one (1) of many features that helps protect an occupant from harm during an accident. Therefore, the prejudice Defendant Magna would face is likely to be severe if severance were granted.

12. Collateral estoppel may be applied when 1) the issue decided in the prior adjudication is identical with the issue presented in the future action; 2) there was a final judgment on the merits; 3) the party against whom the plea is asserted was a party in the prior action, or in privity to a party in the prior action; 4) the party against whom the issue is asserted had a full and fair opportunity to litigate the issue in the prior adjudication. Privity is a mutual or successive relationship.

13. In Forcine the Court declined to extend the automatic stay to a non-debtor because there was no indication that the debtor would have an absolute obligation of indemnification because there was no legal relationship between the bankrupt entity and the non-bankrupt entities. The court held that the possibility that a finding of liability against the other defendants might facilitate a later suit against the debtor did not constitute an unusual circumstance, even assuming that the debtor would be collaterally estopped from relitigating issues decided in the prior proceedings concerning the non-debtor defendants.

14. Present case is distinguishable from Forcine because of the crashworthiness doctrine, Defendant Magna's ability to establish a defense would be severely hampered if Defendant Chrysler were severed from the litigation. Additionally, unlike Forcine, individual corporations are parties as opposed to corporations and agents of the corporation. The legal relationships of the individual defendants to each other (i.e. manufacturer of the vehicle and component part manufacturer) is different. Therefore, if severance were granted, the possibility of collateral estoppel clearly exists, the result of which would be to prevent Defendant Chrysler from litigating issues related to crashworthiness.

Appearances:

Stewart J. Eisenberg, Esq., and Daniel Sherry, Esq., *Counsel for Plaintiffs*

Jane A. North, Esq., and Matthew Junk, Esq., *Counsel for Defendants Evenflo Company, Inc., and Wal-Mart Stores East, L.P.*

C. Scott Toomey, Esq., Tiffany M. Alexander, Esq., and Katherine A. Wang, Esq., Counsel for Defendant Magna Seating of America, Inc.

MEMORANDUM OPINION

Krom, J., October 26, 2010

Presently before the Court is the Plaintiffs', Charles Mills', et al. ("Plaintiffs") Motion to Sever Claims of Debtor, Daimler Chrysler, LLC., a Bankrupt Entity filed on April 13, 2010. For the reasons set forth below, the Court denies the Motion.

Facts

On September 11, 2005 at 4:26 P.M., Plaintiff Darla Johns was driving a 1996 Chrysler Town and Country vehicle when a front-end collision occurred. Minor-Plaintiff Amber Mills ("Amber") was seated in the front passenger seat, Plaintiff-Decedent Aryn Mills ("Aryn") was in strapped into a car seat allegedly manufactured by Defendant Evenflo, Minor-Plaintiff Charlie Mills ("Charlie") was seated directly behind the front passenger seat, Minor-Plaintiff Megan Mills ("Megan") was seated behind Aryn, Minor-Plaintiffs Asia Lemier ("Asia") and Blake Mellot ("Blake") were seated to the right of Megan,

and Minor-Plaintiff Jessica Mills ("Jessica") was seated on the floor of the vehicle directly behind Charlie. As a result of the collision, Aryn died on September 14, 2005 and the remaining Plaintiffs suffered a wide variety of physical injuries.

On May 8, 2007, the Plaintiffs filed a Complaint in the Philadelphia County Court of Common Pleas. In November 2008, Chrysler filed its Motion to Transfer for Forum Non Conveniens seeking to transfer the case to Franklin County. On January 6, 2009, the Honorable William J. Manfredi granted the Motion. Plaintiffs appealed to the Pennsylvania Superior Court. While the case was pending in the Superior Court, Defendant Chrysler filed for bankruptcy protection in the United States Bankruptcy Court for the Southern District of New York which triggered an automatic stay of all claims against Chrysler pursuant to 11 U.S.C.A. §362. The Superior Court, in a per curium decision, dismissed Plaintiffs' appeal without prejudice with instructions to file a petition to reinstate the appeal, upon the conclusion of the bankruptcy proceedings.[1]

On January 28, 2010, Defendants Evenflo and Walmart Stores filed their Praecipe to Transfer to Another Jurisdiction with the Philadelphia County Prothonotary requesting this case be transferred to Franklin County. The record was subsequently transferred.

Plaintiffs filed the present Motion to Sever Claims of Debtor, Daimler Chrysler, LLC., A Bankrupt Entity[2] on April 12, 2010. Answers were filed in opposition, as well as briefs by in support and in opposition to Plaintiff's Motion to Sever. This Court heard oral argument on June 11, 2010. At the request of the Plaintiffs, the Court permitted submission of supplemental memoranda of law by the parties. A supplemental memorandum was filed by the Plaintiff on or about July 9, 2010. The Court also received supplemental memoranda from Defendants Evenflo Company and Wal-Mart Stores East[3] and from Defendant Magna Seating of America.[4] The Plaintiffs' Motion to Sever is now ready for decision.

Discussion

Pursuant to Pa.R.C.P. 213(b), the trial court may order a separate trial for any cause of action.[5] The comments advise, "... Rule 213 will be permissive and any action taken by the court will be discretionary. But the basis of both rules is the avoidance of multiple trials and proceedings involving common facts or issues or arising from the same transaction or occurrence. The avoidance of duplication of effort is a benefit to both the parties and the court." See also Pennsylvania Bankers Ass'n v. Pennsylvania Dept. of Banking, 948 A.2d 790, 798 (Pa. 2008) ("avoiding piecemeal litigation conserves scarce judicial manpower as well as the time of witnesses, jurors, and the use of public resources.") Trial courts have "broad discretion in the ... severance of causes of action and separate issues at trial." Hamilton v. Gallo, 334 A.2d 692, 694-695 (Pa.Super. 1975). Further, "the decision of whether or not to grant separate trials lies within the discretion of the trial court. Separate trials should not be allowed where prejudice is not likely to result from a joint trial." Feld v. Merriman, 461 A.2d 225, 237 (Pa. Super. 1983). Therefore, the primary issue for this Court's consideration in deciding Plaintiffs' Motion is whether severance of Chrysler is required in order to further convenience and avoid prejudice.

I. Effect of automatic stay pursuant to 11 U.S.C.A. §362(a)(1)

The bankruptcy code provides for an automatic stay upon the filing of a bankruptcy complaint against the commencement or continuation of any judicial proceeding. 11 U.S.C.A. §362(a)(1). Two (2) purposes are served by the automatic stay. First, "the automatic stay permits an orderly liquidation of the bankruptcy estate by preventing one creditor from obtaining payment of its claim to the detriment of other creditors." In re Davis, 247 B.R. 690, 697 (Bankr. N.D. Ohio, 1999). Secondly, the automatic stay allows the debtor to have a "breathing spell." Id.; see also H & H Beverage Distribs. v. Dep't of Revenue, 850 F.2d 165, 166 (3d Cir. 1988); A.H. Robins Co., Inc. v. Piccinin, 788 F.2d 994, 998 (4th Cir. 1986) (the purpose is "to protect the debtor from an uncontrollable scramble for its assets in a number of uncoordinated proceedings in different courts, to preclude one creditor from pursuing a remedy to the disadvantage of other creditors and to provide the debtor and its executives with a reasonable respite from protracted litigation.").

"It is well settled that absent extraordinary circumstances, the automatic stay protections afforded a debtor under 11 U.S.C. §362 do not apply to non-debtor third parties." Bankers Trust Co. v. Tax Claim Bureau of Delaware County, 723 A.2d 1092, 1093 (Pa. Commw. Ct., 1999). Under some circumstances, however, a court may extend the protections of an automatic stay to actions brought against non-debtors. Graziani v. Randolph, 887 A.2d 1244 (Pa. Super. 2005). Some courts have extended the protections of the stay to non-debtors under "unusual circumstances." Id.

In McCartney v. Integra Nat'l Bank N., 106 F.3d 506 (3d Cir. 1997), the Third Circuit described two categories of unusual or extraordinary circumstances[6] under which courts have extended the automatic stay afforded to a debtor to a non-debtor. First, McCartney recognized that courts have extended the automatic stay "where stay protection is essential to the debtor's efforts of reorganization." McCartney, 106 F.3d at 510. Second, extraordinary circumstances have been found "where there is such identity between the debtor and the third-party defendant that the debtor may be said to be

the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor." Id. The inquiry for the second type of "unusual circumstances" is "whether the debtor's interests will be protected, and the pivotal question is whether the debtor will suffer irreparable harm if the proceedings against the non-debtor go forward." Graziani, 887 A.2d at 1250 (internal quotation marks omitted); see also In re Philadelphia Newspapers, LLC, 423 B.R. 98, 104 (E.D. Pa. 2010). "Such cases frequently involve situations in which the debtor would be forced to indemnify its co-defendants in the event of an adverse verdict." Forcine Concrete & Constr. Co. v. Manning Equip. Sales & Serv., 426 B.R. 520, 523 (E.D. Pa. 2010). An automatic stay is applicable to non-debtor third parties only where the debtor's obligation to indemnify the third party is absolute. Id. at 525.

II. Do unusual/extraordinary circumstances exist?

In reviewing the two types of unusual or extraordinary circumstances recognized by prior courts, it is clear that the first type of unusual circumstance as described by McCartney, supra, does not exist in this case. There is no allegation that this Court must extend the bankruptcy stay to the non-debtor Defendants in order to protect Chrysler's efforts at reorganization. Therefore, this Court must determine if the second type of unusual circumstance exists. Specifically, the inquiry is whether there is such identity between Defendant Chrysler and the other Defendants such that a judgment against the other Defendants will in effect be a judgment against Chrysler; for the reasons that follow the Court answers this question in the affirmative with respect to Defendant Magna. However, the Court finds that unusual circumstances do not exist to justify extending the stay to Defendant Evenflo.

All Defendants argue extraordinary and unusual circumstances exist to justify extending the automatic stay to them. Plaintiffs, on the other hand, argue the "Automatic stay applicable to a bankrupt defendant does not stay any action against solvent co-defendants, including Magna and Evenflo" because "Plaintiffs have a distinct and separate claim against every seller of the product, including the vehicle seat supplier (Magna) and the infant seat manufacturer (Evenflo)." Pls.' Supplemental Mem. of Law in Supp. of their Mot. to Sever Claims of Debtor, Daimler Chrysler, LLC., a Bankrupt Entity. In support of their argument, Plaintiffs rely on Restatement (Second) of Torts §402A and quote only a portion of the Restatement.[7] However, the portion of the Restatement that Plaintiffs conveniently eliminated by use of an ellipsis requires "unreasonably dangerous to the user or consumer or to his property." Comment "q" states, "the question arises, whether the responsibility is not shifted to the assembler. It is no doubt to be expected that where there is no change in the component part itself, but it is merely incorporated into something larger, the strict liability will be found to carry through to the ultimate user or consumer." If a product is "'substantially changed' before it reaches the consumer, the manufacturer or seller will not be held strictly liable." Burch v. Sears, Roebuck and Co., 467 A.2d 615, 620 (Pa. Super. 1983) (quoting Berkebile v. Brantly Helicopter Corp., 337 A.2d 893 (Pa. 1975)).

In the present case, there are three (3) primary products involved in the litigation. First, is the 1996 Chrysler Town and Country Minivan ("subject vehicle") manufactured by Defendant Chrysler. Second, is the vehicle seats installed in the subject vehicle manufactured by Defendant Magna. Third, is the OnMyWay rear-facing infant seat manufactured by Defendant Evenflo and distributed by Defendant Wal-Mart. Accordingly, the Court shall take the infant seat and vehicle seat in turn to ascertain whether severance is proper.

Do extraordinary/unusual circumstances exist with respect to Defendant Evenflo

The Court is constrained to find that extraordinary circumstances do not exist because of the nature of the allegations in the Complaint. The Complaint alleges in ¶36(f) Defendant Evenflo is strictly liable because the infant seat was neither designed, manufactured, tested, nor assembled with a component part and/or device that would allow the OnMyWay to be adequately tethered to a vehicle seat thus causing the child seat to have an unreasonable and dangerous propensity to fail to adequately protect the seat's occupant during a collision, including the subject collision

Further, ¶36(g) avers the infant seat "failed to meet all applicable and reasonable safety standards." There is nothing in the Complaint that indicates there is such identity between Chrysler as debtor, and Evenflo as non-debtor, so that a judgment against Evenflo would in effect be a judgment against Chrysler. Further, there is no indication of any irreparable harm to Chrysler should the proceedings go forward against Evenflo. Based on an instruction manual posted on Evenflo's website, the car seats are designed to be used in any vehicle[8] regardless of the type of vehicle or the safety features of the vehicle. Therefore, there are no extraordinary circumstances to justify extending the bankruptcy stay to Defendant Evenflo. However, the Plaintiff's Motion seeks to sever Defendant Chrysler from the litigation and for the Court to grant the Motion, the Court must consider Defendant Magna, the remaining Defendant.

Do extraordinary/unusual circumstances exist with respect to Defendant Magna

The Court finds that unusual circumstances do exist to justify extending the bankruptcy stay to Magna, a non-debtor. The

Court's finding is based on the crashworthiness doctrine and resultant prejudice Magna would incur should the litigation proceed without Defendant Chrysler.

Crashworthiness "means the protection that a motor vehicle affords its passenger against personal injury or death as a result of a motor vehicle accident." Colville v. Crown Equip. Corp., 809 A.2d 916, 923 (Pa. Super. 2002) (see also Daddona v. Thind, 891 A.2d 786, 796 (Pa. Cmwlth. 2006) ("The term crashworthiness means the protection a motor vehicle affords its passenger against personal injury or death as a result of a motor vehicle accident."); (Barris v. Bob's Drag Chutes and Safety Equip., Inc., 685 F.2d 94, 100 (3d Cir. 1982) ("the ability of a motor vehicle to protect its passengers from exacerbated injuries after a collision.")). The term is also known as the "enhanced injury doctrine" or "second collision doctrine,"[9] which, "'as used in the definition of a crashworthiness of a motor vehicle in products liability cases, generally refers to the collision of the passenger with the interior part of the vehicle after the initial impact or collision.'" Colville, 809 A.2d at 923 (quoting Kupetz v. Deere & Co., Inc., 644 A.2d 1213, 1214 (Pa. Super. 1994)).

The crashworthiness doctrine is merely a subset of a Section 402A products liability action. Kupetz, 644 A.2d at 1215; (see also Roe v. Deere & Co., 855 F.2d 151, 154 (3d Cir. 1988)). Crashworthiness is distinguished from a Section 402A action in that crashworthiness "extends the liability of manufacturers and sellers to 'situations in which the defect did not cause the accident or initial impact, but rather increased the severity of the injury over that which would have occurred absent the design defect.'" Gaudio v. Ford Motor Co., 976 A.2d 524, 532 (Pa. Super. 2009) (quoting Kupetz, 644 A.2d at 1218). Crashworthiness imposes a legal duty upon manufacturers to design products that include accidents among its intended uses. Kupetz, 644 A.2d at 1218; (see also Barris, 685 F.2d at 100 ("Liability will attach even though the defect in manufacture or design did not cause the initial accident or impact.")). A plaintiff may not choose to pursue a claim under Section 402A or the crashworthiness doctrine because "it is clear that the crashworthiness doctrine is uniquely tailored to address those situations where the defective product did not cause the accident but served to increase the injury." Colville, 809 A.2d at 925-26 ("Thus, we conclude that Appellees could not simply 'elect' to try their instant case under a Section 402A theory of liability."). The focus in crashworthiness cases is on the "'capacity of [the] automobile to respond to a foreseeable hazardous situation without causing or enhancing injury' and not on whether a per se second collision occurred." Colville, 809 A.2d at 924 (quoting Volkswagen of Am. v. Marinelli, 628 So.2d 378, 385 (Ala. 1993)).

There are three (3) elements to a crashworthiness doctrine case. First, the Plaintiff must demonstrate that the design of the vehicle was defective and that when the design was made, an alternative, safer, practicable design existed." Barris, 685 F.2d at 98 fn.2. Second, the plaintiff must show what injuries, if any, the plaintiff would have received had the alternative safer design been used. Id. Third, the plaintiff must prove what injuries were attributable to the defective design. Id. Crashworthiness "imposes on the plaintiff more rigorous proof requirements than a typical section 402A action." Id. at 99.

In the present case, the Plaintiffs have pled a crashworthiness claim because of the nature of the Complaint. Count III of the Complaint alleges strict liability against both Defendant Chrysler and Defendant Magna. Paragraph 51(e) of the Complaint alleges,

The subject vehicle was defective and unreasonably dangerous because it was neither designed, manufactured, tested nor assembled in a way that would adequately protect an occupant's head and/or body, including but not limited to occupants in the subject vehicle as well as infants restrained in rear facing infant seats, if the occupant's head or body struck the vehicle's seats during a collision, including the subject collision.

Accordingly, this is precisely the type of case where the alleged defect(s) of the seat manufactured by Defendant Magna did not cause the accident or initial impact, but rather the seat may or may not have increased the severity of the injury over that which would have occurred absent the design defect(s). The Plaintiffs' attempt to disguise this as a Section 402A claim is improper because a party may not simply elect to use the less rigorous Section 402A standard.

If severance is granted, Magna would face additional prejudice because, based on the information provided to the Court, Magna designed and manufactured seats to meet performance and functional objectives as determined by Chrysler. As Defendant Magna indicates, "Plaintiffs have not even articulated a specific defect against Magna, much less proven that any such defect is specific to Magna's seats and not due solely to Chrysler's installation of the seats and the seats' interaction with some other component of the subject vehicle or another component entirely." Supplemental Mem. of Law of Def. Magna Seating of America, Inc. in Opp'n to Pls' Mot. to Sever Claims of Daimler Chrysler, LLC a Bankrupt Entity at 9. Additionally, "Magna Seating did not install the seats within the finished 1996 Chrysler Town and Country and was not responsible for dynamic vehicle crash tests or compliance with occupant restraint vehicle safety standards." Id. at 10. The integrity of a vehicle seat is just one (1) of many features that helps protect an occupant from harm during an accident. Therefore, the prejudice Defendant Magna would face is likely to be severe if severance were granted.

The Benefits/Burdens of Severance

In the present case, the benefits of severance are marginal. Plaintiffs have presented no evidence to support their assertion that Chrysler's bankruptcy proceeding is expected to take years.[10] Nor have Plaintiff's represented any evidence to this Court that they have sought and been denied relief from the bankruptcy stay.

While Plaintiff has cited to several well-reasoned cases that clearly support their Motion to Sever, the cases Plaintiff cites to in support of severance are distinguishable and therefore not applicable to the present case. In each of the cases cited by Plaintiff, time was of the essence in the litigation and most importantly, **discovery was complete**.[11]

In particular, Plaintiffs reliance on Lynch v. Johns-Manville Sales Corp., 710 F.2d 1194 (6th Cir. 1983) is misplaced because the court believed time was of the essence.[12] In the present case there is no reason to believe that any of the parties are presently suffering under the threat of impending death or serious bodily injury. There is also no allegation that evidence will be destroyed if the case does not proceed immediately. Further, discovery is still ongoing. The issue of discovery was raised during oral argument; specifically, the issue raised was the availability of discovery from Defendant Chrysler necessary for Defendant Magna to present a defense.

Collateral Estoppel

The Court also acknowledges the potential prejudice to Defendant Chrysler because of collateral estoppel. Collateral estoppel may be applied when 1) the issue decided in the prior adjudication is identical with the issue presented in the future action; 2) there was a final judgment on the merits; 3) the party against whom the plea is asserted was a party in the prior action, or in privity to a party in the prior action; 4) the party against whom the issue is asserted had a full and fair opportunity to litigate the issue in the prior adjudication. Nelson v. Heslin, 806 A.2d 873, 877 (Pa. Super. 2002). Privity is a "mutual or successive relationship." Cent. Pennsylvania Lumber Co. v. Carter, 35 A.2d 282, 283 (Pa. 1944).

In Forcine, 426 B.R. at 520 the Court declined to extend the automatic stay to a non-debtor because there was no indication that the debtor would have an absolute obligation of indemnification because there was "no legal relationship" between the bankrupt entity and the non-bankrupt entities. The Plaintiff, Forcine, purchased two (2) laser screeds from the Defendant, Somero[13] "at an artificially low sale price." Forcine Concrete and Constr., Co. v. Manning Sales and Servs., et. al, No. 08-2926, 2010 WL 2470992 (E.D.Pa. June 14, 2010). Forcine, upon the recommendation of Somero, entered into an agreement with Defendant MES & S whereby MES & S would sell the laser screed on commission on behalf of Forcine at a much higher price, thereby giving Forcine an easy profit. Id. After the machine was allegedly sold, Forcine spoke to the Defendants seeking to obtain the money from the sale and the Defendants repeatedly gave excuses to the Plaintiff as to why the money could not be paid. A few months later, Forcine filed suit alleging violations of the Unfair Trade Practices and Consumer Protection Law (73 Pa. Stat. §§201-1 et. seq.), common law fraud and civil conspiracy. During litigation Defendant MES & S filed for bankruptcy. Id. The bankruptcy court noted, "Somero is a corporation with no legal relationship to MES & S and that Hillock, an employee of Somero, also lacks any such relationship." Forcine, 426 B.R. at 523. The court held that the possibility that a finding of liability against the other defendants might facilitate a later suit against the debtor did not constitute an unusual circumstance, even assuming that the debtor would be collaterally estopped from relitigating issues decided in the prior proceedings concerning the non-debtor defendants. Id., at 525. Quoting the Second Circuit in Queenie, Ltd. v. Nygard Int'l, 321 F.3d 282 (2nd Cir. 2003), the Forcine Court stated, "if the possibility of 'later use against the debtor…of an adverse decision' 'could support application of the stay, there would be vast and unwarranted interference with creditors' enforcement of their rights against non-debtor co-defendants.'" Id.

This case is distinguishable from Forcine because the nature of the Plaintiffs' Complaint is different. The Plaintiffs' Complaint alleges strict liability,[14] negligence,[15] and breach of warranty[16] against both Defendant Magna and Defendant Chrysler. As the Court has previously discussed, because of the crashworthiness doctrine, Defendant Magna's ability to establish a defense would be severely hampered if Defendant Chrysler were severed from the litigation. Additionally, unlike Forcine, individual corporations are parties as opposed to corporations and agents of the corporation. The legal relationships of the individual defendants to each other, (i.e. manufacturer of the vehicle and component part manufacturer), is different. Therefore, if severance were granted, the possibility of collateral estoppel clearly exists, the result of which would be to prevent Defendant Chrysler from litigating issues related to crashworthiness.

Judicial Economy

Finally, the Court notes that it is not in the interests of judicial economy to sever Defendant Chrysler from this litigation. Courts should avoid piecemeal litigation to preserve scarce judicial resources. Multiple trials involving multiple defendants

over the same series of events would constitute a severe strain on an already strained court system. For this reason, as well, severance is improper.

The Court recognizes that Plaintiffs may argue that it is in the interests of judicial economy to move their case through the judicial system, rather than have it stagnate waiting for Defendant Chrysler to emerge from bankruptcy protection. While the Court specifically considered this argument and accorded it great weight, ultimately, the Court believes that judicial economy is fostered by one trial involving all parties and all claims.

Conclusion

In sum, this Court is constrained to find that unusual circumstances exist to justify extending the automatic stay to Defendant Magna because of the crashworthiness doctrine. The benefits of severance are heavily outweighed by the prejudiced to Defendants Chrysler and Magna and therefore, under Pa. R.C.P. 213(b) severance is improper. The Court does not find, based on reasons set forth above, that extraordinary circumstances exist to justify extending the automatic bankruptcy stay to Defendant Evenflo. However, because the Plaintiffs' Motion seeks to sever Defendant Chrysler only, this Court must deny the Motion.

October 26, 2010, the Court having reviewed Plaintiffs' Motion to Sever Claims of Debtor, Daimler Chrysler, LLC., a Bankrupt Entity, the various Defendants' Responses, the memoranda of law submitted by the parties, both original and supplemental, the oral arguments of the parties, and the law, it is hereby ordered that the Plaintiffs' Motion to Sever Claims of Debtor, Daimler Chrysler, LLC., a Bankrupt Entity is denied for the reasons set forth in the preceding Opinion.

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[1] See Charles Mills, et al. v. Evenflo Company, Inc., et al., 834 EDA 2009 (May 19, 2009).

[2] Hereinafter Motion to Sever

[3] Hereinafter Defendants Evenflo and Wal-Mart will be referred to as "Evenflo." The complaint alleges, "in 1998, Defendant Spalding and Evenflo Companies, Inc. restructured its company, and in doing so renamed itself Spalding Holdings Corporation, and separated its two businesses Evenflo Company and Spalding Sports Worldwide into stand-alone companies." Pl's Compl, ¶8. Defendant Keystone Auto Sales and Service sold the subject vehicle to the Plaintiffs.

[4] Hereinafter "Magna."

[5] Pa.R.C.P. 213(b) states, "The court, in furtherance of convenience or to avoid prejudice, may, on its own motion or on motion of any party, order a separate trial of any cause of action, claim, or counterclaim, set-off, or cross-suit, or of any separate issue or of any number of causes of action, claims, counterclaims, set-offs, cross-suits, or issues."

[6] Courts appear to use the terms "unusual circumstances" and "extraordinary circumstances" interchangeably in deciding whether or not to extend the protections of an automatic bankruptcy stay to a non-debtor.

[7] Plaintiff avers, "Indeed 402A refers to 'One who sells any product in a defective condition…', if 'the seller is engaged in the business of selling a product.'" Pls.' Supplemental Mem. of Law in Supp. of their Mot. to Sever Claims of Debtor, Daimler Chrysler, LLC., a Bankrupt Entity.

[8] See Evenflo OnMyWay Rear Facing Infant Car Seat Instructions, "This child restraint must be installed by using the following instructions as well as the instructions in your vehicle owner's manual. If there is a conflict between the two instructions, the vehicle owner's manual regarding child restraint installation must be followed." Available online at: https://plweb.evenflo.com/replacement_parts.aspx

[9] Courts have used the terms interchangeably. See 3 West's Pa. Prac., Torts: Law and Advocacy §9.37 (2009).

[10] Plaintiffs' avers "Plaintiffs, like the countless individuals who have active crashworthiness claims against Chrysler, are given little likelihood of ever recovering from Chrysler."

[11] See Wedgeworth v. Fibreboard Corp., 706 F.2d 541, 543 (5th Cir. 1983) ("Extensive discovery has been accomplished."); Williford v. Armstrong World Indus., Inc., 715 F.2d 124, 126 (4th Cir. 1983) ("the case then moved into discovery and at the

time appellants sought relief was approaching trial stage. Thereafter four of the 28 defendants filed petitions for reorganization under Chapter 11."); Gold v. Johns-Manville Sales Corp., 723 F.2d 1068, 1076 (3d Cir. 1983) ("we cannot ignore the fact that plaintiffs and crucial witnesses are dying, often from the very diseases that have led to these actions.... Discovery seems to have been completed in some of the cases now at issue."); Brown v. Philadelphia Asbestos Corp., 639 A.2d 1245 (Pa. Super. 1994) (Case was on appeal after jury rendered verdict).

[12] "In a number of those [asbestos] cases, plaintiffs and crucial witnesses are dying. We are not persuaded that the hardship to defendants of having to go forward on this appeal without Unarco, or the interests of judicial economy in avoiding relitigation of the issues, are strong enough to justify forcing plaintiff and a number of other plaintiffs to wait until bankrupt defendants are successfully reorganized in order to be able to pursue their claims." quoting Austin v. Unarco Industries, Inc., 705 F.2d 1, 5 (1st Cir.1983).

[13] The Defendants in the case were Manning Equipment Sales and Service (MES & S); John Manning, the President of MES & S; Patty Doe and James Doe, employees of MES & S; Somero Enterprises, Inc., the company that manufactured and sold the laser screed to Forcine; and Myron Hillock, an employee of Somero.

[14] See Count III.

[15] See Count VII.

[16] See Count XI.