

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
GMC	:	Case No. 09-50026
	:	
Debtor	:	

ORDER REQUIRING ANSWER

AND NOW, this day of , 2009, it is ORDERED that all interested persons are required to serve upon Movant’s attorney, whose address is set forth below, and file with the clerk, an answer to the Motion for Relief from the Automatic Stay, which has been served upon it, within 15 days after service of this Order, exclusive of service. If no answer is filed, an Order may be entered granting the relief demanded in the Motion.

A hearing will be held before the Honorable _____ United States Bankruptcy Judge, in Courtroom __, at the United States Courthouse on , , 2009 at a.m./p.m. or as soon thereafter as counsel can be heard to consider the Motion. The hearing scheduled may be adjourned from time to time without further notice to interested parties by announcement of such adjournment in the Court on the date scheduled for the hearing.

BY THE COURT:

BANKRUPTCY JUDGE

(Interested parties are listed on page 2)

Eric G. Zajac, Esquire
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30th Floor
Philadelphia, PA 19103
Attorney for Plaintiff

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Counsel for: General Motors Corporation

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Counsel for: Pompey Dodge, Inc.

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
GMC	:	Case No. 09-50026
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ORDER

AND NOW, upon consideration of the Motion for Relief from the Automatic Stay, and after notice and hearing, it is hereby ORDERED, ADJUDGED and DECREED that the stay afforded by 11 U.S.C. § 362 be, and hereby is, LIFTED to allow SARAJUAN GILVARY to litigate to conclusion claims against Pompey Dodge, Inc. in the case captioned Sara Gilvary v. Pompey Dodge, Inc. et al., Philadelphia County, Pennsylvania, Court of Common Pleas, March Term, 2007 No. 03736. The stay otherwise remains in effect.

BY THE COURT:

BANKRUPTCY JUDGE

By: Eric G. Zajac, Esquire
Zajac & Arias, LLC
1818 Market Street
30th Floor
Philadelphia, PA 19103
Attorney for Plaintiff

(Other interested parties to receive the Order-see next page)

OTHER INTERESTED PARTIES:

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Counsel for: General Motors Corporation

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Email: nancy.campbell@zurichna.com
Counsel for: Pompey Dodge, Inc.

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
GMC	:	
Debtor	:	Case No. 09-50026

**MOTION OF SARAJUAN GILVARY FOR RELIEF
FROM THE AUTOMATIC STAY
TO CONTINUE A SEPARATE LITIGATION**

AND NOW comes Sarajuan Gilvary (the Movant), by and through her attorneys, Zajac & Arias, LLC, pursuant to Bankruptcy Rule 4001 and 11 U.S.C. § 362(d), respectfully seeking an Order granting Relief from the Automatic Stay Provisions of §362 of the Bankruptcy Code. In support of this Motion, Movant alleges as follows:

I. INTRODUCTION

1. GMC, (herein identified as the “Debtor”) filed a Petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York at Case No. 09-50026, on or about June 1, 2009.
2. This is a proceeding, arising under Title 11, over which this Court has jurisdiction pursuant to 28 U.S.C. §157(a) and 157(b)(2)(g).
3. Prior to the bankruptcy proceeding, in March, 2007, Movant filed suit in the Philadelphia County Court of Common Pleas, Pennsylvania, for strict liability, negligence and breach of warranty claims brought against debtor and against an intermediate seller of an automobile, seeking damages in connection with her claims. See Exhibit A.
4. The action referred to above is a product liability action with docket no. March Term, 2007 No. 3736 (hereafter “state court action.”).

5. Movant alleges in the state court action that a 1995 Chevrolet Lumina is defective primarily in two respects: (1) inadequate warnings against the risks of reclining the front passenger seat while the vehicle is in motion; and (2) failure to design the vehicle in such a way as to actively warn (such as with a bell or light) that the front passenger seat is reclined while the vehicle is in motion, or to mechanically prevent the front passenger seat from reclining while the vehicle is in motion. See generally reports of Ken Laughery and William Muzzy, attached as Exhibit B.
6. Movant alleges that as a result of these defects, she was rendered a quadriplegic at the age of 19.
7. In Pennsylvania, a dealership or distributor is liable for design defects as though it were the manufacturer. *Forry v. Gulf Oil Corp.*, 428 Pa. 334, 340, 237 A.2d 593, 597 (1968).
8. Pompey Dodge, Inc. admits that it was an intermediate seller of the subject vehicle.
9. Consistent with Pennsylvania law, the design defects summarized above could have been brought against Pompey Dodge, Inc. only.
10. Although bankrupt General Motors Corp. was self-insured, Defendant Pompey Dodge, Inc. is insured to ten million dollars through multiple carriers.
11. The state court litigation progressed all the way through a Pretrial Conference, and trial was scheduled to commence in late June, 2009.
12. On or about June 9, 2009, shortly after the Pretrial Conference, and days before trial was to commence, Defendant General Motors Corp. filed a Suggestion of Bankruptcy, and the state court action was placed in deferred status in its entirety. See Exhibit C.
13. A Motion to Sever the GMC claims from the Pompey Dodge, Inc. claims has been denied by the state court judge without explanation. See Exhibit D. However, in a similar Chrysler claim, another Judge of the Philadelphia Court of Common Pleas has described the issue as being a “matter for the bankruptcy court” to resolve. See Exhibit E.

I. STATEMENT OF LAW AND ARGUMENT

14. On June 2, 2009, this Honorable Court entered its Order (a) Approving Procedures for Sale of Debtors' Assets Pursuant to Master Sale and Purchase Agreement; (b) Scheduling Bid Deadline and Sale Hearing Date; (c) Establishing Assumption and Assignment Procedures; and (d) Fixing Notice Procedures and Approving Form of Notice (Docket #274).
15. The June 2, 2009 Order of This Honorable Court approved bidding procedures for the sale of substantially all of the Debtors' tangible, intangible and operating assets between and among Vehicle Acquisition Holdings LLC (the purchaser), and General Motors Corporation and its Debtor subsidiaries. The purchaser is hereafter referred to as "New GM."
16. The authorized sale of assets to New GM is to be free and clear of all liens, claims, encumbrances, rights, remedies, restrictions, interests, liabilities and contractual commitments of any kind or nature whatsoever, whether arising before or after the Petition Date, whether at law or in equity, including all rights or claims based on any successor or transferee liability.
17. Liabilities, including consumer litigation claims and personal injury claims such as that of the Movant, would remain with "Old GM." It is expected that any liquidation of assets would take two or more years and result in pennies on the dollar, if any money at all, for claimants.
18. Notwithstanding the filing of a bankruptcy petition by a defendant manufacturer, pending products liability suits involving the manufacturer's products may be continued against co-defendants who have not gone into bankruptcy. See 11 U.S.C. § 362(a) (providing for the automatic stay of judicial proceedings against the debtor, does not mandate a stay of proceedings against joint tortfeasors who are the debtor's codefendants). The Chapter 11

debtor is not an indispensable party under Fed. R. Civ. P. 19 in whose absence the products liability suit against solvent joint tortfeasors would have to be stayed.

CONTINUATION OF SUITS AGAINST JOINT TORTFEASORS NOT IN BANKRUPTCY, Am. L. Prod. Liab. 3d § 59:11 (May 2009 ed.) (citations & footnotes omitted).

19. This very Court has already recognized that state court litigants such as Movant may need “to resort to dealers” to be made whole on their personal injury claims, see *In Re GMC Bankruptcy*, 407 B.R. 463, 506 n. 110, and this is exactly what Movant is seeking to do through this request for relief.
20. Thus, both the interests of justice and judicial economy will be best served by this Court permitting Movant to proceed against the remaining state court defendant as opposed to staying the entire case indefinitely pending the lifting of the bankruptcy stay as to General Motors. See, e.g., *Wedgeworth v. Fibreboard Corp.*, 706 F.2d 541 (5th Cir.1983):

We join those courts concluding that the protections of § 362 neither apply to codefendants **nor preclude severance.**

* * * * *

We are persuaded that the requisite balancing of the competing interests involved in these cases weighs in favor of allowing the remaining actions to proceed. The realities of the hardship of a stay on the plaintiffs . . . is substantial and, in some instances, permanent. The grim reaper has called while judgment waits. Just as obviously, the bankruptcy proceedings are not likely to conclude in the immediate future. A stay hinged on completion of those proceedings is manifestly “indefinite.” *Id.* at 544; 545.

21. Movant thus moves this Court, pursuant to established precedent, and consistent with this Honorable Court’s own remarks, to permit severance of the state court action -- severing the claims against debtor General Motors Corporation from those claims against the insured co-defendant in the state court litigation.

22. Put simply, the automatic stay applicable to debtor General Motors Corp. should not stay the action against the insured co-defendant. To the contrary, claims against that defendant can, and should move forward, requiring severance of the state court action. *Wedgewood v. Fireboard Corp.*, 706 F.2d 541 (C.A.La., 1983); *Willford v. Armstrong World industries, Inc.*, 715 F.2d 124 (C.A.N.C., 1983).
23. Philadelphia trial courts have used severance as a means of allowing plaintiffs to timely proceed against solvent co-defendants in the event of a bankruptcy of one or more defendants in the course of the litigation. *Westerby v. Johns-Manville Corp.*, 32 Pa.D.&C.3d 163 (Phila. Cty., 1982); *McMillan v. Johns-Manville et. al.*, 15 Phila. Cty. Rptr. 650 (1987); *Matthews v. Johnsmanville Corp.*, 33 Pa.D.&C.3d 233, 236-237 (Phila. Cty., 1982). However, as stated above, there are at least two Philadelphia County Judges who are not following this precedent, one of whom is viewing the issue as a matter for the bankruptcy court. See Exhibit E.
24. Further, even if Defendant General Motors were not indemnifying co-Defendant Pompey Dodge, “nothing precludes the solvent [defendants]... from obtaining contribution from the bankrupts when (and if) they emerge from reorganization proceedings. To hold otherwise would be to require an exercise in futility, for any finding of fault against the bankrupt manufacturers would be unenforceable under the automatic stay provisions of the Bankruptcy Code.” *Ottavio v. Fibreboard Corp.*, 421 Pa. Super. 284, 293 (1992).

WHEREFORE, Movant, Sarajuan Gilvary, respectfully requests this Honorable Court to lift the Automatic Stay provision of §362 of the Bankruptcy Code to the extent that the stay is preventing her from litigating to conclusion her claims against Pompey Dodge in Gilvary v. GM and Pompey Dodge, Philadelphia Court of Common Pleas, March Term, 2007 no. 3736.

Respectfully submitted,

ZAJAC & ARIAS, LLC



BY: _____
ERIC G. ZAJAC, ESQUIRE
COUNSEL FOR PLAINTIFFS

DATED: November 25, 2009

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
GMC	:	
Debtor	:	Case No. 09-50026

CERTIFICATE OF SERVICE

A true and correct copy of this Motion for Relief is being served by first class mail on November 25, 2009 as follows:

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Counsel for: General Motors Corporation

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Counsel for: Pompey Dodge, Inc.



ZAJAC &
ARIAS, LLC

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EXHIBIT A

THE ZAJAC LAW FIRM, LLC
BY: Eric G. Zajac, Esquire
Attorney No. 66003
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Phone: 215-575-7615
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Counsel for Plaintiff

SARAHJUAN GILVARY	:	IN THE COURT OF COMMON PLEAS
834 Linden Street	:	PHILADELPHIA COUNTY
Avoca, Pennsylvania 18641	:	CIVIL ACTION - LAW
v.	:	
GENERAL MOTORS CORPORATION	:	MARCH TERM, 2007
c/o C.T. Corporation Systems	:	
1635 Market Street	:	NO. 3736
Philadelphia, PA 19103	:	
and	:	
POMPEY DODGE, INC.	:	JURY TRIAL DEMANDED
303 Wyoming Avenue	:	
Kingston, PA 18704	:	

CIVIL ACTION COMPLAINT

Ms. Sarahjuan Gilvary (“Ms. Gilvary” or “Plaintiff”) through her attorney, Eric G. Zajac, Esquire, THE ZAJAC LAW FIRM, L.L.C., alleges the following against the above Defendants:

I. JURISDICTION AND VENUE

1. Jurisdiction is proper in this Court because the Defendant, GENERAL MOTORS CORPORATION, is present in the county of Philadelphia, can be given notice here, has purposefully availed itself to do business in the county of Philadelphia, and was in fact served with process here.

2. Venue is proper in this Court because the Defendant, GENERAL MOTORS CORPORATION, regularly conducts business activities in the county of Philadelphia.

II. THE PARTIES

3. Plaintiff is Sarahjuan Gilvary, citizen and resident of the Commonwealth of Pennsylvania residing at 834 Linden Street, Avoca, PA, 18641.

4. Defendant, General Motors Corporation (hereinafter "GM") is a Delaware corporation, licensed to transact business and which does transact business in the Commonwealth of Pennsylvania, including in Philadelphia, Pennsylvania. GM can be served with process through its registered agent for service in the Commonwealth of Pennsylvania at C.T. Corporation Systems, 1635 Market Street, Philadelphia, PA 19103.

5. Defendant Pompey Dodge, Inc. (hereinafter "Pompey") is a corporation duly licensed to conduct business in the Commonwealth of Pennsylvania with a registered office or principal place of business where it can be served with process at 303 Wyoming Avenue, Kingston, PA, 18704. Pompey is in the business of selling automobiles including the subject vehicle.

III. FACTUAL BACKGROUND

6. Defendant GM designed, manufactured, marketed and/or sold the 1995 Buick Regal with motor vehicle identification number 264WB52M951459192 which was involved in this incident.

7. Defendant Pompey purchased, marketed and sold the 1995 Buick Regal mentioned above. Defendant Pompey was therefore in the stream of distribution of the subject vehicle between its manufacture and the date of the incident.
8. On April 16, 2005 at approximately 7:00am, and at all relevant times, Plaintiff Sarahjuan Gilvary was riding in the front passenger seat of the Buick Regal involved in this incident, which was owned and operated by Richard Gross (“Mr. Gross”), her co-worker. Upon information and belief, Mr. Gross has or does live in Wilkes-Barre.
9. On April 16, 2005, at approximately 7:00am, Plaintiff and Mr. Gross were traveling south on SR 309.
10. As Mr. Gross operated the vehicle, it struck the guard rail on the west side of SR 309, then traveled left across both lanes and struck a concrete center barrier and rolled in a clock-wise manner until it came to rest in the left south-bound lane, facing west.
11. While the vehicle was rolling, Plaintiff was partially or fully ejected through the right rear passenger door, which flew open during the incident.
12. As a direct result of the above-mentioned incident, Plaintiff, who was a healthy 19-year-old before the incident, sustained severe injuries and now has no feeling in her body from the shoulders downwards. She is paralyzed.
13. Plaintiff has been forced to expend substantial sums of money for medical treatment, care and medications in an attempt to alleviate and cure her injuries and suffering and will be forced to incur these expenses for an indefinite time in the future.

14. Defendant GM designed, manufactured, assembled and sold the 1995 Buick Regal in a defective and unreasonably dangerous condition including but not limited to as follows:
15. The unsafe design of the vehicle's occupant containment system generally, and its door latch system specifically, caused the right rear door to fly open during the incident and as a result, Plaintiff was ejected from the vehicle; and
16. The vehicle did not possess a crashworthy rear door latch.
17. The above-mentioned defective system and the unreasonably dangerous conditions it created were substantial factors in producing the serious and grievous injuries sustained by Plaintiff.
18. Mr. Gross acquired the defective 1995 Buick Regal through the chain of distribution indirectly from Defendant Pompey, a dealership and distributor, which sold him the vehicle in the defective condition.
19. The above-mentioned sale of the 1995 Buick Regal to Plaintiff was a substantial factor in producing the serious and grievous injuries sustained by Plaintiff.

COUNT 1:

PLAINTIFF v. GM (STRICT LIABILITY)

20. Plaintiff incorporates by reference all above Paragraphs.
21. Defendant GM designed, manufactured, assembled and sold the 1995 Buick Regal involved in this incident. At the time of the sale, Defendant was in the business of designing, manufacturing, assembling and selling automotive vehicles such as Plaintiff's 1995 Buick Regal.

22. Defendant GM, through media advertising, by its appearance, and through the dissemination of brochures, manuals and pamphlets, made representations about the character, quality and/or recommended uses of the 1995 Buick Regal.
23. At the time the 1995 Buick Regal was designed, manufactured, assembled and sold by Defendant GM, the vehicle was defective in its design and unreasonably dangerous with respect to its door latch system, its crashworthiness, its occupant containment capabilities, its seatback design, and other defects regarding its crashworthiness as may be discovered. This defect and/or these defects caused an unreasonably dangerous condition, and was/were a factual cause in the injuries sustained by Plaintiff.
24. The actions of Defendant GM, as detailed above, constituted willful and wanton misconduct in disregard for the rights and safety of Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendant GM for compensatory and punitive damages in excess of \$50,000, plus interest and costs as well as any other relief this Court deems appropriate.

COUNT 2:

PLAINTIFF v. GM (NEGLIGENCE)

25. Plaintiff incorporates by reference all above Paragraphs.
26. The subject vehicle was designed, manufactured, assembled and sold by Defendant GM and was being used for its intended and reasonably anticipated use and purpose at the time of this incident.

27. Defendant GM had a duty to design, manufacture, assemble and sell this vehicle in a condition with no defects which would cause unreasonably unsafe conditions and owed a duty to design, manufacture, market and sell a crashworthy vehicle.

28. At the times relevant hereto, the subject vehicle was being operated in such a manner as was reasonably foreseeable and/or anticipated and/or intended and her injuries directly and proximately resulted from the negligent conduct of the Defendant GM in the following manners:

- i. Failing to incorporate reasonable engineering methodology to design a crashworthy vehicle;
- ii. failing to provide adequate warnings and/or cautions and/or directions concerning the dangerous condition of the vehicle;
- iii. failing to adequately or properly test and inspect the vehicle to provide a safe product that would not cause new or enhanced injuries due to its defective design;
- iv. failing to give adequate instruction to foreseeable users of the 1995 Buick Regal regarding the likelihood or possibility of injuries resulting from the vehicle's defective design;
- v. failing to adequately, properly or completely supervise its personnel in the manufacture and assembly of the vehicle so that it would not cause injuries; and
- vi. failing to recall the vehicle in a timely and/or reasonable manner without government intervention so as to correct the defective conditions set forth above.

29. The actions and/or inactions of Defendant GM constituted willful and wanton misconduct in total disregard of the rights and safety of Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendant GM for compensatory and punitive damages in excess of \$50,000, plus interest and costs as well as any other relief this Court deems appropriate.

COUNT 3:

PLAINTIFF v. GM (BREACH OF WARRANTY)

30. Plaintiff incorporates by reference all above Paragraphs.

31. As a result of the defective and unreasonably dangerous condition of the Buick Regal as set forth above, Defendant GM, in selling the vehicle in such condition, breached implied warranties of merchantability and fitness; these breaches were factual causes in the injuries sustained by Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendant GM for compensatory and punitive damages in excess of \$50,000, plus interest and costs as well as any other relief this Court deems appropriate.

COUNT 4:

PLAINTIFF v. POMPEY (STRICT LIABILITY)

32. Plaintiff incorporates by reference all above Paragraphs.

33. Defendant Pompey marketed and sold the 1995 Buick Regal involved in this incident.

34. At the time of its sale of the 1995 Buick Regal involved in this incident, Defendant was in the business of purchasing, marketing and selling vehicles such as Plaintiff's Buick Regal.

35. Defendant Pompey, through media advertising, by its appearance, and through the dissemination of brochures, manuals and pamphlets, made representations about the character, quality and/or recommended uses of the 1995 Buick Regal.

36. At the time the 1995 Buick Regal was marketed and sold by Defendant Pompey, the vehicle was unreasonably dangerous and defective. Said defect(s) and the unreasonably dangerous conditions it/they created were factual causes in the injuries sustained by Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendant Pompey for compensatory damages in excess of \$50,000, plus interest and costs as well as any other relief this Court deems appropriate.

COUNT 5:

PLAINTIFF v. POMPEY (BREACH OF WARRANTY)

37. Plaintiff incorporates by reference all above Paragraphs.

38. As a result of the defective and unreasonably dangerous condition of the Buick Regal as set forth above, Defendant Pompey in selling the vehicle in such condition breached implied warranties of merchantability and fitness; these breaches were factual causes in the injuries sustained by Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendant Pompey for compensatory damages in excess of \$50,000 plus interest and costs as well as any other relief this Court deems appropriate.

THE ZAJAC LAW FIRM, LLC

BY: _____
Eric G. Zajac, Esquire
Counsel for Plaintiffs

DATED: _____



ZAJAC &
ARIAS, LLC

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EXHIBIT B

**KENNETH R. LAUGHERY
3050 CLAIRE COURT
JANESVILLE, WI 53548**

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February 28, 2008

Mr. Eric G. Zajac
Zajac & Arial
1818 Market Street, 30th Floor
Philadelphia, PA 19103

Re: Gilvary vs. General Motors Corp. et al.

Dear Mr. Zajac:

You requested a report of my analyses and opinions regarding the human factors and warnings issues associated with the Gilvary vs. General Motors Corp. et al. case. This letter is my report. I reserve the right to amend this report should additional relevant information become available.

Qualifications and Bases For Opinions

My analyses and opinions are based on my education, training and experience, my review of relevant materials in the case, and a substantial body of scientific, peer-reviewed, published empirical research.

Following is a summary of some of my relevant background and qualifications.

Regarding my education, I received a Bachelor of Science degree in Metallurgical Engineering in 1957, a Masters of Science in Psychology in 1959, and a Ph.D. in Psychology in 1961. All three degrees are from Carnegie-Mellon University.

Regarding employment, while on active military duty during 1962-1963, I worked as a Research Psychologist at the US Army Human Engineering Laboratories at Aberdeen Proving Ground, Maryland. From 1963 through 1972 I was on the faculty at the State University of New York at Buffalo where I held a joint appointment in the Departments of Psychology and Industrial Engineering. While on sabbatical leave from Buffalo, I was a Visiting Professor at the University of Sussex in England during 1969-1970. Also while at Buffalo, I was Chair of the Industrial Engineering Department in 1967-1969. In 1972 I became Professor and Chair of the Psychology Department at the University of Houston, where I remained until 1984. In 1984 I joined the faculty at Rice University as an Endowed Chair Professor of Psychology. I was Chair of the Psychology Department at Rice from 1987 through 1990. I retired from Rice in 2002, and I currently have the title of Emeritus Professor. In recent years my teaching

responsibilities included graduate and undergraduate courses in human factors and ergonomics, human factors methodology, human reliability and safety.

I am a certified Human Factors Professional. I have been President of the national Human Factors and Ergonomics Society. Over the years I have participated in research funded through an assortment of grants and contracts, including contracts funded by a number of industrial corporations. I have evaluated and published research on topics including the design and effectiveness of instructions, warnings and labels as well as research involving industrial accident analysis.

I have edited/authored three books on warnings and a book on information technology. My research has been published in peer-reviewed journals, and I have authored or co-authored over 140 articles. Some of the relevant peer-reviewed publications include:

- Wogalter, M.S., DeJoy, D.M. and Laughery, K.R. (Eds.) Warnings and Risk Communication. London, Taylor & Francis, 1999.
- Wogalter, M.S. and Laughery, K.R. Warnings and hazard communications. In Salvendy (Ed.), Handbook of Human Factors and Ergonomics, Third Edition. New York, Wiley, 2006, 889-911.
- * Laughery, K.R. Safety communications: Warnings. Applied Ergonomics. 2006, 37, 467-478.
- Laughery, K.R. and Paige-Smith, D. Explicit information in warnings. In Wogalter, M.S. (Ed.) Handbook of Warnings, Mahwah, New Jersey, Erlbaum, 2006, 419-428.
- Laughery, K.R. and Wogalter, M.S. Designing Effective Warnings. In Williges (Ed.), Reviews of Human Factors and Ergonomics, Volume 2. Santa Monica, Human Factors and Ergonomics Society, 2006, 241-271.

A list of other articles and technical reports is in my Curriculum Vitae -- a copy of which is attached. I have offered expert testimony in various state and federal courts throughout the country on issues within my field of expertise.

My analysis in this case has included a review of the following materials:

- GM's supplemental response to Requests to Produce Documents provided in response to Court Order
- Carfax report for subject vehicle
- Title History of subject vehicle
- Police Report
- Owner's Manual for subject vehicle
- Accident reconstruction report of Lawrence Wilson.
- Depositions of:
 - Patrick Gilvary
 - Sarajuan Gilvary
 - James Gavin
 - Ronald Ostrowski
 - Andrew Ruddy
 - George Spangenberg
 - Marilee Spangenberg
 - Carol White

Laughery, K.R., Paige, D.L., Laughery, B.R., Wogalter, M.S., Kalsher, M.J. and Leonard, S.D. (2002). Guidelines for warnings design: Do they matter? *Proceedings of the Human Factors and Ergonomics Society 46th Annual Meeting*, Baltimore, 1708-1712.

Laughery, K.R. and Paige, D.L. Warnings research: A methodological analysis of rating procedures. *Proceedings of the XVth Triennial Congress of the International Ergonomics Association*, Seoul, Korea, August, 2003.

Paige, D.L. and Laughery, K.R. Risk perception: The effects of technical knowledge - or lack of it. *Proceedings of the XVth Triennial Congress of the International Ergonomics Association*, Seoul, Korea, August, 2003.

Rhoades, T.P. and Wisniewski, E.C. (2004). Judgments of risk associated with riding with a reclined seat in an automobile. *Proceedings of the Human Factors and Ergonomics Society 48th Annual Meeting*, New Orleans, 1136-1139.

Leonard, S.D. and Karnes, E.W. (1998) Perception of risk in automobiles: Is it accurate? *Proceedings of the Human Factors and Ergonomics Society 42nd Annual Meeting*, Chicago, 1083-1087.

Bason, J.J. (2000). Reclining Seat Back Survey. Survey Research Center, The University of Georgia.

Leonard, S.D. and Karnes, E.W. (2000). Compatibility of safety and comfort in vehicles. *Proceedings of the International Ergonomics Association 2000/ Human Factors and Ergonomics Society 2000 Congress*, San Diego, 3.357-3-360.

Mehlenbacher, B., Wogalter, M.S. and Laughery, K.R. (2002). On the reading of product owner's manuals: Perceptions and product complexity. *Proceedings of the Human Factors and Ergonomics Society 46th Annual Meeting*, Baltimore, 730-734.

Cowley, J.A., Kim, S. and Wogalter, M.S. (2006). People do not identify tire aging as a safety hazard. *Proceedings of the Human Factors and Ergonomics Society 50th Annual Meeting*, San Francisco, 860-864.

Frantz, J.P. (1994). Effect of location and procedural explicitness on user processing of and compliance with product warnings. *Human Factors*, 36, 532-546.

Thyer, B.A. and Geller, E.S. (1987). The “buckle-up” dashboard sticker: An effective environmental intervention for safety belt promotion. *Environment and Behavior*, 19, 484-494.

National Transportation Safety Board Safety Recommendation. Dated 5/10/88.
ANSI Z535.4-1991 Product Safety Signs and Labels

Understanding and Assumptions

Based on the above review and analysis, I have the following understanding and/or assumptions regarding the incident:

1. On April 16, 2005 at approximately 7:18am, Richard Gross was driving his 1995 Buick Regal southbound on Hwy-309. Sarajuan Gilvary was a passenger in the right front seat. Mr. Gross and Ms. Gilvary had worked through the night cleaning Grotto Pizza, a facility that was part of Mr. Gross’s cleaning business. While driving, Mr. Gross fell asleep and lost control of the vehicle. The Buick rolled, passenger’s side leading. Ms. Gilvary was severely injured.
2. At the time of the accident, Ms. Gilvary was asleep with her seatback fully reclined. She was ejected from the front passenger seat towards the rear, and she ended in the rear seat partially ejected through the rear passenger side door.
3. The speed limit on the highway was 55 mph. Mr. Gross was traveling at approximately the speed limit.
4. It is uncertain whether Ms. Gilvary had her seat belt engaged.
5. Promotional materials for General Motors vehicles, including the 1995 Buick Regal, emphasize the seat recline as a comfort feature.
6. Prior to manufacturing the subject 1995 vehicle, General Motors Corporation was aware of the hazards and consequences associated with reclining the seat back while the vehicle is moving.

7. A warning addressing the hazards associated with reclining the seat back while the vehicle is moving was present in the vehicle Owner's Manual. There was no on-vehicle warning addressing these hazards.

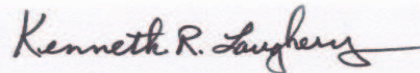
Opinions

Based on my review of the materials and the above understanding and/or assumptions, I have the following opinions:

1. The seat recline is a comfort feature that functions as an invitation for the occupant to recline the seat.
2. The hazards associated with reclining the seat back while the vehicle is moving are not open and obvious. These hazards are essentially technical in nature, having to do with issues such as kinematics, biomechanics and forces, and they cannot be expected to be known or discoverable by the average consumer. Thus, it is imperative that an adequate warning system be provided.
3. The restraint system in the subject vehicle is defective due to the lack of an adequate warning system regarding the hazards associated with riding with the seat back reclined. The warning system is inadequate because:
 - a) The information in the Owner's Manual has poor attention-getting characteristics. It is embedded in a document consisting of 326 pages. Further, it is well established that the vast majority of vehicle owners do not read owner's manuals; rather, they scan or browse them and then use them primarily as a reference document when specific information is needed. Thus, it is likely that warnings in the Owner's Manual regarding the hazards associated with the seat back reclined while the vehicle is moving will not be seen, and a warning system that is limited to information in the Owner's Manual is inadequate.
 - b) The most critical component of such a warning system is an on-product warning. A good warning explicitly addressing the hazards, potential consequences, and instructions associated with riding with the seat back reclined should have been on the vehicle. There was no such warning information on the vehicle.

4. The attached exemplar warning is an example of an on-product warning addressing the hazards associated with riding with the seat back reclined. It employs a pictorial, color and a signal word to attract attention. It provides explicit information regarding the hazard, the consequences and proper instructions. This exemplar meets the ANSI Z535.4 Standard for product warnings, which is applicable to vehicles. Also, a temporary label such as this exemplar should have been placed on the dash when the vehicle was new.
5. Warnings containing explicit information regarding the hazards, potential consequences and instructions associated with riding with the seat back reclined provide motivation that results in higher levels of compliance. Hence, it is critical that such warning information be communicated to the user.
6. The warning system could also contain additional components that would contribute to its effectiveness. A back-lit reminder statement in the dash on the passenger side stating KEEP SEAT BACK UPRIGHT that is lit when the seat back is reclined would be an effective reminder to the passenger. An auditory signal that activates when the seat back is reclined would also be an effective reminder. Also, warning information addressing this issue could be provided to the purchaser of the vehicle at the point of sale.

Sincerely,

A handwritten signature in black ink that reads "Kenneth R. Laughery". The signature is written in a cursive style with a long horizontal flourish at the end.

Kenneth R. Laughery, Ph.D.

EXEMPLAR WARNING



⚠ WARNING

**Keep Seat Back Upright!
When Vehicle is in Motion**

If seat back is reclined in an accident, you can slide under the belts and:

- catch your neck on the shoulder belt and break it.
- suffer severe or fatal internal injuries.

Be sure shoulder belt is against your shoulder



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Identification No.: 66003
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Philadelphia, PA 19103
215.575.7615
215.575.7640 (Fax)
email: Eric@TeamLawyers.com

COUNSEL FOR: PLAINTIFF

SARAH GILVARY	:	COURT OF COMMON PLEAS
	:	OF PHILADELPHIA COUNTY
Plaintiff,	:	
v.	:	March Term, 2007
	:	
GENERAL MOTORS CORPORATION	:	No. 3736
and POMPEY DODGE, INC.,	:	
	:	JURY TRIAL DEMANDED
Defendants.	:	

**RESPONSES OF PLAINTIFF, SARAH GILVARY, TO INTERROGATORIES (SET III)
OF DEFENDANT, GENERAL MOTORS CORPORATION**

1. Identify each person whom you expect to call as an expert witness, at the trial of this action to testify.

William H. Muzzy, III, B.S.
1509 Porter Ave.
Ocean Springs, MS 39564

- a. as to each person so identified, state the subject matter on which the expert is expected to testify.

Mr. Muzzy is a mechanical engineer with expertise in injury mechanics, occupant motion, and restraint systems. Mr. Muzzy has researched and developed restraint systems. He was involved in designing, building, and operating a crash injury research facility that examined the effects of acceleration and deceleration on the human body at the Naval Biodynamics Laboratories (NBL) as chief engineer. The tests performed at the NBL used the same type restraint system automotive companies have to test components of their restraint systems. Mr. Muzzy has designed restraint systems for various types of crashes.

It is expected that the subject matter which Mr. Muzzy will testify to is the defective design of the reclining seat mechanism of the subject vehicle, especially in light of the risks associated with reclining the front passenger seat, or sleeping, while the vehicle is in motion. This defective design includes, but is not limited to, allowing the front passenger seat to recline more than 30 degrees while the vehicle is in motion, and the ineffectiveness of the design in reducing injury associated with reclining the front passenger seat, or sleeping, while the vehicle is in motion. He will also address the relationship between Ms. Gilvary's injuries and the restraint system of the subject vehicle.

2. As to each expert identified above, have him state the following and sign his answers:
 - a. the substance of the facts and opinions to which he is expected to testify;

Mr. Muzzy will testify that the seat design is defective because it can be reclined more than 30 degrees while the vehicle is in motion. He will testify as to the causal relationship between the seat-back being reclined and the injuries. He will testify that there would have been no serious injury if the seatback were in the upright position, including the head and neck reaction to a head and neck acceleration. He will offer alternative feasible designs that would allow the seat to be reclined under appropriate circumstances without impairing the utility of the seat or materially increasing its cost of production.

- b. a summary of the grounds for each opinion.

The grounds upon which Mr. Muzzy will base his opinions may or may not rely upon studies, tests or surveys. He may rely on documents on restraint performance and reclined seats, including technical papers, govt reports and patents. These materials contain test results and discussions of belt performance related to seat orientation, seatbelt "misuse" in the context of reclined seats, and alternative belt designs that address seat recline. The patents present a variety of technologies that can be -- or have been -- applied to reclined seats, including interlock systems that prevent vehicle use when seats are reclined, crash systems that move seats to an upright position prior to impact, and seatbacks that move in conjunction with the seat cushion angle when reclining.

However, Mr. Muzzy has relied upon a substantial body of evidence in support of his opinions regarding seat design, including, but not limited to:

- 1964, Dynamic Research of Passenger Restraining Devices, 1964 STAPP Car Crash Conference;

- 1975, Motion Sequence Criteria and Design Proposals for Restraint Devices in Order to Avoid Unfavorable Biomechanic Conditions and Submarining, SAE 751146;
- Sept., 1975, United States Patent, No. 3907361, "Control Means for the Position of a Vehicle Seat";
- Oct., 1976, Designing Safer Seats, Automotive Engineering, An SAE publication;
- May, 1983, United States Patent, No. 4384743, "Adjustable Stop Assembly for Limiting the Recline Angle of a Seat Back."
- 1984, Seat Belt Improvements, DeRosa, D; Larssonneur, JF, Renault Technical Center, SAE 840506;
- February, 1984, Anatomical Geometry and Seating, SAE 840400;
- Sept., 1986, "Misuse of three-point occupant restraints in real-world collisions," Green, R., German, A., University of Western Ontario; Dance, M., Transport Canada; SAE 1987-13-0008;
- March 25, 1987, Public Forum on Occupant Restraints, Transport Canada;
- United States Patent, No. 4659108, "Automatic Seat Belt Adjusting System., Inventor - John J. Sack; Nazareth Stambouljian; Akira Tanaka / Assignee - American Safety Equipment Corporation
- March 01, 1988, Performance of Lap/Shoulder Belts in 167 Motor Vehicle Crashes, Volume 1, NTSB;
- Performance of Lap/Shoulder Belts in 167 Motor Vehicle Crashes, Volume 2, NTSB;
- May 10, 1988, H88-9: Seatbelt Safety Recommendation to NHTSA; Burnett, Jim, NTSB;
- August 2, 1988, Letter from Diane K. Steed, Administrator, NHTSA, to Jim Burnett, Chair, NTSB;
- 19890301; Letter from James L. Kolstad, Acting Chair, NTSB, to Diane K. Steed, Administrator, NHTSA, Kolstad, J. L.
- 19890724, Letter from Jeffrey R. Miller, Acting Administrator, NHTSA, to James L. Kolstad, Acting Chair, NTSB, Miller, J. R., NHTSA;
- 19910900, Seat Belts and Reclining Seats, Jeffrey, RS and Cook, PL, Injury, 1991;
- 19911008, U.S. Patent No. 5055824, "System for Warning an Effective Restraint Limit of a Seat Belt," Inventor - Tetsuya Hamaue, assignee Takata;
- 19940517, U.S. Patent No. 5311962, "Seat Reclining Mechanism and Shift Lever Inventor Interlock System."- Nobuyuki Nakano; Takuya Tomike / Assignee - Ikeda Bussan Company Ltd
- 19950518, United States Patent, No. 5407244, "Safety Seat and Safety Arrangement of Seats." Inventor - Nobuyuki Nakano; Nobuhiko Takahashi / Assignee - Ikeda Bussan Company Ltd;
- 19950620, United States Patent, No. 5425568, "Van-Type Vehicle Seat with a Seatback-Mounted Armrest." Inventor - Thomas C. Sliney; James R. Abel / Assignee - General Motors, Corporation;
- 20030527, U.S. Patent No. 6568756, "Foldable Vehicle Seat."

- 19980505, United States Patent, No. 5746478, "Reclining Mechanism and Latch for Child Safety Seat. Inventor - Michael Andrew Lumley; Wieslaw Peter Maciejczyk / Assignee - Britax Child-Care Products Pty Ltd
- 19980602, United States Patent, No. 5758544, "System and Method for Locking Out An Output Device When an Input Device is Actuated," Inventor - Jimmy Lee / Assignee - P.L Porter Company
- 20011200, "Seat Belt and Car Seat in a Reclined Position: A Dangerous Combination, Rehm," C. G., Goldman, R. K, Journal of Trauma, 51(6), 1189-1191.
- 20020122, United States Patent, No.6340209, "Vehicle Body Acceleration Sensor for Seat Belts," Inventor - Kazuo Yamamoto; Yoshito Hashimoto; Masanao Fukunaga / Assignee - Fuji Kiko Company;
- 20030000, "Reclining Seats Trade Safety for Comfort," Emison, J.K., Trial: Journal of the Association of Trial Lawyers of America, volume 39, issue 2;
- 2003, May 27, U.S. Patent No. 6568756, Foldable Vehicle Seat," Inventor - Kunihisa Sugimoto; Shuichi Sugano / Assignee - Fuji Kiko Company, ltd.
- 1990, Assessing the Safety Performance of Occupant, Restraint Systems, Viano, DC; Arepally, S, General Motors;
- 19950620 Armrest." Corporation angular movement of the seatback during excessive deceleration. Trademark Office;SRS, Inc. 2008-06-19 4 Reclined Vehicle Seats Technical Papers and Patents Addressing Relevant Safety Issues 20030527 6568756, "Foldable Vehicle Seat." Ltd. to danger." Trademark Office SRS, Inc. 2008-06-19 5 Reclined Vehicle Seats Technical Papers and Patents Addressing Relevant Safety Issues 20070907 back the front seat—don't do it! Bazelon, E. between the NTSB and NHTSA on the issue. Slate SRS, Inc. 2008-06-19 6
- 20070907 ."Death Nap: The dangers of tilting back the front seat—don't do it! Bazelon, E., Slate;
- 2003, November 10, 75,000 units of PRE-SAFE predictive occupant protection system already in use. DaimlerChrysler Press;
- 20040302; U.S. Patent No. 6698837, "Seat Assembly with Integrated Recliner and Floor- Latch Mechanism." Inventor - Srinivas Pejathaya; Jeffrey T. Bonk / Assignee - Fisher Dynamics;
- 20041130, United States Patent, No. 6824216, "Seat Reclining Mechanisms." Inventor - Hideki Uramichi / Assignee Araco Kabushiki Kaish;
- 20050322; United States Patent, No.6871120, "Device for Actuating a Seat Element and Seat Comprising It," Inventor Laurent Nivet / Assignee Labinal;
- Sept 10, 1996, U.S. Patent No. 5,553,924, vehicle safety seat system in passenger vehicles, inventor Muzzy.

Additional grounds upon which Mr. Muzzy will base his opinions may be provided.

3. With respect to each expert identified in answer to the preceding interrogatory, state the following:

- a. a brief chronological resume of the expert's education and professional background, including associations or societies of which he (she) is a member, schools attended, including years of attendance and degrees received, experience in particular fields, including names and addresses of employers with inclusive years of employment;

See attached curriculum vitae.

- b. the title, publisher, date and form of all documentary material published by the expert.

See attached curriculum vitae.

4. Identify any documents prepared or generated by the expert which in whole or in part contain the facts and opinions to which the expert is expected to testify, for whom prepared and when and identify further each person to whom the document or documents were given or distributed.

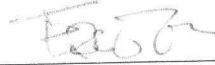
As of this writing, Mr. Muzzy has not “prepared or generated” any documents specific to this case because Defendant General Motors has just complied with a Court Order requiring it to produce, among other items, all warnings provided to users of the subject vehicle, regarding the risks associated with reclining the front passenger seat while the vehicle is in motion.

5. Identify all factual information supplied to the expert which was used as the basis for his opinion including correspondence, memoranda, reports, tests, plans, specifications, drawings and/or documents of any kind as well as objects and photographs examined.

Specific to this case, Mr. Muzzy reviewed:

- **GM’s supplemental response to Requests to Produce Documents provided in response to Court Order,**
- **Carfax report for subject vehicle,**
- **Title History of subject vehicle,**
- **Police Report,**
- **Deposition of Patrick Gilvary,**
- **Deposition of Sarajuan Gilvary,**
- **Deposition of Gavin,**
- **Deposition of Ostrowski,**
- **Deposition of Ruddy,**
- **Deposition of G. Spangenberg,**
- **Deposition of M. Spangenberg,**
- **Deposition of White,**
- **Owner’s Manual for subject vehicle, and**
- **Accident reconstruction report of Lawrence Wilson.**

ZAJAC & ARIAS, LLC



BY: **Eric G. Zajac, Esquire**
Attorney for Plaintiff

DATED: February 9, 2009



www.TeamLawyers.com

EXHIBIT C

ECKERT SEAMANS CHERIN & MELLOTT, LLC

BY: Edward A. Gray, Esquire

Michael P. Kinkopf, Esquire

Attorney I.D. Nos.: 28246/56344

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Attorneys for Defendant, General Motors Corporation

SARAH GILVARY	:	COURT OF COMMON PLEAS
	:	OF PHILADELPHIA COUNTY
Plaintiff,	:	
v.	:	March Term, 2007, No. 3736
	:	
GENERAL MOTORS CORPORATION	:	
and POMPEY DODGE, INC.,	:	
	:	
Defendants.	:	

NOTICE OF BANKRUPTCY

PLEASE TAKE NOTICE that, on June 1, 2009, (the “Commencement Date”), General Motors Corporation and certain of its subsidiaries filed a voluntary petition seeking bankruptcy protection under chapter 11 of title 11 of the United States Code (11 U.S.C. § 101 *et seq.*) (“Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (“Bankruptcy Court”). The bankruptcy case has been assigned Case No. 09-50026 (REG). A copy of GM’s chapter 11 petition is attached hereto as Exhibit A.

PLEASE BE ADVISED that, as of the Commencement Date, any new or further action against GM is stayed pursuant to section 362 of the Bankruptcy Code (the

“Automatic Stay”), which provides that the filing of the petition, among other things, “operates as a stay, applicable to all entities, of ...the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title” and of “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(1) & 362(a)(3).

PLEASE BE FURTHER ADVISED that any action taken against GM without obtaining relief from the Automatic Stay from the Bankruptcy Court may be void ab initio and may result in a finding of contempt against Plaintiffs. GM reserves and retains its statutory right to seek relief in the Bankruptcy Court from any judgment, order, or ruling entered in violation of the Automatic Stay.

ECKERT SEAMANS CHERIN & MELLOTT, LLC

BY: _____



EDWARD A. GRAY, ESQUIRE
MICHAEL P. KINKOPF, ESQUIRE
Attorneys for Defendant, General Motors Corporation

Dated: June 8, 2009



ZAJAC &
ARIAS, LLC

www.TeamLawyers.com

EXHIBIT D

FILED
25 SEP 2009 03:13 pm
Civil Administration

SARAH GILVARY
v.
GENERAL MOTORS COPRORATION, and
POMPEY DODGE, INC.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

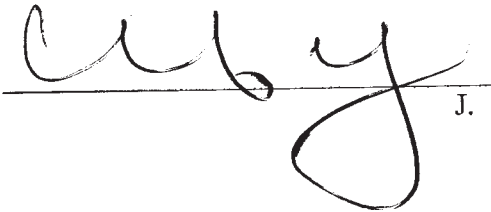
MARCH TERM 2007; NO.: 3736

TRIAL BY JURY OF 12 DEMANDED

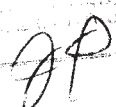
ORDER

AND NOW, this 21st day of Oct, 2009, upon
consideration of Plaintiff's Motion to Sever General Motors, and the responses thereto, it
is hereby ORDERED and DECREED that said Motion is DENIED.

BY THE COURT,


J.

DOCKETED
OCT 21 2009
K. GALLAGHER

COPIES SENT
FURNISHMENT TO PROSECUTOR 2009(b)
OCT 21 2009
JUDGE JUDITH S. GIBSON
CLERK JUDITH S. GIBSON


Gilvary Vs General Moto-ORDER



07030373600086

Case ID: 070303736
Control No.: 09091068



ZAJAC &
ARIAS, LLC

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EXHIBIT E

FILED
20 JUL 2009 03:58 pm
Civil Administration

MISTY PETERSON, an Incapacitated Person, : COURT OF COMMON PLEAS
By her Guardian Paula Peterson : PHILADELPHIA COUNTY
v. : JUNE TERM, 2008
CHRYSLER, LLC and KEVIN B. :
TRI STAR CONNELLSVILLE, INC. and TRW :
AUTOMOTIVE HOLDINGS CORP. and :
TRW AUTOMOTIVE, INC. and TRW :
VEHICLE SAFETY SYSTEMS, INC. : NO. 3546

DOCKETED

JUL 27 2009

L. KELLY
DAY FORWARD

ORDER

AND NOW, this 27 day of July, 2009, upon
consideration of Plaintiff's Motion To Sever Claims Of Debtor Chrysler, and any responses
thereto, it is hereby ORDERED and DECREED that ~~all claims against Chrysler LLC and Tri~~ DISMISSED,
~~Star Connellsville, Inc. are hereby severed from this action in accordance with Pa. R.C.P. 213,~~
~~and that the stay of these proceedings under 11 U.S.C.A §362 is applicable to both Chrysler LLC~~
~~(now "Old CarCo") and Tri Star Connellsville, Inc. without prejudice to the right to renew this~~
request at a later date. *The Motion is properly addressed to the B.R. Court.*

BY THE COURT:

[Signature]
J.

COPIES SENT
PURSUANT TO Pa.R.C.P. 236(b)

JUL 27 2009

FIRST JUDICIAL DISTRICT OF PA
SERIAL NO. *[Signature]*

Peterson Vs Chrysler LI-ORDER



08060354600049

Case ID: 080603546
Control No.: 09063298

Case ID: 070303736
Control No.: 09091068