NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

THE CITY OF BRIDGETON, Plaintiff,	:	Hon. Joseph H. Rodriguez
	:	Civil Action No. 04-5545
v.	:	
TOYOBO COMPANY, LTD., et al., Defendants.	:	**OPINION**

This matter comes before the Court on Defendants' Notice of Removal. Defendants have also filed a Motion to Transfer to the United States District Court for the Western District of Michigan. Plaintiff has filed a Combined Motion to Remand and Motion for Abstension. For the reasons set forth below, the Court will grant Plaintiff's Combined Motion to Remand and Abstension, and therefore, deny Defendants' Motion to Transfer because the Court lacks subject matter jurisdiction.

I. Procedural and Factual History

The City of Bridgeton (the "City") has filed this class action complaint against Second Chance Body Armor, Inc. ("Second Chance" or "Debtor"), alleging that Second Chance manufactured and sold certain protective ballistic vests to Plaintiff and the putative class which are defective and dangerous. Specifically, Plaintiff alleges that the lightweight fiber used in the vests, known as "Zylon", may be degraded when exposed to various conditions, resulting in a loss of protection for users of the vests. Plaintiff has also sued Toyobo America, Inc. ("Toyobo America") and Toyobo Co., Ltd. ("Toyobo

Japan") (collectively the "Toyobo Companies"), which Plaintiff alleges manufactured and sold the Zylon material used in the vests. Plaintiff has also sued John Doe Insurance Companies (Defendants' unknown insurance companies), Defendants ABC Sellers, Distributors, and/or Advertisers (unknown sellers/advertisers of body armor doing business in New Jersey).

The City asserts one cause of action; namely, that Defendants violated the New Jersey Consumer Fraud Act (the "Fraud Act"), N.J.S.A. 56:8-1 to -20. The Amended Complaint does not allege a federal cause of action. The Toyobo Companies and Second Chance have each filed cross-claims for contribution and indemnification. This case is one of several cases being litigated against the Toyobo Companies and Second Chance in courts across the country.

This case was originally brought in the Superior Court of New Jersey, Cumberland County, and it was removed to this Court on November 11, 2004. Previously, on October 8, 2004, Plaintiff filed for a Motion for Class Certification. On October 17, 2004, Second Chance filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the Western District of Michigan. Nevertheless, the parties participated with a status conference with Judge Curio in Superior Court on October 28, 2004, at which point a hearing date for class certification was set for January 15, 2005. After removal, on November 30, 2004, Second Chance filed a Verified Adversary Complaint in which it sought to enjoin various litigations from proceeding against the Toyobo Companies in

state court.[1] As a result of its bankruptcy, Second Chance is no longer a direct participant in this litigation.[2] On December 1, 2004, this Court issued an Order that stayed Defendants' Motion to transfer pending this Court's determination of jurisdiction. Subsequently, on December 6, 2004, Plaintiff moved to remand the case back to state court. The Court received submissions and heard oral argument on federal jurisdiction on December 13, 2004.

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[1] On December 6, 2004, Second Chance filed a motion seeking preliminary injunction staying all state court cases in which the Toyobo Companies and Second Chance are both defendants until the merits of the permanent injunction are determined. (Def.'s Jurisdictional Br. At 7.)

[2] Once the Chapter 11 is commenced, the automatic stay provisions of 11 U.S.C. § 362(a)(1) are triggered, and "the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title" is stayed. The Third Circuit has explained the procedural result:

> All proceedings in a single case are not lumped together for purposes of automatic stay analysis. Even if the first claim filed in a case was originally brought against the debtor, section 362 does not necessarily stay all other claims in the case. Within a single case, some actions may be stayed, others not. Multiple claim and multiple party litigation must be desegregated so that particular claims, counterclaims, crossclaims and third-party claims are treated independently when determining which of their respective proceedings are subject to the bankruptcy stay.

Maritime Electric Co. v. United Jersey Bank, 959 F.2d 1194, 1204-5 (3d Cir. 1991). Thus, the fact that Plaintiffs have failed to "sever" Second Chance is immaterial. Relatedly, the Toyobo Companies have filed a motion to modify the automatic stay with the bankruptcy court so that in can proceed with discovery against Second Chance.

III. Discussion

______The Toyobo Companies removed this action from state court pursuant to 28 U.S.C §§ 157(b)(2) and 1334(b). Notice of Removal, ¶¶ 4, 6.[3] It is undisputed that there is no diversity or federal question jurisdiction in this matter. Therefore, the Toyobo Companies argue that by virtue of Second Chance's bankruptcy, it has federal court jurisdiction because this action is a "core" bankruptcy matter, or alternatively, it is "related to" Second Chance's bankruptcy. (Mot. to Remand Br. at 8-9.) The Toyobo Companies assert a "unity of interest" theory, arguing that the theories of liability against Toyobo and Second Chance arise out of the same operative facts. (Def.'s Jurisdiction Br. at 6.) Hence, Defendants argue that the City's claims against the Toyobo Companies now have federal jurisdiction under one of these two theories.

Conversely, the City argues that (i) the Fraud Act claim, as against Second Chance, is not a "core" matter, and (ii) these claims, as against the Toyobo Companies, are not

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[3] Despite the statutes stated on the Notice of Removal, the Toyobo Companies state in their Motion to Remand that they removed this action pursuant to 28 U.S.C. § 1452(a). (Mot. to Remand at 1.) Section 1452(a) provides in pertinent part:

> A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, <u>if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.</u>

28 U.S.C. § 1452(a) (emphasis added). Section 1452(a) is the appropriate statutory mechanism for removal and requires that the district court establish section 1334 "related to" jurisdiction before hearing the civil action. There are no statutory exceptions to this requirement.

"related-to" Second Chance's bankruptcy case. Thus, the City argues that federal jurisdiction is lacking and the case should be remanded to state court.

A. Toyobo's bankruptcy jurisdiction

The Toyobo Companies contend that because this action once involved claims against Second Chance, it falls within the Bankruptcy Court's "core" jurisdiction under 28 U.S.C. § 157(b)(2)(B). This section allows Bankruptcy judges to hear certain "core" matters. In pertinent part:

> (2) Core proceedings include, but are not limited to--
> (A) matters concerning the administration of the estate
> (B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 [11 U.S.C §§ 1101 et seq., 1201 et seq. or 1301 et seq.] but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11 [11 U.S.C. §§ 101 et seq.]

28 U.S.C § 157(b)(2)(B) (emphasis added). Defendants argue that this case is a "core" proceeding because it could potentially lead to "claims against [Second Chance] the estate" pursuant to § 157(b)(2)(B) As such, Defendants' assert that jurisdiction is proper in either a Bankruptcy Court or this Court.

Defendants argument is flawed in several aspects. First, the Fraud Act claim, as against Second Chance, is a non-core proceeding in which the bankruptcy court lacks jurisdiction. Bankruptcy court jurisdiction potentially extends to four types of title 11 matters, pending referral from the district court: (1) cases under title 11, (2) proceeding

arising under title 11, (3) proceedings arising in a case under title 11, and (4) proceedings "related to" a case under title 11. In re Guild & Gallery Plus, 72 F.3d 1171, 1175 (3d Cir. 1996) (quoting In re Marcus Hook Dev. Park, Inc., 943 F.2d 261, 264 (3d Cir. 1991)). Cases under title 11, proceedings arising under title 11, and proceedings arising in a case under title 11 are referred to as "core" proceedings; whereas proceedings "related to" a case under title 11 are referred to as "non-core" proceedings. See 1 Collier on Bankruptcy, P3.02[2], at 3-35 (15th ed. rev. 2003).

This cause of action does not arise "in" or "under" the bankruptcy code. In the well-cited concurrence of Justice Rehnquist, joined by Justice O'Connor, it was concluded in N. Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 89-92 n.11 (1982) (plurality) that a lawsuit based upon a contract, involving claims which arise entirely under state law with no federal rule of decision, to the extent it may be heard in a federal court due to its relationship to a bankruptcy proceeding, must be adjudicated by an Article III court. Id. (emphasis added) Here, the City has requested a jury trial and has not consented to a judgment by the bankruptcy court. Jurisdiction of this claim cannot be found in an Article I bankruptcy court because it is a non-core matter; yet, Defendants assert this is a core matter. It is well-understood that subject matter jurisdiction is the *sin qua non* for all matters appearing in a district court. Moreover, even if this Court had jurisdiction, which it does not, it would not be proper for this Court to refer this case to a bankruptcy court.

Second, and more fundamental, is the fact that the Toyobo Companies, not Second Chance, are asserting the jurisdiction of this Court. This case is not a core proceeding because it is entirely independent of the Bankruptcy Code it does not involve the allowance or disallowance of claims against the Debtor's estate.[4] Likewise, Toyobo's and Second Chance's cross-claims are not core proceedings since they are entirely based on state law, and have not yet ripened into "proof of claims" against the estate. To the Court's knowledge, the Toyobo Companies are not currently in bankruptcy; therefore, it is not necessary to reach the core/non-core distinction because there is no direct bankruptcy jurisdiction. In addition, the cause of action against Toyobo does not arise "under" the Bankruptcy Code or arise "in" the bankruptcy case.[5] Thus, there is no "core"

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[4] See Asousa P'ship, Inc. v. Pinnacle Foods, Inc. (In re Asousa P'ship.), 264 B.R. 376 (Bankr. E.D. Pa. 2001). In Asousa P'ship, the bankruptcy court succinctly stated:

> When no proof of claim is filed, claims (or counterclaims) asserted against the debtor pre-petition are not transformed into core proceedings simply because the debtor files for bankruptcy and removes them.

Id. at 387. The Asousa case involved a state court landlord-tenant dispute, initiated by debtor-landlord for ejectment and payment of rent. The tenant filed counterclaims against the debtor-landlord based on the debtor-landlord's alleged failure to deliver the premises in a usable condition and failure to make improvements and repairs. Judge Sigmund concluded that the state court action could not be removed to bankruptcy court and treated as a core "objection to claim" proceeding under § 157(b)(2)(B) when the tenant had not filed a proof of claim. The position of the Toyobo Companies is even more tenuous because Toyobo is not a debtor in bankruptcy.

[5] Generally, cases "under" the Bankruptcy Code are the actual bankruptcy proceedings. In re Resorts Intern., Inc., 372 F.3d 154, 162 (3d Cir. 2004). Cases arising "in" a bankruptcy case are those type of actions that cannot exist outside the bankruptcy case. U.S. Trustee v. Gryphon at the Stone Mansion, Inc., 166 F.3d 552, 556 (3d Cir. 1999).

jurisdiction.[6]

B. "Related to" jurisdiction

Alternatively, and more appropriately, Toyobo asserts that the City's claims against it are "related to" Second Chance's bankruptcy case under 28 U.S.C. 1334(b). As such, Toyobo proffers that this matter is now a civil case in which the district court has original jurisdiction. Section 1334(b) states in relevant part:

> Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11

28 U.S.C. 1334(b) (emphasis added). Toyobo has filed cross-claims against Second Chance for indemnification and contribution, and Second Chance has filed cross-claims against Toyobo for the same. Presumably, it is these claims that Toyobo seeks to assert "related to" jurisdiction in this Court.

The seminal case of Pacor Inc. v. Higgins (In re Pacor), 743 F.2d 984 (3d Cir. 1984) definitively interpreted the scope of the statutory "related to" jurisdiction of bankruptcy courts.[7] In Pacor, John and Louise Higgins sued Pacor in Pennsylvania state

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[6] Not surprisingly, and in support of its argument here, Plaintiff submits a brief (see Reply, Exh. A) that was submitted by Second Chance in a similar case pending in the United States District Court for the District of Michigan, which argued against the Toyobo Companies' assertion of "core" jurisdiction.

[7] The Supreme Court effectively has overruled Pacor with respect to its holding that the prohibition against review of a remand order in 28 U.S.C. § 1447(d) is not applicable in a bankruptcy case. See Things Remembered, Inc. v. Petrarca, 516 U.S. 124 (1995). But, Things Remembered does not disturb the authority of Pacor on the points for which it is cited. In fact,

court for work-related injuries to John Higgins caused by exposure to asbestos supplied by Pacor. Pacor filed a third-party complaint impleading Johns-Manville, the manufacturer of the asbestos. Thereafter, Manville filed for Chapter 11 bankruptcy in the Southern District of New York. Pacor filed a petition for removal in the Bankruptcy Court for the Eastern District of Pennsylvania seeking to remove the Higgins' case from state court to federal bankruptcy court and simultaneously to transfer it from that court to the New York district court where it would be joined with the rest of the Johns-Manville bankruptcy proceedings. The theory of Pacor's petition was that the Higgins suit was "related to" the Manville bankruptcy proceeding. The bankruptcy court denied the petition and remanded the case. Pacor, 743 F.2d at 986-87. Analyzing the "related to" provision, the Third Circuit concluded:

> The primary action between Higgins and Pacor would have no effect on the Manville bankruptcy estate, and therefore is not "related to" [the Manville] bankruptcy [proceeding]. At best, it is a mere precursor to the potential third party claim for indemnification by Pacor against Manville. Yet the outcome of the Higgins-Pacor action would in no way bind Manville, in that it could not determine any rights, liabilities, or course of action of the debtor. Since Manville is not a party to the Higgins-Pacor action, it could not be bound by res judicata or collateral estoppel. Even if the Higgins-Pacor dispute is resolved in favor of Higgins (thereby keeping open the possibility of a third party claim), Manville would still be able to relitigate any issue, or adopt any position, in response to a subsequent claim by Pacor. Thus, the bankruptcy estate could not be affected in any way until the Pacor-Manville third party action is actually brought and tried.

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the Pacor test "has been enormously influential" as a "cogent analytical framework" relied upon by our sister circuits more than any other case in this area ["related to" jurisdiction] of the law. See Binder v. Price Waterhouse & Co., LLP (In re Resorts Int'l, Inc.), 372 F.3d 154 (3d Cir. 2004) (citation omitted).

Id. at 995 (citations omitted and emphasis added).

Under Pacor, bankruptcy courts have jurisdiction to hear a proceeding if "the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." In re Marcus Hook, 943 F.2d at 264. The Third Circuit has emphasized that a key word in this test is "conceivable" and that "certainty, or even likelihood, is not a requirement." Id. Admittedly, the word "conceivable" casts a wide net; yet, in Pacor it was explained that:

> The proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

Pacor, 743 F.2d at 994. The Supreme Court has looked to Pacor, and explained that the critical component of the Pacor test is that "bankruptcy courts have no jurisdiction over proceedings that have no effect on the estate of the debtor." Celotex Corp. v. Edwards, 514 U.S. 300, 308 n.6 (1995).

The crux of Defendants' argument is that there exists a "unity of interests" because the City's claims derive from one material (Zylon), one product (bullet-proof vests), and one end-user (police officers). Thus, it is asserted that the liability of the Toyobo Companies and Second Chance are "inextricably intertwined." (Def.'s Jurisdiction Br. at 16.) In support of this theory, Defendants place much reliance on the Sixth Circuit case of In re Dow Corning, 86 F.3d 482, 493 (6th Cir. 1996), a case where the personal injury

liability of both the debtor and non-debtors was based on a single product, silicone gel breast implants. In that case, the Sixth Circuit found "related to" jurisdiction. Analogous to this case, Defendants argue, each of the co-defendants were closely involved in using the same material, originating with the debtor, to make the same, singular product, sold to the same market and incurring substantially similar injuries.

Most recently, the Third Circuit distinguished Dow Corning from a pending bankruptcy asbestos case, explaining that "[t]he theory of 'related to' jurisdiction in Dow Corning was based on the near certainty that Dow Corning, the debtor, would be directly or derivatively liable for any injury resulting from a silicone breast implant because it either manufactured or contributed key supplies to every breast implant on the market. In re Combustion Eng'g, Inc., 2004 WL 2743565 at *26 (3d Cir. Dec. 2, 2004) (emphasis added). The court amplified this distinction by stating that courts exercising "related to" jurisdiction over personal injury claims against non-debtors based on the potential for indemnification claims against the debtor have similarly involved either express indemnification obligations, see A.H. Robins Co., Inc. v. Piccinin, 788 F.2d 994, 1007-08 (4th Cir. 1986), or derivative liability, see MacArthur Co. v. Johns-Manville, 837 F.2d 89, 92-93 (2d Cir. 1988). The In re Combustion Eng'g court neither adopted or discounted the result in Dow Corning, but merely reaffirmed Pacor and held:

> In both cases [Pacor and Federal-Mogul] the unity of exposure created by asbestos contained in a common product was insufficient to give rise to "related to" jurisdiction when the third-party claim would not directly result in liability for the debtor.

In re Combustion Eng'g, Inc., 2004 WL 2743565 at *26. Thus, the rule of this circuit is not "unity of interest" analysis, but rather, whether indemnification would require the intervention of another lawsuit to affect the bankruptcy estate. Id. at *27. This, the court held, cannot provide a basis for "related to" jurisdiction. Id.

Similarly, the Toyobo Companies assert that the so-called "home court presumption" principle dictates that the bankruptcy court, and not this Court, should decide any jurisdictional issues concerning this case. (Def's Mot. to Remand Br. at 7.) Defendants cite numerous cases, most notably Hohl v. Bastian, 279 B.R. 165, 177 (W.D. Pa. 2002), to support this argument. The Hohl case involved a court that was simultaneously confronted with a motion to transfer and a motion to remand. After the discussion of Pacor, the Hohl court determined that the automatic indemnification agreement in the non-debtor's bylaws created "related to" jurisdiction because any claim would result in direct liability to debtor's estate. Justifiably, the court transferred this case to the debtor's bankruptcy court, only after first deciding the jurisdictional question. Here, however, Pacor controls and it is not necessary to reach the "home court presumption" principle since there is no federal jurisdiction.

Finally, the Toyobo Companies argue that a district court need not determine either personal or subject matter jurisdiction before ruling on a procedural issue not affecting the merits of the case. (Def's Jurisdiction Br. at 22-25.) This is an overstatement of the law; especially, since Defendants are urging this Court to transfer pursuant to 28 U.S.C. §

1404(a). After all, a motion for remand must necessarily be heard and decided prior to defendant's motion to transfer venue because the court must determine whether it has subject matter jurisdiction, and if it does not, it must remand the case to state court immediately. AUSA Life Ins. Co., Inc. v Citigroup, Inc., 293 B.R. 471 (N.D. Iowa 2003).

Instead, Defendants cite numerous cases that invoke 28 U.S.C. § 1407, the rule governing transfer of cases for multidistrict litigation ("MDL"). Here, an MDL Panel is not a factor; therefore, the special rules governing MDL under § 1407 are not implicated. Simply stated, under § 1404, subject matter jurisdiction is still a prerequisite to transfer.

Here, like Pacor, the City's state consumer fraud claims against the Toyobo Companies will have no conceivable impact on Second Chance's bankruptcy estate. First, the City states that Second Chance has not contractually agreed to indemnify Toyobo. (Pl. Mot. to Remand, Exh. C.)[8] Indeed, a district court, relying on Pacor, held that the necessity of future action to fix the debtor's liability after resolution of the

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[8] Even if there was an indemnification agreement, under the precedent of the Third Circuit, that alone would not give rise to "related to" jurisdiction. Belcufine v. Aloe, 112 F.3d 633 (3d Cir. 1997). In Belcufine, the Third Circuit found "related to" jurisdiction over employee suits filed against corporate officers for non-payment of wages based on the indemnification provision in the corporate by-laws of the debtor. The indemnification provision in Belcufine provided for guaranteed reimbursement of "reasonable expenses, judgments, fines, or costs incurred in a legal proceeding" whenever the corporate officers, regardless of their liability, were sued. Thus, the right to indemnification accrued immediately upon the filing of the lawsuit against the party entitled to indemnification from the bankruptcy estate. Here, unlike Belcufine, the indemnification claim would have to be separately litigated. If there was any doubt about the application of the Pacor test in Belcufine, it was dispelled in Federal-Mogul when the Third Circuit rejected the implication that indemnification agreements *a fortiori* established "related to" jurisdiction. Federal-Mogul, 300 F.3d at 382.

pending lawsuit precludes the exercise of related to jurisdiction. Steel Workers Pension Trust v. Citigroup, Inc., 295 B.R. 747 (E.D.Pa. 2003). Thus, the impact to the Debtor's estate is speculative at best, and a separate legal determination is necessary before the debtor's estate is effected. Under Third Circuit law, this is not sufficient to establish "related to" jurisdiction.

Second, because Second Chance no longer has the ability to defend against Toyobo's cross-claim, the City correctly posits that Second Chance would no longer be bound by *res judicata* or collateral estoppel on account of the City's action against Toyobo. Since Second Chance is no longer a party to the City-Toyobo action, it could not be bound by *res judicata* or collateral estoppel. Even if the City-Toyobo dispute is resolved in favor of the City, Second Chance would still be able to relitigate any issue, or adopt any position, in response to a subsequent claim by Toyobo. Thus, the bankruptcy estate could not be effected in any way until the Toyobo-Second Chance cross-claim is actually brought and tried.

Therefore, this Court is without jurisdiction to hear the claims for relief asserted in the Complaint because the City-Toyobo proceeding is not "related to" Second Chances' bankruptcy case.

C. Mandatory Abstension

Even if this Court has jurisdiction, it must abstain from hearing claims against Toyobo pursuant to 28 U.S.C. § 1334(c)(2). Under the doctrine of mandatory abstension,

a district court must abstain from hearing a proceeding under the following conditions:

> (1) a timely motion is made;
> (2) the proceeding is based upon a state law claim or state law cause of action;
> (3) the proceeding is related to a case under Title 11 but does not arise under Title 11 or a case under Title 11;
> (4) the action could not have been commenced in a federal court absent jurisdiction under 28 U.S.C. § 1334; and
> (5) an action is commenced, and can be timely adjudicated, in a state forum of appropriate jurisdiction.

28 U.S.C. § 1334(c)(2); see First Western SBLC, Inc. v. Mac-Tav, Inc., 231 B.R. 878 (D.N.J. 1999). Defendants argue that mandatory abstension is not warranted here because Plaintiff cannot carry its burden as to the "can be timely adjudicated in a state forum" requirement in subsection (5).

Here, the Court must abstain from extending its jurisdiction because each of the statutory requirements are met. First, Plaintiff's motion was timely made since it was made less than a month from the Notice of Removal.[9] Second, as discussed above, Plaintiff's sole cause of action is based on the New Jersey Consumer Fraud Act, a state law claim. Third, the City's claims against Toyobo are not "core" or "related-to" Second Chance's bankruptcy to establish federal jurisdiction. Subsection (4) is satisfied because this action is not one that could have been brought in federal court.

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[9] Section 1334(c)(2) does define what constitutes a "timely motion" for abstension purposes. Nevertheless, it can be determined that less than a month is timely.

Despite Defendants' arguments to the contrary, this case was commenced in state forum of appropriate jurisdiction and can be timely adjudicated; consequently, Plaintiff's burden as to subsection (5) is also met. The terms "timely adjudicated" is not defined in the Bankruptcy Code, however this court explained:

> Nothing in the record suggest this action could not be timely litigated in the New Jersey state courts. The parties have not identified any problems with the statute of limitations or with service of process, and in addition, all case preparation to date is easily transferable to the state court.

In re Oliver's Stores, Inc., 107 B.R. 40, 43-44 (D.N.J. 1989). With no evidence submitted to support any other determination, Plaintiff has satisfied its burden as to the "can be timely adjudicated" requirement by the simple fact that this case has been proceeding in the Cumberland County Superior Court for a year. The court finds the In re Oliver's Stores reasoning more persuasive than the non-controlling caselaw submitted in Defendants' Motion to Remand. Admittedly, the litigation in this matter has just begun, but the interests of comity and subject matter jurisdiction far outweigh any need to have this case be heard in a federal court. Defendants' admission that "Judge Curio has been diligent in her duties," (see Def's Mot. to Remand Br. at 13), is enough to satisfy Plaintiff's burden that this case can be timely adjudicated in a state court of proper jurisdiction.

Therefore, the principles of mandatory abstension require this case to be remanded to state court. For these reasons, it is not necessary to reach the merits of Plaintiff's permissive abstension argument.

IV. Conclusion

First, this Court lacks the subject matter jurisdiction to hear this case. Second Chance is no longer a participant in this litigation and the resolution of the City-Toyobo action will not increase or decrease the size of Second Chance's bankruptcy estate. Nor will this action effect the administration of the Second Chance bankruptcy. Any indemnification or contribution claim asserted by Toyobo against Second Chance "[has] not yet accrued and would require another lawsuit" before it could have an impact on Second Chance's bankruptcy. See Federal-Mogul, 300 F.3d at 382. Thus, the City's claims against the Toyobo are not "related to" the Second bankruptcy proceedings under 28 U.S.C. §§ 1334(b), and will be remanded pursuant to 28 U.S.C. § 1447(d) to the state court from which they were removed. Second, pursuant to the dictates of mandatory abstension, this Court is required to remand this case to the New Jersey Superior Court for Cumberland County pursuant to 28 U.S.C. § 1452(b).

/S/ Joseph H. Rodriguez

JOSEPH H. RODRIGUEZ

U.S.D.J.

Dated: January 10, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

THE CITY OF BRIDGETON, Plaintiff,	:	Hon. Joseph H. Rodriguez
	:	Civil Action No. 04-5545
v.	:	
TOYOBO COMPANY, LTD., et al., Defendants.	:	**ORDER**

For the reasons set forth in the Court's Opinion filed even date,

IT IS ORDERED on this 10th day of January, 2005 that Plaintiff's Combined Motion to Remand to the Superior Court, Cumberland County and for Abstension [11] is GRANTED; and

IT IS FURTHER ORDERED that Defendants' Motion to Transfer Venue [3] is DENIED; and

IT IS FURTHER ORDERED that the above action is REMANDED to the Superior Court of New Jersey, Cumberland County.

/S/ Joseph H. Rodriguez
JOSEPH H. RODRIGUEZ
U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
OFFICE OF THE CLERK

MARTIN LUTHER KING JR. FEDERAL BLDG & U.S. COURTHOUSE
50 WALNUT STREET, P.O. BOX 419
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January 11, 2005

WILLIAM T. WALSH
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REPLY TO: CAMDEN

Clerk, Superior Court Cumberland County
West Broad & Fayette Sts.
Bridgeton, NJ 08302

RE: The City of Bridgeton -v- Toyobo Company, et al

Our Civil Number: 04-5545
Your Civil Number: CUM-L-000036-04

Dear Sir or Madam:

Pursuant to the Order of Remand entered in the above entitled matter by this Court, please find enclosed one (1) certified copy of the docket entries and one (1) certified copy of the Remand order.

Very truly yours,

WILLIAM T. WALSH, CLERK

By: s/Thomas Haggerty
Deputy Clerk

cc: file