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| DONNA L. SOTO, ADMINISTRATRIX) | SUPERIOR COURT |
| OF THE ESTATE OF VICTORIA L.) | |
| SOTO, DECEASED, ET AL.) | J.D. OF FAIRFIELD/BRIDGEPORT |
|) | @ BRIDGEPORT |
| v.) | |
|) | |
| BUSHMASTER FIREARMS) | |
| INTERNATIONAL, LLC, ET AL.) | APRIL 19, 2016 |

MOTION FOR STAY OF DISCOVERY

The Defendants in the above-referenced matter, REMINGTON OUTDOOR COMPANY, INC. and REMINGTON ARMS COMPANY, LLC (“REMINGTON”) pursuant to Practice Book Section 13-5, respectfully move the Court for a stay of discovery pending resolution of their Motion to Strike Plaintiffs’ First Amended Complaint, which will be filed no later than April 22, 2016. In support of this Request, REMINGTON represents as follows:

1. By order dated April 14, 2016, the Court denied REMINGTON’S Motion to Dismiss, finding, *inter alia*, that the immunity from suit provided to REMINGTON under the Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901 *et seq.* (“PLCAA”), does not implicate the Court’s subject matter jurisdiction and was not a basis for a motion to dismiss. The Court held that whether REMINGTON has immunity under the PLCAA goes to the legal sufficiency of plaintiffs’ allegations and is properly raised by a motion to strike.
2. REMINGTON will file a Motion to Strike by no later than April 22, 2016. The bases for striking plaintiffs’ allegations will be those already asserted in support of its Motion to Dismiss, including threshold PLCAA immunity from suit and plaintiffs’

inability to state a claim under the Connecticut Unfair Trade Practices Act (“CUTPA”). REMINGTON will also raise the exclusivity provision of the Connecticut Product Liability Act and the CUTPA statute of limitations.

3. Practice Book Section 13-5 provides:

Upon motion by a party from whom discovery is sought, and for good cause shown, the judicial authority may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters

The rules of practice are to be liberally interpreted so as to advance justice. Practice Book § 1-8. The Court has discretion to impose a stay of discovery as justice requires. *Ritchie v. Nyfix*, No. CV06-4009324S, 2007 Conn. Super. LEXIS 518 (Conn. Super Ct. Feb. 22, 2007).

4. Whether a defendant is immune from suit is a threshold question to be resolved at the earliest possible stages of litigation. *Saucier v. Katz*, 533 U.S. 194, 201 (2001); *Jeffries v. District of Columbia*, 916 F. Supp. 2d 42, 44 (D.D.C. 2013) (PLCAA immunity is a threshold issue). Immunity is, after all, “an entitlement to not stand trial or face the other burdens of litigation.” *Saucier*, 533 U.S. at 200. The question of whether a defendant has immunity from suit should be made “as early in the case as possible” because “to defer the question is to frustrate [the] significance and benefit” of the immunity provided to the defendant. *Phoenix Consulting, Inc. v. Republic of Angola*, 216 F.3d 36, 39 (D.C.Cir. 2000). Connecticut courts follow these principles

and recognize that the purpose behind immunities is protection from “having to litigate at all.” *Shay v. Rossi*, 252 Conn. 134, 166 (2000). Given that the question of whether REMINGTON is immune from suit under the PLCAA is a legal question, a stay of discovery is appropriate during the pendency of REMINGTON’S forthcoming Motion to Strike.

5. Among the stated purposes of the PLCAA is “[t]o prevent the use of ... lawsuits to impose unreasonable burdens” on firearms manufacturers. 15 U.S.C. § 7901(b)(4); *see also City of New York v. Beretta*, 524 F.3d 384, 394-95 (“Congress explicitly found that the third-party suits that the Act bars are a direct threat to the firearms industry,” and “rationally perceived substantial effect on the industry of the litigation that the Act seeks to curtail.”). Congress plainly intended that PLCAA immunity is not merely a defense to be addressed following discovery. Lawsuits against firearm manufacturers seeking damages resulting from the criminal use of lawfully manufactured, non-defective firearms “may not be brought in any Federal or State court.” 15 U.S.C. § 7902(a). In fact, lawsuits against firearm manufacturers that were pending when the PLCAA became law were to “be immediately dismissed.” 15 U.S.C. § 7902(b). Congress acted to prevent the use of the “judicial branch” to circumvent the legislative branches of government “through judgments or judicial decrees.” 15 U.S.C. § 7901(a)(8).
6. Discovery should not proceed while purely legal questions regarding REMINGTON’S immunity from suit under the PLCAA remain unresolved. Permitting discovery to proceed simply because REMINGTON could not raise PLCAA immunity in its initial pleading would be in disregard of the fundamental

purpose of the PLCAA. It would also unjustly impose undue burden and expense on the parties. And permitting discovery under these circumstances would be a waste of judicial resources because there will be substantial motion practice related to discovery objections, in light of the breadth of the discovery already served on REMINGTON. Although plaintiffs may express an interest in adjudicating their claims against REMINGTON quickly, their interest does not outweigh the Court's responsibility to respect clearly stated congressional intent, correctly apply the law and resolve legal questions implicating immunity from suit under the PLCAA at the earliest stages of the litigation.

WHEREFORE, Defendants, REMINGTON OUTDOOR COMPANY, INC. and REMINGTON ARMS COMPANY, LLC, request a stay of discovery pending resolution of their Motion to Strike Plaintiffs' First Amended Complaint.

THE DEFENDANTS,

REMINGTON OUTDOOR COMPANY, INC. and
REMINGTON ARMS COMPANY, LLC

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was emailed and mailed on April 19,

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Ritchie v. Nyfix, Inc.

Superior Court of Connecticut, Judicial District of Stamford-Norwalk, at Stamford

February 21, 2007, Decided ; February 22, 2007, Filed

FSTCV064009324S

Reporter

2007 Conn. Super. LEXIS 518; 2007 WL 806240

Steven R. Ritchie v. Nyfix, Inc.

Notice: [*1] THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

Judges: Nadeau, J.

Opinion by: Thomas L. Nadeau

Opinion

MEMORANDUM OF LAW RE DEFENDANTS' MOTION FOR PROTECTIVE ORDER

The defendants' motion for protective order to stay proceedings or, in the alternative, to stay

discovery is denied in part and granted in part. The defendants have not sufficiently stated reasons for this court to impose a stay of *proceedings* and thus the motion for a protective order to stay proceedings is denied.

Nonetheless, it is within this court's discretion to impose a stay of *discovery* as justice requires. See [Practice Book § 13-5](#). The defendants have filed a motion to dismiss, dated January 27, 2007, based on a purported lack of subject matter jurisdiction due to the plaintiff's alleged failure to properly make prior demand on the board of directors in initiating this shareholder derivative suit. The motion for protective order is granted to stay discovery until resolution of the pending motion to dismiss.

Nadeau, [*2] J.