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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

BERARDO A. QUILEZ-VELAR, et al., Plaintiffs.

v.

Civil No. 12-1780 (GAG)

OX BODIES, INC., et al.,

Defendants.

MEMORANDUM OPINION

11 Defendants' motion to dismiss is **DENIED** without prejudice. (Docket No. 106.) 12 Defendants move for dismissal on two grounds: lack of personal jurisdiction and Colorado River 13 abstention. Defendants claim they lack sufficient minimum contacts with Puerto Rico. Plaintiffs 14 allege that Defendants' contacts with Guaraguao Truck Sales, Inc., in Bayamon, Puerto Rico, 15 sufficiently constitute minimum contacts (See Docket No. 125-4), and that personal jurisdiction 16 exists because Plaintiff purchased liability insurance coverage in Puerto Rico and failed to object to 17 personal jurisdiction in the corresponding state court cases. At this time, the court does not 18 determine whether personal jurisdiction exists. Plaintiffs request the court to withhold a ruling on 19 the personal jurisdiction question until they depose Defendants' employee, Jerry Frost, on May 30, 20 2013. The court grants Plaintiffs' request. Defendants may re-file their 12(b)(2) motion to dismiss 21 for lack of personal jurisdiction following the June 20, 2013 deadline for depositions of fact 22 witnesses. In reply thereto, Plaintiffs shall address why Truck Bodies, Inc., is liable in light of 23 Defendants' contention that it did not exist until after the automobile's manufacture.

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Secondly, *Colorado River* and its progeny establish that a federal court has a virtually unflagging obligation to exercise its jurisdiction. The cases provide eight factors to apply when considering "exceptional circumstances" meriting abstention. Five are relevant here: 1) the desirability of avoiding piecemeal litigation; 2) the order in which the forums obtained jurisdiction;

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3) whether state or federal law controls; 4) the adequacy of the state forum to protect the parties'
interests, and; 5) the vexatious or contrived nature of the federal claim. See Rio Grande Cmty.
<u>Health Ctr., Inc. v. Rullan</u>, 397 F.3d 56, 71-72 (1st Cir. 2005).

5 This case was bifurcated in the Puerto Rico courts, whereas this case is consolidated. (See 6 Docket No. 125 at 39 n.17.) Plaintiffs' attorneys swear under penalty of perjury that this case is 7 more advanced in the litigation stage than the parallel state proceedings even though this case was 8 filed subsequent to the state actions. (See generally Docket Nos. 125-1-125-2.) This court has 9 already invested the time and resources of its chambers staff, as has Magistrate Judge Carreno-Coll. 10 A comprehensive timetable for resolving this case establishes deadlines for discovery and dispositive 11 motions for the next eleven months. (See Docket No. 83.) Furthermore, the state courts scheduled 12 a status conference for June 25, 2013, well after this court's scheduled settlement conference at the 13 close of discovery in January 2013. (See Docket No. 125 at 46.)

14 This case was properly filed in federal court, as well. It makes sense why Plaintiffs would 15 bring concurrent state and federal claims. Their state claims request retrospective damages from the 16 Commonwealth of Puerto Rico, which the Eleventh Amendment bars in federal court. See Rullan, 17 397 F.3d at 72 (concurrent claims in which the state is a defendant only in the state proceedings for 18 Eleventh Amendment purposes is "an entirely reasonable explanation"). In the state proceedings, 19 additionally, Ox Bodies is a third-party defendant, whereas it is the principal defendant in federal 20 court. Although the state court could capably grapple with these state law issues, Congress provided 21 for diversity jurisdiction in 28 U.S.C. § 1332, and products liability cases do not implicate complex 22 questions unique to Puerto Rico. Lastly, a timeless principle whose origins are traced to the Great 23 Chief Justice dictates that, "With whatever doubts, with whatever difficulties, a case may be 24 attended, we must decide it, if it is brought before us . . . [to do otherwise] would be treason to the 25 Constitution." Cohens v. Virginia, 19 U.S. 264, 404 (1821).

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3	For the reasons stated above, the court finds no exceptional circumstances meriting
4	abstention. Defendants' motion to dismiss is DENIED without prejudice. (Docket No. 106.)
5	SO ORDERED
6	In San Juan, Puerto Rico this 3rd day of May, 2013.
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8	<i>S/Gustavo A. Gelpí</i> GUSTAVO A. GELPÍ United States District Judge
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