

NOT DESIGNATED FOR PUBLICATION

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

08-1350

**PATSY JANE BOUDREAUX, ET AL.
VERSUS
ABLE SUPPLY CO., ET AL.**

**APPEAL FROM THE
FIFTEENTH JUDICIAL DISTRICT COURT
PARISH OF VERMILION, NO. 88221-I
HONORABLE THOMAS R. DUPLANTIER, DISTRICT JUDGE**

**BILLY H. EZELL
JUDGE**

Court composed of Jimmie C. Peters, Michael G. Sullivan, and Billy H. Ezell, Judges.

**MOTION TO LIFT STAY GRANTED
IN PART AND DENIED IN PART.**

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EZELL, Judge.

The Defendant-Appellee, American Cyanamid, Inc., moves this court to lift the stay currently in effect for this appeal. For the reasons given herein, we grant the motion to lift the stay as to all defendants, except Lyondell Chemical Company and Millennium Petrochemicals, Inc.

This case involves a wrongful death and survival action filed by the widow and children of Decedent, Lloyd Joseph Boudreaux, Jr. Decedent died in 2007 from mesothelioma, which is a form of cancer caused by exposure to asbestos. Plaintiffs, Patsy Boudreaux, Carrie Boudreaux, Traci Mills, Cheryl Simon, and Marti Boudreaux, have filed suit against more than fifty corporate defendants alleging that Decedent was exposed to asbestos while working as an insulator and various other jobs from the 1950's to the 1990's. The suit was filed in Vermilion Parish. However, because Plaintiffs are domiciled in Texas and because most of Decedent's jobs were located in Texas, Defendant, American Cyanamid, Inc., filed a motion to dismiss the lawsuit for *forum non conveniens*, asserting that Texas would be a more convenient forum. Several other defendants joined in the motion to dismiss. By judgment dated April 25, 2008, the trial court granted the motion to dismiss but reserved Plaintiffs' right to re-file their action within sixty days in a court of competent jurisdiction.

Plaintiffs filed an appeal which was lodged in this court on November 6, 2008. The parties have submitted their appellate briefs and requested oral argument. However, on January 22, 2009, this court received notice that Defendants, Lyondell Chemical Company and Millennium Petrochemicals, Inc., had filed a voluntary petition for bankruptcy under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. As a result, on January 22, 2009, a deputy clerk of court for this court sent a correspondence to the parties notifying them that the appeal has been stayed.

At this time, Defendant, American Cyanamid, Inc., has filed a motion to lift the stay on the ground that Plaintiffs filed, in the district court, a motion and order to voluntarily dismiss their claims against Lyondell Chemical Company and Millennium Petrochemicals, Inc., which was granted by the trial court on February 3, 2009. Since we find that the jurisprudence allows us to lift the stay order as it pertains to the non-bankrupt debtors, we pretermitt any determination of whether the trial court retained jurisdiction to issue an order dismissing the two bankrupt debtors after the trial court had already dismissed the entire case for *forum non conveniens* and after an appeal had been taken.

“The filing of a federal bankruptcy petition operates as an automatic stay under 11 U.S.C. § 362 that prevents creditors from commencing or continuing judicial or administrative proceedings against the debtor.” *Ring Const., LLC v. Chateau Des Lions, LLC*, 05-568 (La.App. 3 Cir. 12/30/05), 918 So.2d 1172, 1176, *writ denied*, 06-0584 (La. 5/5/06), 927 So.2d 325. However, the automatic stay imposed by Section 362 only applies to the party or parties filing for bankruptcy and does not apply to non-bankrupt co-defendants. *See Martin v. David*, 95-1411 (La.App. 3 Cir. 12/7/95), 666 So.2d 1136; *Jackson v. BASF Corp.*, 04-2777 (La.App. 1 Cir. 11/4/05), 927 So.2d 412, *writ denied*, 05-2444 (La. 3/24/06), 925 So.2d 1231. In the instant case, we find that since only two of the numerous named defendants have filed bankruptcy, the automatic stay imposed by 11 U.S.C. § 362 only applies to those two defendants, i. e., Lyondell Chemical Company and Millennium Petrochemicals, Inc. Having determined that the automatic stay does not require a stay as to the remaining defendants, we see no reason why the appeal should not be allowed to proceed as to the remaining defendants, especially since Plaintiffs have filed with the trial court a motion to dismiss which manifests their intent not to proceed with their claims against the two bankrupt defendants at this time.

For the foregoing reasons, we order that the stay be lifted as to all Defendants, except Lyondell Chemical Company and Millennium Petrochemicals, Inc.

MOTION TO LIFT STAY GRANTED IN PART AND DENIED IN PART.

This opinion is **NOT DESIGNATED FOR PUBLICATION.**
Rules 2-16.2 and 2-16.3, Uniform Rules, Courts of Appeal.