

byproducts of combustion such as carbon monoxide from a boiler to the outside of a home. Plaintiff, Peerless Heating Company ("Peerless"), is a manufacturer of gas-fired furnace and boiler appliances, and it regularly installed defendants' pipes in its appliances. Peerless alleges that the pipes are defective, having cracked after repeated exposure and use. It filed suit against Chevron, seeking to recover on theories of breach of contract, breach of warranty of merchantability, breach of warranty of fitness, breach of express warranties, negligent misrepresentation, and fraud. Peerless later amended the complaint, adding defendant H & C and an indemnification count.

Earlier, in January 1997 in Tennessee state court, a nationwide class action against the HTPV pipe manufacturers, including the defendants, was brought on behalf of all homeowners whose furnaces use the pipes. Engel v. Chevron Corporation, Inc., et al., Civil Action No. 37715 (Rutherford County, Tennessee, filed January 9, 1997). Chevron, seeking contribution, filed a third-party complaint against the class of appliance manufacturers, including Peerless.

Also, in Michigan state court, H & C filed suit against Peerless and 33 other appliance manufacturers, seeking a declaratory judgment regarding the duties owed by the appliance manufacturers and the anticipated claims for contribution. Hart & Cooley, Inc. v. Amana Refrigeration, Inc., et al., No. 97-27729-NP (Ottawa County, Michigan, filed April 1, 1997). The complaint includes ten damages counts, asking for declaratory

relief as to the parties' liability, indemnification for past and future damages arising from litigation over the failed pipe, and reimbursement for expenses already incurred in such litigation. Chevron is not a party to the Michigan action.

Defendants maintain that both the state actions and this federal one spring from the same factual scenario and involve the same controlling issues. Defendants thus -- with Chevron relying on the Tennessee case and H & C on the Michigan case -- ask this court, pursuant to the Colorado River doctrine, to decline to exercise jurisdiction.

II. Colorado River Abstention

Abstention by a federal court due to a similar suit in state court is justified "only in the exceptional circumstances where the order to the parties to repair to the state court would clearly serve an important countervailing interest." Colorado River Water Cons. Dist. v. United States, 424 U.S. 800, 813 (1976). The three traditional bases of abstention arise from concerns of constitutionality or comity.¹ In contrast, the

¹ The three traditional doctrines are Pullman, Burford, and Younger abstention. Under Railroad Comm'n of Texas v. Pullman Co., 312 U.S. 496 (1941), and its progeny, abstention is proper where a state court determination of a question of state law might moot or change a federal constitutional issue presented in a federal court case. Under Burford v. Sun Oil Co., 319 U.S. 315 (1943), and its progeny, abstention is proper where the federal case presents questions of state law in which the state has expressed an interest in establishing a coherent policy in a matter of substantial concern. Finally, under Younger v. Harris, 401 U.S. 37 (1971), and its progeny, abstention is proper where federal jurisdiction has been invoked in order to restrain

principles underlying Colorado River abstention "rest on considerations of '[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation.'" 424 U.S. at 817 (citations omitted).

Colorado River abstention is even rarer than abstention on the three traditional grounds, for two reasons. First, the "virtually unflagging obligation of the federal courts to exercise the jurisdiction given them" means that pendency of a case in state court does not generally bar federal litigation on the same issues. Id. at 817. Second is "the absence of weightier considerations of constitutional adjudication and state-federal relations" which support the three traditional abstention doctrines. Id. at 818.

A. Parallel Proceedings

Colorado River abstention is justified only if the state and federal cases involved are duplicative or 'parallel.' Trent v. Dial Medical of Florida, Inc., 33 F.3d 217, 223 (3d Cir. 1994). Cases are parallel when "they involve the same parties and claims," Ryan v. Johnson, 115 F.3d 193, 196 (3d Cir. 1997), or when they are "substantially identical," "essentially identical," or raise "nearly identical allegations and issues." Trent at 223. See also Complaint of Bankers Trust Co. v. Chatterjee, 636 F.2d 37, 40 (3d Cir. 1980)(cases are not parallel when the

certain state proceedings.

claims, parties, or requested relief differ).

1. The Tennessee case

Chevron argues that the Tennessee action is sufficiently similar to warrant application of the Colorado River abstention doctrine. All the parties in this action are parties in the Tennessee suit, although there are also additional parties to that case. The claims in this case are substantially the same as those in Tennessee.²

Peerless response that, because Chevron cannot sue for contribution under Tennessee law, the Tennessee litigation is not parallel. Chevron disagrees; both cite case law to support their position. I need not predict how the Tennessee court will rule. Rather, the issue is whether the state case, "as it currently exists, is a parallel, state-court proceeding". Crawley v. Hamilton County Comm'rs, 744 F.2d 28, 31 (6th Cir. 1984) (emphasis in the original). As to defendant Chevron, I conclude that the Tennessee action sufficiently presents the same parties and claims to merit Colorado River analysis.

2. The Michigan case

H & C argues that the Michigan lawsuit is parallel to

² Although Peerless asserts numerous claims against Chevron based on contract and warranty theories that do not exactly mirror Chevron's tort-based contribution claim in the Tennessee case, these claims all arise out of the same transaction between Peerless and Chevron over the purchase and use of the pipes. These claims must be brought as compulsory counterclaims under Tenn. Civ. P. 13.01. The two cases thus should be considered 'parallel.' See Allied Nut and Bolt, Inc. V. NSS Industries, Inc., 920 F. Supp. 626, 630 (E.D. Pa. 1996).

Peerless' current suit. Peerless's response first argues that because there are 32 other boiler manufacturers in the Michigan case who are not parties in this case the cases are not parallel. However, since additional parties do not destroy the parallel nature of the two proceedings this is not dispositive. See Albright v. Sears, Roebuck and Co., 1995 WL 664742, at *1 (E.D. Pa). Peerless next suggests that, because Chevron is not a party in Michigan, the case is not parallel. But this is not the issue. The question is not whether this case and the Michigan one are parallel with respect to Peerless, H & C, and Chevron, but rather whether they are parallel as to Peerless and H & C. Finally, Peerless asserts that the claims differ. In Michigan, H & C asks for a declaratory judgment on Peerless' obligation to indemnify H & C for any liability it may incur, as well as seeking damages for injuries already realized.

Although H & C is a defendant in this case and a plaintiff in Michigan, this reversal of roles does not alter the parallel nature of the cases. See Ingersoll-Rand Fin. Corp. V. Callison, 844 F.2d 133 (3d Cir. 1988). The actual, substantive claims are not meaningfully different, each positing the same issue: which party is ultimately liable for the defective HTPV pipes. I thus find that the Michigan litigation addresses substantially the same claims as this case and that the two cases are parallel.³

³As discussed in Allied Nut and Bolt, Inc. v. NSS Ind. Inc., 920 F. Supp. 626 (E.D. Pa. 1996), the reasons for assessing whether the state and federal claims are parallel is that the Colorado River abstention doctrine is based not on comity, which

B. Colorado River abstention test

In deciding whether to abstain from hearing this case, I must consider the following six factors:(1) which court first assumed jurisdiction over any property involved,(2) whether the federal forum is inconvenient, (3) desirability of avoiding piecemeal litigation,(4) the order in which the respective courts obtained jurisdiction,(5) whether federal or state law applies, and(6) whether the state court proceedings would adequately protect the federal plaintiff's interests. Trent, 33 F.3d at 225(citing Moses H. Cone Mem. Hosp. V. Mercury Constr. Corp., 460 U.S. 1, 15-16, 23-26 (1983)). No single factor is necessarily determinative in this analysis. Colorado River, 424 U.S. at 818. Only the "clearest of justifications" will warrant the dismissal or stay of a federal action because of a concurrent parallel state action. Id. at 819.

When I apply these factors to this case, their sum does not rise to the level of the "exceptional circumstances" necessary for abstention under Colorado River. Moses H. Cone, 460 U.S. at 19. The first factor is irrelevant, there being no property over which any of the courts have assumed jurisdiction. As to the second factor, I do not see that any forum is more or less convenient than the other. All the parties engage regularly in business nationwide, and some internationally.

might require that the two jurisdictions consider the cases to be identical before abstention would be allowed, but on "whether considerations of 'wise judicial administration' render it inappropriate for them to proceed separately." Id. at 630.

The Third Circuit recently expounded on what sort of analysis the third factor requires. In Ryan v. Johnson the court observed that because every parallel state-federal litigation by definition is piecemeal, if the mere existence of concurrent state-federal litigation satisfied this factor "it is difficult to conceive of any parallel state litigation that would not satisfy the 'piecemeal adjudication' factor and militate in favor of Colorado River abstention." 115 F.3d 193, 198 (3d Cir. 1997). Rather, for this factor to apply "there must be a strongly articulated congressional policy against piecemeal litigation in the specific context of the case under review." Id. (citing Colorado River, 424 U.S. at 819 ("clear federal policy" of "avoidance of piecemeal adjudication" under the governing statute)).

At bar, Chevron argues that to continue this litigation would effectively "be a declaration of open hunting season to each furnace and boiler manufacturer, allowing each to file its own individual suit wherever it may desire on the same issues." (Chevron's Reply Mem. Mot. to Dismiss at 6.) H & C echoes this concern, stating that appliance manufacturers potentially could file suit against it in Iowa, South Carolina, New York, Kansas, and California. (H & C's Reply Mem. Mot. to Dismiss at 4.) Certainly, piecemeal litigation abounds: beyond the parallel litigations in Tennessee and Michigan, there currently are related litigations in Alabama federal court and in Massachusetts and Texas state courts. Nevertheless, the defendants do not

suggest, nor has this court found, a congressional policy that piecemeal litigation should be avoided in this context. "The presence of garden-variety state law issues has not, in this circuit, been considered sufficient evidence of congressional policy to consolidate multiple lawsuits for unified resolution in the state courts." Ryan, 115 F.3d at 198 (citations omitted). Accordingly, I find that the mere existence of piecemeal litigation is an insufficient basis to justify abstention.

The fourth factor, the order in which the respective courts first obtained jurisdiction, is neutral. "[P]riority should not be measured exclusively by which complaint was filed first, but rather in terms of how much progress has been made in the [] actions." Moses H. Cone, 460 U.S. at 21. Each of the cases is at its beginning or early stage, and none has developed so far as to weigh either for or against abstention.

The Ryan court also addressed how courts should view the fifth factor, whether state or federal law applies. The Ryan court made clear that abstention cannot rest on the simple presence of state-law issues in the federal suit. 115 F.3d at 199. Although the presence of federal-law issues weighs against abstention, only rarely will state-law issues weigh in favor of abstention. Id. The Ryan court noted a Second Circuit case which justified abstention partly on the basis that the case raised state-law issues that were novel. The court was "skeptical of [the] rationale, at least as applied to the straightforward state negligence law issues." 115 F.3d at 200.

Thus, the question is whether the state-law issues here go beyond the ordinary and present novel questions best left for adjudication by the state courts.

The current suit by Peerless alleges that defendants manufactured and distributed defective pipes. Although this case involves a large number of state-law issues, and it concerns numerous parties, it remains no more inherently unusual or unsettled than other state law negligence and product liability cases. There is no doubt that this matter has some element of complexity and may well require the resolution of conflicts-of-law questions; however, these are issues that this court normally can, and does, address. Even when considering the scale and implications of this case, the state-law issues here do not amount to "exceptional circumstances" which would suggest that the matter is best decided by the state courts. Thus, this factor does not support abstention.

Finally, as to the sixth factor -- whether the proceeding in the state courts will protect Peerless' interests -- the state courts are amply capable in that regard. Thus, this factor, too, carries little weight. See Ryan, 115 F.3d at 200.

In conclusion, I find that this case does not present the "exceptional circumstances" necessary to stay or dismiss this action.

An order follows.