STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

FCA US LLC,
Plaintiff,

v.

Case No. 19-174160-CB
Hon. James M. Alexander

FAURECIA AUTOMOTIVE SEATING, LLC,
Defendant,

and

FAURECIA AUTOMOTIVE SEATING, LLC,
Third-Party Plaintiff,

v.

ADIENT US LLC,
Third-Party Defendant.
_____/

OPINION AND ORDER RE: FCA US LLC'S MOTION FOR SUMMARY DISPOSITION AND FAURECIA AUTOMOTIVE SEATING, LLC'S CROSS MOTION FOR SUMMARY DISPOSITION

This matter is before the Court on FCA US LLC's Motion for Summary Disposition and Faurecia Automotive Seating, LLC's Cross Motion for Summary Disposition. The Court dispenses with oral argument in accordance with MCR 2.119(E)(3).

By way of background, FCA US LLC ("Plaintiff") and Faurecia Automotive Seating, LLC ("Defendant") entered into an agreement for Defendant's supply of a "JS Seat Set Complete" to Plaintiff. In January 2010, Plaintiff began issuing Purchase Orders to Defendant for the supply of the JS Seat Set Complete for incorporation into certain FCA vehicles such as the Dodge Avenger.

As the supplier of the JS Seat Set Complete, Defendant was responsible for: (1) adding trim, foam, and upholstery to the structural components of the seat, such as Third-Party Defendant Adient US LLC's SCS-II seat structure; and (2) shipping the complete seat to Plaintiff.

In 2017 and 2018, two separate lawsuits were filed against Plaintiff by individuals seeking recovery from personal injuries sustained in rear-end car collisions involving Dodge Avengers. In particular, Demetrio Gutierrez filed a lawsuit in Bexar County, Texas on February 14, 2017 on allegations that he was paralyzed as result of an accident involving his 2014 Dodge Avenger. On February 16, 2018, Darius W. Lewis filed a lawsuit against Plaintiff in Dallas County, Texas on allegations that he suffered serious, permanent spinal and head injuries as a result of an accident involving his 2013 Dodge Avenger. Generally-speaking, both lawsuits concern the alleged, defective design of the driver's seat, which led to serious personal injury of both Mr. Gutierrez and Mr. Lewis following their rear-end car collisions. On May 3, 2019, Plaintiff entered into a Complete Release, Indemnity, Confidentiality, and Settlement Agreement[1] in the Gutierrez lawsuit. The parties have represented that the Lewis lawsuit is currently pending.

In relation to the underlying lawsuits in Texas, Plaintiff asserts that it is entitled to indemnification from Defendant pursuant to its Purchase Orders for the JS Seat Set Complete. According to the Purchase Orders, "Seller [Faurecia] agrees to sell and deliver the goods or services specified in Chrysler's order in accordance with the Terms and Conditions contained in the order, including the clauses referenced in the order, the Chrysler general Terms and Conditions, the terms of this form and any signed documents referred in the order, all of which constitute the entire and final agreement between Chrysler and Seller and cancel and supersede any prior or

[1] The Court has reviewed the sealed Settlement Agreement and related documents filed under seal as Exhibit 18 of Plaintiff's Motion.

contemporaneous negotiations or agreements regarding the order." See Exhibit 2 of Plaintiff's Motion.

Section 11(b) of Plaintiff's Terms and Conditions provides as follows:

> Seller [Faurecia] will defend, indemnify, and hold Chrysler and its subsidiaries, including their respective employees, officers, directors, agents or representatives harmless against all claims, suits, actions or proceedings ("Claims") and pay (i) all liabilities, losses, damages (including without limitation judgments, amounts paid in settlement and other recoveries), (ii) fees and expenses (including without limitation fees of counsel and experts) and (iii) other costs (collectively, "Expenses") in connection with any breach or nonperformance by Seller of the Order, or for injury or death of any person and damage or loss of any property allegedly or actually resulting from or arising out of any act, omission, or negligent work of Seller or its employees, agents or subcontractors in connection with performing the Order, either on Chrysler's property or in the course of their employment (including without limitation, Expenses arising out of, or in connection with, vehicle recall and customer satisfaction campaigns, provided however that if Chrysler and Seller agree upon an Authority Definition Plan ("ADP") for goods supplied under the Order setting forth at a minimum an allocation of responsibility for design-related defects in the goods, then Seller's indemnification obligation for campaign Expenses will be determined based on the ADP). See Exhibit 5 of Plaintiff's Motion.

Pursuant to Section 11(b) of its Terms and Conditions, Plaintiff demanded that Defendant indemnify Plaintiff for the expenses, costs, and damages incurred in relation to the Texas litigation. Plaintiff asserts that it formally tendered the Gutierrez lawsuit claims to Defendant for defense and indemnification on August 8, 2018. Plaintiff then informed Defendant of the settlement recommendations in the Gutierrez matter and sought Defendant's consent to the settlement amount on March 7, 2019. See Exhibit 16 of Plaintiff's Motion. Regarding the Lewis lawsuit, Plaintiff formally tendered the claims asserted in that matter to Defendant on May 15, 2019 for defense and indemnification. See Exhibit 19 of Plaintiff's Motion. With respect to both cases, Defendant refused to indemnify Plaintiff and as a result, Plaintiff initiated this lawsuit against Defendant on May 24, 2019 on one count of Indemnification. Thereafter, Defendant filed its Third-Party Complaint against Adient US, LLC, formerly known as Johnson Controls, Inc., on July 19, 2019.

Subsequently, and in response to the Complaint, both Plaintiff and Defendant filed their respective Motions for Summary Disposition pursuant to MCR 2.116(C)(10). "A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties…in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999); *Quinto v Cross & Peters Co.,* 451 Mich 358, 362; 547 NW2d 314 (1996). "The party opposing a motion for summary disposition has the burden of showing that a genuine issue of disputed fact exists. The opposing party may not rest upon mere allegations or denials in the pleadings but must, by affidavit or other documentary evidence, set forth specific facts showing that there is a genuine issue for trial. MCR 2.116(G)(4)." *Dep't of Soc. Servs. v Aetna Cas. & Sur. Co.*, 177 Mich App 440, 445; 443 NW2d 420 (1989).

As a procedural matter, the Court observes that Third-Party Defendant Adient US LLC has filed a Response in Opposition to FCA's Motion for Summary Disposition. However, the cross motions for summary disposition have been filed in regard to the original Complaint in this matter between Plaintiff FCA US LLC and Defendant Faurecia Automotive Seating, LLC only. Third-Party Defendant is not a party to the original Complaint and as such, it lacks standing to advance any argument for or against the cross motions for summary disposition. To have standing, a party must have a legally protected interest that is in jeopardy of being adversely affected. *Barclay v Zarb*, 300 Mich App 455, 483; 834 NW2d 100 (2013). Michigan law provides:

> The purpose of the standing doctrine is to assess whether a litigant's interest in the issue is sufficient to ensure sincere and vigorous advocacy. Thus, the standing inquiry focuses on whether a litigant is a proper party to request adjudication of a particular issue and not whether the issue itself is justiciable. *Lansing Sch Ed Ass'n*

v Lansing Bd of Ed, 487 Mich 349, 355; 792 NW2d 686 (2010).

Since Third-Party Defendant does not have "a legally protected interest that is in jeopardy of being adversely affected" by the original Complaint, the Court will not consider its Response in Opposition to FCA's Motion for Summary Disposition.

Since the parties' summary disposition motions are cross motions concerning the same issues, the Court shall address them simultaneously. It is undisputed that the clear and unambiguous indemnification provision, namely Section 11(b) in Plaintiff's Terms and Conditions, is the controlling contractual provision in relation to the parties' dispute as to whether Defendant is required to indemnify Plaintiff in the underlying lawsuits.

Michigan law is well-established that "[a] contract must be interpreted according to its plain and ordinary meaning." *Holmes v Holmes*, 281 Mich App 575, 593; 760 NW2d 300 (2008), citing *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 107; 577 NW2d 188 (1998). "Under ordinary contract principles, if contractual language is clear, construction of the contract is a question of law for the court. If the contract is subject to two reasonable interpretations, factual development is necessary to determine the intent of the parties and summary disposition is therefore inappropriate." *Holmes v Holmes*, *supra* at 594; quoting *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997).

"Contracts must be construed as a whole, giving effect to all provisions. Courts must avoid interpretations that would render any part of a contract surplusage or nugatory and must also, if possible, seek an interpretation that harmonizes potentially conflicting terms." *Village of Edmore v Crystal Automation Systems Inc.*, 322 Mich App 244, 263; 911 NW2d 241 (2017). (Citations omitted).

"An indemnity contract is to be construed in the same fashion as other contracts. The extent of the duty must be determined from the language of the contract, itself. All contracts, including indemnity contracts should be construed to ascertain and give effect to the intentions of the parties and should be interpreted to give a reasonable meaning to all of its provisions. This Court has generally observed that if the language of the contract is clear and unambiguous, it is to be construed according to its plain sense and meaning." *Zahn v Kroger Co. of Michigan*, 483 Mich 34, 40–41; 764 NW2d 207 (2009). (Citations omitted).

Pursuant to Section 11(b) of Plaintiff's Terms and Conditions, Defendant is required to indemnify Plaintiff against all claims, suits, actions, or proceedings for injury or death of any person or damage or loss of any property allegedly or actually resulting from or arising out of any act, omission or negligent work of Defendant or its employees, agents, or subcontractors in connection with performing the Purchase Order or in the course of their employment.

In support of its position for indemnification, Plaintiff relies upon the Court of Appeals' three-part analysis in *Grand Trunk W. R.R. v Auto Warehousing Co.*, 262 Mich App 345, 355; 686 NW2d 756 (2004) for an indemnitee to recover indemnification from an indemnitor upon settlement. The indemnitee must demonstrate the following: (1) the existence of an enforceable contract of indemnity; (2) a seasonable tender of defense is made with notice that a settlement will be entered; and, (3) the tender of defense is refused by the indemnitor. If "the tender of defense is refused, an indemnitee need show only potential liability to recover on a contract of indemnity." *Grand Trunk W. R.R., supra.* "Potential liability actually means nothing more than that the indemnitee acted reasonably in settling the underlying suit. The reasonableness of the settlement consists of two components, which are interrelated. The fact finder must look at the amount paid in settlement of the claim in light of the risk of exposure. The risk of exposure is the probable

amount of a judgment if the original plaintiff were to prevail at trial, balanced against the possibility that the original defendant would have prevailed. If the amount of the settlement is reasonable in light of the fact finder's analysis of these factors, the indemnitee will have cleared this hurdle." *Grand Trunk, supra at 355-56.*

Accordingly, Plaintiff argues that there is an enforceable contract of indemnity between the parties. What is more, Plaintiff asserts that the Petitions, as amended, in the Gutierrez and Lewis lawsuits are "controlling documents" when assessing whether Defendant owes Plaintiff a duty of defense and indemnification. Based upon these "controlling documents" as well as Plaintiff's seasonable tender of defense to Defendant with notice that a settlement will be entered, followed by Defendant's refusal of that tender of defense, Plaintiff argues that it has satisfied the *Grand Trunk* three-part analysis to recover indemnification from Defendant following the reasonable settlement[2] in the Gutierrez case.

In support of its assertion that the Petitions, as amended, in the Gutierrez and Lewis lawsuits are "controlling documents" when assessing Defendant's duty of defense and indemnification, Plaintiff defers to the 1978 appellate case of *Hill v Sullivan Equip. Co.*, 86 Mich App 693; 273 NW2d 527 (1978). In *Hill*, however, the Court of Appeals examined the issue of whether the defendant/third-party plaintiff had stated a cause of action for common law indemnity based upon an implied contract with the third-party defendant. The Court of Appeals determined that common law indemnity is only available if the defendant/third-party plaintiff is not "actively" negligent. To determine whether the defendant/third-party party is actively negligent, courts must look to the primary complaint to determine whether the plaintiff alleges active negligence against the defendant/third-party plaintiff. *Hill, supra*. Stated otherwise, "the court examines the primary

[2] Plaintiff maintains that the settlement was reasonable as it was recommended by an independent third-party mediator.

plaintiff's complaint; if that complaint alleges active negligence, the defendant/third-party plaintiff is not entitled to either common law indemnification or implied contractual indemnification." *Johnson v Bundy*, 129 Mich App 393, 398–99; 342 NW2d 567 (1983). See, e.g., *Die Cutter Repair Serv., Inc. v King Seeley Thermos Co.*, 543 F Supp 250, 252 (ED Mich 1982)

Upon review of the present summary disposition motions, the Court is not tasked with determining whether Defendant can establish a common law indemnity claim against a third party. Rather, the dispute at issue here concerns an express indemnification clause between Plaintiff and Defendant. Clearly, the *Hill* case and the Court of Appeals' resultant findings are distinguishable from the fact pattern in this matter. As such, the Court finds that the legal basis for Plaintiff's position that the Petitions, as amended, in the Gutierrez and Lewis lawsuits are "controlling documents" is unfounded.

In this matter, the parties acknowledge the existence of an enforceable contract of indemnity, namely Section 11(b) of the Plaintiff's Terms and Conditions. Central to this case is whether Defendant breached its express indemnification obligations set forth in Section 11(b). "Where parties have expressly contracted with respect to the duty to indemnify, the extent of the duty must be determined from the language of the contract." *Grand Trunk, supra at* 353. "The threshold question whether the fact situation is covered by the indemnity contract generally requires only a straightforward analysis of the facts and the contract terms." *Grand Trunk, supra* at 356-57. Should the Court determine that the "fact situation is covered by the contract of indemnity, the only remaining considerations are whether plaintiff had potential liability and whether the settlement was reasonable." *Grand Trunk, supra* at 358.

Therefore, the Court must first analyze the contractual indemnification provision in conjunction with the facts to determine whether Defendant was contractually obligated to

indemnify Plaintiff. Again, Section 11(b) requires Defendant to defend and indemnify Plaintiff against all claims, suits, actions, or proceedings for injury or death of any person or damage or loss of any property allegedly or actually resulting from or arising out of any act, omission or negligent work of Defendant or its employees, agents, or subcontractors in connection with performing the Purchase Order or in the course of employment. As stated by Defendant, Plaintiff must prove that the injury at issue actually or allegedly resulted from or arose out of Defendant's act, omission, or negligent work or that of its employees, agents, or subcontractors in connection with performing pursuant to the Purchase Order or in the course of their employment.

According to Defendant, any losses suffered by Plaintiff are squarely outside of the scope of Defendant's indemnification obligation as the allegations in both underlying lawsuits concern the SCS-II seat structure, particularly the connecting rod and the recliners, which was designed by Third-Party Defendant, Adient US LLC through its separate contract with Plaintiff.

Gutierrez Lawsuit

In support of its position for indemnification, Plaintiff argues that Defendant's JS Seat Set Complete was designed or performed defectively, which caused the personal injury to Mr. Gutierrez. Plaintiff relies on the allegations contained in the Gutierrez Second Amended Original Petition that "[t]he front seat of the Vehicle in Question was designed in such a way that the seatback would yield in the event of a rear-end collision. However, the design allowed the seatback to yield to such an extent that it created a risk that a driver or passenger would become out of position, ramp over the seatback, and make contact with the interior of the car in a rear-impact collision." See Exhibit 7 of Plaintiff's Motion.

Plaintiff offers the FCA Seat Set Complete Original Purchase Order as Exhibit 2 to demonstrate that in July 2010, Plaintiff began issuing Purchase Orders for Defendant's supply of

the JS Seat Set Complete for incorporation into certain vehicles. Plaintiff notes further that the JS Seat Set Complete for the Dodge Avengers of both Mr. Gutierrez and Mr. Lewis were supplied to Plaintiff by Defendant. Since Defendant consented to Plaintiff's General Terms and Conditions, as referenced in the Purchase Order, Plaintiff asserts that Defendant contractually agreed to defend and indemnify Plaintiff against all damages allegedly or actually arising out of any act, omission, or negligent work of Defendant in supplying the JS Seat Set Complete. See Exhibit 5 of Plaintiff's Motion.

Plaintiff also refers to the Faurecia Design Drawing of Seat Set Complete to argue that the JS Seat Set Complete consists of a back frame, cushion panel, manual and power adjuster, seat back recliner manual and power adjuster, lumbar assembly, and other structural components. See Exhibit 1 of Plaintiff's Motion. It is Plaintiff's position that Defendant is liable under the subject indemnification clause because it was responsible for the design of the overall seating system.

In opposition, Defendant asserts that the allegations in the Gutierrez lawsuit concern the seat structure that was defectively designed and/or manufactured by Third-Party Defendant, Adient US LLC, as opposed to the JS Seat Set Complete. Defendant refers to the following allegations within the Second Amended Original Petition in the Gutierrez lawsuit: "[t]he seat which failed (hereinafter "Seat in Question") was manufactured and supplied to FCA by Johnson Controls, Inc. (hereinafter "JCI")…The front seat of the Vehicle in Question was designed in such a way that the seatback would yield in the event of a rear-impact collision. However, the design allowed the seatback to yield to such an extent that it created a risk that a driver or passenger would become out of position, ramp over the seatback, and make contact with the interior of the car in a rear-impact collision. The design allowing the seatback to yield to this extent creates a high likelihood of grave injury but provides no utility…The Vehicle in Question was designed in such

a way that its restraint system could not prevent the driver or front-seat passenger from being out of position in the event of an initial rear-impact collision…safer alternative designs existed which would have prevented or significantly reduced the risks created by the defective seatback and/or the defective restraint system without substantially impairing the product's utility." See Exhibit 7 of Plaintiff's Motion; Paragraphs 4.4, 5.3, 5.5, and 5.6 of the Second Amended Original Petition.

The Gutierrez plaintiffs alleged further that "[t]he Vehicle in Question's seat and restraint system deviated from FCA's planned specifications or planned output in terms of quality or construction, rendering the Vehicle in Question defective…FCA was aware of the risk of ramping/excursion as a result of seatback failure in a rear-impact collision." See Exhibit 7; Paragraph 5.9 and 5.11 of the Second Amended Original Petition. The Gutierrez plaintiffs subsequently reiterated the following allegations: "[a]t the time the Seat in Question left the hands of JCI, said component part contained one or more design defects…The Seat in Question was designed in such a way that the seatback would yield in the event of a rear-impact collision. However, the design allowed the seatback to yield to such an extent that it created a risk that the driver or passenger would become out of position, ramp over the seatback, and make contact with the interior of the car in a rear-impact collision. A design allowing the seatback to yield to this extent creates a high likelihood of grave injury but provides no utility. JCI could have eliminated this unsafe characteristic." See Exhibit 7; Paragraphs 6.2 and 6.3 of the Second Amended Original Petition.

Defendant argues that the design defect, which led to the injuries sustained by both Mr. Gutierrez and Mr. Lewis in their respective rear-end car collisions, relates to Third-Party Defendant's SCS-II seat structure and not the JS Seat Set Complete. Defendant offers the September 14, 2018 report by expert Steven E. Meyer, P.E. (filed under seal) that was prepared

for the Gutierrez lawsuit. As expressly referenced by Defendant in its motion, Mr. Meyer determined on page 21 of his report that "the recliners mechanically and catastrophically failed due to unintended actuation of the recliners via occupant loading to the connector rod." Defendant also expressly references Mr. Meyer's statement in his Summary of Conclusions that "[t]he driver's seat failure in the subject vehicle was due to and/or associated with a failure of the recliner mechanisms to remain engaged." See Exhibit 17 of Defendant's Motion and Response.

In consideration of Mr. Meyer's conclusions, Defendant asserts that the recliners and connector rod, namely components of the SCS-II seat structure, were identified as the cause of the driver's seat failure. Defendant also presents the deposition testimony of Michael Butler, a manager in the FCA US seating group, wherein Mr. Butler testified that "the connector rod or torque tube was designed by JCI, [and] it was manufactured by JCI."

Defendant next offers as Exhibit 7 to its motion and response, the March 31, 2002 Statement of Work (filed under seal) between Plaintiff and Johnson Controls, Inc. concerning the Common Seat Structure SCS II. In Section 6.1 of the Statement of Work, the general responsibilities of Johnson Controls, Inc. were to design, develop and supply the seat structure, namely the SCS-II seat structure. In the SCSII Seat Structure Commercial Agreement (filed under seal) between Plaintiff and Johnson Controls, Inc., the SCS-II seat structure is defined as "a front seat structure consisting of a back frame, cushion pan, manual and power adjuster, seat back recliner manual and power, lumbar assembly, and other structural components including fasteners." See Exhibit 2 of Defendant's Motion and Response.

Paul Plantinga, a representative of Plaintiff, testified in his deposition as follows: "[w]e call the seat structure the SCS-II, and that was designed and developed separately, under PS-7000, between Chrysler and JCI back prior to the JS even going into production." See Exhibit 1 of

Defendant's Motion. Further, Mr. Butler testified that to his knowledge, Defendant was not involved in the design of the recliners for the SCS-II seat structure. See Exhibit 3 of Defendant's Motion. Mr. Butler also attests in his Affidavit that "[t]he SCS-II and the seat complete ultimately installed in the 2014 Avenger were 'Outside Design and Development Items.'" See Exhibit 4 of Defendant's Motion. "This process standard describes the administrative aspects of outside (supplier) designed and developed items (ODD Box Items). An ODD Box Item is a part, assembly, component, or system that is developed by a supplier or jointly by a supplier and Chrysler LLC." See the Chrysler LLC Process Standard (filed under seal); Exhibit 6 of Defendant's Motion.

Mr. Plantinga testified that Plaintiff was "using the directed source of JCI for the SCS-II structure [and] Faurecia is doing the assembly; they're doing the foam and trim, the fabric, the styling of the seat." More specifically, "JCI was designing, developing and testing the SCS-II seat structure, which included the adjusters, the cushion pan assembly, the recliner mechanisms, the back assembly, and they were designing that seat structural system to specifications that were provided to them by Chrysler." See Exhibit 1 of Defendant's Motion. According to Robert Parmann, the former Director of Engineering for Defendant, he attests in his Affidavit that "FCA mandated that Faurecia use the SCS-II seat structure from Adient as a directed component in Faurecia's JS41 seat complete." Mr. Parmann defined a directed component as "a component part that a supplier is required by FCA to use in the supplier's own product." See Exhibit 13 of Defendant's Motion.

According to the Statement of Work between Plaintiff and Defendant (filed under seal), Defendant argues that the directed component suppliers, like Third-Party Defendant, are responsible to Plaintiff, and not Defendant, for tasks including meeting design objectives and specifications, component testing, and product validation. See Exhibit 12 of Defendant's Motion.

Moreover, Defendant argues that Plaintiff even warrants the parts of the directed component suppliers to Defendant.

In opposition, Plaintiff argues that the Statement of Work between the parties is unsigned and incomplete. As such, it never became a part of the parties' fully integrated Purchase Order and/or Terms and Conditions. Plaintiff also contends that Defendant was intimately involved in the design, development, and testing of the SCS-II seat structure. For example, Defendant would attend weekly seat structure design meetings as required by Plaintiff since the seat structure was to be utilized in different vehicles.

Plaintiff offers the deposition testimony of Benjamin Reisner, one of the leading project engineers for Third-Party Defendant, who testified that "[t]he core open issues list was reviewed weekly and then distributed to the SDT, the simultaneous development team, within Johnson Controls, also with our customers. Those would be the various JITs, the complete seat set providers, and also to Chrysler engineering, as well." Mr. Reisner indicated that the JIT[3] customers were Magna and Defendant. See Exhibit F of Plaintiff's Response. Plaintiff emphasizes Mr. Reisner's description of Defendant as a customer of Third-Party Defendant Adient US LLC.

Plaintiff also defers to the deposition testimony of Robert Parmann, who testified in relation to the FS cushion update that Defendant would be preparing for "measurements and any changes and testing that would have to gone on with that to prove out the changes." See Exhibit G of Plaintiff's Response. Based upon the deposition testimony of both Mr. Reisner and Mr. Parmann, Plaintiff asserts that Defendant was responsible for the design, development, and assembly of the seat structure into the overall seating system supplied to Plaintiff.

[3] Just-In-Time (JIT) suppliers.

Having reviewed Mr. Parmann's testimony, however, the Court believes that Mr. Parmann was referring to cushion and trim changes that Defendant was responsible for as the supplier of the JS Seat Set Complete. Prior to that line of questioning, Mr. Parmann testified that if the springs related to the lumbar mat were mounted differently, that issue would have to go "through Chrysler to JCI to get those changes to the SCSII frame." See Exhibit G of Plaintiff's Response. Furthermore, Mr. Butler testified that Third-Party Defendant Adient US LLC maintained the design and design responsibility as well as any process changes that were requested in relation to the SCS-II seat structure. See Exhibit 1 of Defendant's Reply.

Even in terms of testing, Mr. Parmann attests in his Affidavit that "[t]he testing that Faurecia performed on the JS41 seat complete was testing that was agreed upon by FCA and Faurecia and set forth in Faurecia's Design Verification Plan & Report, or DVP&R. The testing that Faurecia performed on the JS41 seat complete was not to be duplicative of the testing that Adient performed on the SCS-II seat structure, and it did not include the seat structure tests set forth in FCA's Front Seat Structure Performance Standard DC-10859 that Adient performed." Rather, "Faurecia's testing was defined in scope…to confirm that neither its assembly of the seat complete nor the elements it added, disturbed the structural integrity of the SCS-II seat structure." See Exhibit 13 of Defendant's Motion. Mr. Butler also acknowledged that Plaintiff would look to the directed supplier for resolution of any performance issue related to its component. See Exhibit 3 of Defendant's Motion.

Finally, Defendant refers to Plaintiff's Response to Co-Defendant Johnson Controls, Inc.'s Motion for Summary Disposition in the Gutierrez lawsuit wherein Plaintiff acknowledges that the Gutierrez plaintiffs' "defect theory is focused on recliner mechanisms and the crosstalk tube [also referred to as the connector rod]." Plaintiff made the following assertion on page 7of its Response:

> For the Court's reference, a recliner mechanism, which is located on both sides of the seat, is a 'mechanism that's locked, and when you release it with an actuation lever, it allows the customer to adjust their back frame position to a different angle for comfort and convenience.' The crosstalk tube is part of the back frame and connects the recliner mechanism on one side of the seat (outboard side) to the recliner mechanism on the other side of the seat (inboard side). When the lever on the outboard recliner mechanism is actuated by the occupant, the crosstalk tube transmits that action to the inboard recliner mechanism thereby simultaneously controlling the locking and unlocking function of both recliner mechanisms. Adient designed/built those parts or had sub-suppliers design/build those parts, and Adient assembled the parts into the SCS-II seat structure that it ultimately supplied to FCA US for installation into vehicles. See Exhibit 18 of Defendant's Motion.

In Plaintiff's Response to Co-Defendant Johnson Controls, Inc.'s Motion for Summary Judgment in the Gutierrez case, Plaintiff also responded that the Gutierrez parties' "defect allegations in this automotive product-liability lawsuit focus on a driver's seat structure that Co-Defendant Johnson Controls, Inc., now known as Adient US LLC (hereinafter "Adient" or "JCI"), designed, tested, and manufactured." See Exhibit 18 of Defendant's Motion. On page 2 of Plaintiff's Objections and Response to Co-Defendant/Cross-Defendant Johnson Controls, Inc.'s Sur-Reply in the Gutierrez lawsuit, Plaintiff maintains, "the fact is that Mr. Meyer contends the specific component part that Adient designed is defective, which is the reason that FCA US has asserted a cross-claim against Adient for indemnity." See Exhibit 19 of Defendant's Motion.

In their Motion to Strike RTP Designations, the Gutierrez plaintiffs relied on certain deposition testimony to argue that "Faurecia was not involved with the design and development of the SCS-II structure. (Faurecia was ordered to use the seat structure from Johnson Controls). It simply assembled the seat (adding foam, trim, fabrics, etc.) pursuant to the specifications. There is no evidence that the defects in the seat were attributable to Faurecia or that Faurecia acted negligently." See Exhibit 21 of Defendant's Motion.

The evidence that has been presented unequivocally demonstrates that the alleged cause of injury to Mr. Gutierrez concerns the purportedly defective SCS-II seat structure that was designed

and manufactured by Third-Party Defendant as a directed component or outside designed and developed product under a separate contract to which Defendant was not a party. Defendant was required to incorporate Third-Party Defendant's SCS-II seat structure into the JS Seat Set Complete without any authority to test or change that directed component. Stated otherwise, the Court finds that there is no question of material fact that Defendant was not responsible for the design or manufacture, modification, or testing of the SCS-II seat structure, specifically the recliners and connector rods, which was the alleged cause of injury to Mr. Gutierrez. Accordingly, the Court finds that Plaintiff has not proven that the injury to Mr. Gutierrez actually or allegedly resulted from Defendant's supply of the JS Seat Set Complete.

The Court next examines whether the injury to Mr. Gutierrez actually or allegedly resulted from any act, omission, or negligent work of a subcontractor of Defendant in the course of its employment. As such, the Court must determine the nature of the contractual relationship between the parties. The dispute here is whether Third-Party Defendant, Adient US LLC, is a subcontractor of Defendant to impose liability upon Defendant under the indemnification clause.

Plaintiff argues that Third-Party Defendant is a subcontractor of Defendant as its Tier II supplier of the SCS-II seat structure. Plaintiff attaches the Purchase Orders of Defendant as Exhibit B in support of its position. Plaintiff also points out that Defendant has filed a Third-Party Complaint against Adient US LLC for defense and indemnification under its Terms and Conditions of Purchasing. In consideration of Defendant's claim for indemnification against Adient US LLC, Plaintiff argues that Third-Party Defendant is in fact a subcontractor of Defendant.

In reply, Defendant argues that it has never represented that Third-Party Defendant was its subcontractor. Defendant acknowledges that it issued Purchase Orders to Third-Party Defendant

for the supply of the SCS-II seat structures. Even if Third-Party Defendant is considered a supplier of a directed component, Defendant argues that a supplier is not the same as a subcontractor.

It is Defendant's position that Third-Party Defendant Adient US LLC is not its subcontractor, but rather Third-Party Defendant designed the SCS-II seat structure pursuant to a contract with Plaintiff. In his Affidavit, Mr. Butler attests that Third-Party Defendant "was awarded Tier One responsibility for SCS-II seat structures, which involved certain roles and responsibilities as to JCI related to the SCS-II seat structure and the seat complete into which it was to be incorporated." See Exhibit 4 of Defendant's Motion.

Mr. Butler testified further in his deposition that Third-Party Defendant was "awarded the front seat structure, they were sourced the front seat structure business for SCSII. Now, that included the cushion adjuster made by Brose, Schukra made the lumbar system, and then JCI sourced, you know, other suppliers for different components, so they were awarded the Tier One meaning that they were the supplier of record for the front seat structure." See Exhibit 3 of Defendant's Motion.

Mr. Plantinga also testified that "the SCS-II structure [sic] was designed and developed by JCI, separate from Faurecia. …At the point in time that the SCS-II structure was being designed and developed, Faurecia didn't even have the business to supply the JS seats." Since the SCS-II structure [which includes the recliners and the connecting rod] was a directed component by Plaintiff to Defendant, "[b]asically that's Chrysler telling Faurecia these items you are not to design or develop yourself. You're to purchase them from these entities and include them in the seat complete." Mr. Plantinga acknowledges that Defendant could not change the recliners or connecting rod even if it had wanted to, based upon the pre-source package and the fact that they were directed components. See Exhibit 1 of Defendant's Motion.

Based upon the testimony of Mr. Butler and Mr. Plantinga, the Court finds that Third-Party Defendant was not a subcontractor of Defendant. Clearly, Third-Party Defendant Adient US LLC did not perform any work on behalf of Defendant. Moreover, Defendant had no authority over the design, manufacture, or testing of Third-Party Defendant's SCS-II seat structure. Rather, Third-Party Defendant designed and developed the SCS-II seat structure as a directed component pursuant to its contract with Plaintiff. Third-Party Defendant simply supplied that seat structure to Defendant for incorporation into the JS Seat Set Complete. Based upon the foregoing, no evidence has been presented by Plaintiff to demonstrate that Third-Party Defendant was a subcontractor of Defendant in order to hold Defendant liable for indemnification under Section 11(b) of Plaintiff's Terms and Conditions.

Upon review of the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, the Court finds that the proffered evidence fails to establish a genuine issue regarding the material fact that Defendant is not liable or required by Section 11(b) of Plaintiff's Terms and Conditions to indemnify Plaintiff in relation to the Gutierrez lawsuit. Accordingly, Defendant is entitled to judgment as a matter of law.

Lewis Lawsuit

The Court is aware that the Lewis lawsuit is currently pending. In their Second-Amended Petition, the Lewis plaintiffs allege that "[a]t the time the 2013 Dodge Avenger in question was introduced into the stream of commerce, it contained a defect in the design of the occupant restraint system, of which the driver's seat assembly is an integral part, which failed to restrain Mr. Lewis in the driver's seat area during the subject crash. This design defect rendered the Avenger unreasonably dangerous as designed, taking into consideration the utility of the seat and the risk involved in its use in a crash." The Lewis plaintiffs allege further that "[t]he Avenger's driver's

seat was defective in design at the time it left possession of JCI, which defect was a producing cause of the injuries and damages to Darius W. Lewis." See Exhibit 22 of Defendant's Motion.

As noted previously by Plaintiff, the Lewis plaintiffs have recently filed a Third Amended Petition in which they name Defendant as a party. Plaintiff maintains that the Third Amended Petition contains allegations regarding the defective design of the occupant restraint system, of which the driver's seat assembly is an integral part. Further, the Third Amended Petition alleges that "[t]he Avenger driver's seat was defective in design at the time it left the possession of Faurecia." See Exhibit A of Plaintiff's Response. Based upon these allegations, it is Plaintiff's position that Defendant is required to defend and indemnify Plaintiff with respect to any allegations of injury actually or allegedly arising out of any act, omission, or negligence of Defendant or its subcontractors in connection with the JS Seat Set Complete.

Conversely, Defendant points out that the Gutierrez plaintiffs' expert, Steven E. Meyer, P.E., was also utilized as an expert in the Lewis lawsuit. Defendant offers Mr. Meyer's April 10, 2020 report as Exhibit 23 to demonstrate that his conclusions in the Lewis lawsuit were almost identical to his conclusions in the Gutierrez lawsuit. The Court has reviewed Mr. Meyer's April 10, 2020 report, which is sealed, and will simply refer to the third and fourth full paragraphs on page 38 of the report as well as the fifth bullet point on page 55 to support Defendant's position that the expert attributes the cause of Mr. Lewis' injury to the defective design of the SCS-II seat structure as opposed to Defendant's work on the JS Seat Set Complete. See Exhibit 23 of Defendant's Motion and Response.

In contrast, Plaintiff presents the expert report of William R. Tighe, P.E., Adient US LLC's expert in the Lewis lawsuit, who stated that "starting in 2011, with the Faurecia introduced softer lumbar suspension and other changes noted above, the Faurecia supplied Dodge Avenger and

Chrysler 200 seats featured substantial changes and alterations." See Exhibit E of Plaintiff's Response. The Court notes for the record that it has reviewed Mr. Tighe's report, which has been filed under seal.

With regard to Plaintiff's indemnification claim against Defendant as it relates to the Lewis lawsuit, the Court has reviewed the evidence presented, including, but not limited to, the expert reports of both Mr. Meyer and Mr. Tighe, and finds that there are sufficient questions concerning the underlying, material facts involved in the Lewis lawsuit such that summary disposition is not appropriate at this time.

Based on the foregoing analysis, Defendant's Cross Motion for Summary Disposition under MCR 2.116(C)(10) is GRANTED as to the Gutierrez lawsuit and DENIED as to the Lewis lawsuit. Furthermore, Plaintiff's Motion for Summary Disposition under MCR 2.116(C)(10) is DENIED in its entirety.

Accordingly, Plaintiff's claim for Indemnification against Defendant is dismissed as to the Gutierrez lawsuit only.

IT IS SO ORDERED.

October 6, 2020
Date

/s/ James M. Alexander
Hon. James M. Alexander
Circuit Court Judge