

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STATE FARM MUTUAL AUTOMOBILE	:	CIVIL ACTION
INSURANCE COMPANY	:	
	:	
v.	:	
	:	
GLORIA BECKHAM-EASLEY, <u>et al.</u>	:	NO. 01-5530

**MEMORANDUM AND ORDER**

HUTTON, J.

September 18, 2002

Presently before the Court is the Defendant's Motion to Stay Civil Discovery Pending Criminal Proceedings (Docket Nos. 35, 36, 42).

**I. BACKGROUND**

On November 1, 2001, Plaintiff State Farm filed an initial complaint, alleging diversity of citizenship and damages in excess of \$75,000 against Defendants. This suit arises from an alleged staged car accident, which resulted in the submitting of phony medical bills and reports in order to obtain payment from Plaintiff on behalf of Defendants and their patients. On January 4, 2002, defendants Center City Medical, Strawberry Mansion, Joseph Davidson and Phyllis Davidson filed a Motion to Dismiss. On May 6, 2002, Plaintiff filed a Motion to Amend the Complaint. Upon the Court granting this motion, Plaintiffs filed an Amended Complaint, adding

several Defendants and adding a cause of action under RICO, 18 U.S.C. §§ 1962(c) and 1964(c). Defendants' Motion to Dismiss was subsequently denied as moot.

The United States Attorney's office is currently investigating two defendants, Joseph Davidson, D.C. and Brian Torchin, D.C., to whom target letters were sent. Neither the scope nor the particular issues surrounding the investigation are known. Moreover, there have been no criminal indictments. No other Defendants are subject to this investigation.

On June 20, 2002, defendants filed a Motion to Stay Civil Discovery Pending Disposition of Criminal Proceedings. Plaintiffs filed a Motion asking this Court to Deny the Stay.

## **II. DISCUSSION**

It is within the discretion of the court to grant a stay when justice so requires. See Walsh Securities, Inc. v. Cristo Property Management, LTD., 7 F. Supp 2d. 523, 526 (citing United States v. Kordel, 387 U.S. 1, 12 n. 27, 90 S.Ct. 763, 25 L.Ed.2d 1 (1970)). "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with the economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." Texaco, Inc. v. Borda, 383 F.2d 607,608 (3d Cir. 1967) (quoting Landis v. North American Co., 299 U.S. 248,

254-55, 57 S. Ct. 163, 81 L. Ed. 153 (1936)); see also Saunders v. City of Philadelphia, No. 97-3251, 1997 WL 400034 (E.D. Pa. July 11, 1997).

A stay of a civil case is an "extraordinary remedy." Walsh Securities, Inc., 7 F. Supp 2d. at 526 (quoting Weil v. Markowitz, 829 F.2d 166, 174 n. 17 (D.C. Cir. 1987)). The factors a court must consider in determining whether to grant a stay include: 1) the extent to which the issues in the criminal and civil cases overlap; 2) the status of the case, including whether the defendants have been indicted; 3) the plaintiff's interest in proceeding expeditiously weighed against the prejudice to plaintiff caused by a delay; 4) the private interests of and burden on the defendants; 5) the interest of the court; and 6) the public interest. Walsh Securities, Inc., 7 F. Supp. at 526-27; see also Golden Quality Ice Cream Co. v. Deerfield Specialty Papers, 87 F.R.D. 53, 56 (E.D. Pa. 1980).

#### **A. Similarity of Issues**

The degree to which issues in simultaneous civil and criminal proceedings overlap is considered the most important threshold issue when determining whether or not to grant a stay. Walsh Securities, Inc., 7 F. Supp 2d. at 527 (citing Milton Pollack, Parallel Civil and Criminal Proceedings, 129 F.R.D. 201, 203 (1989)). There are no criminal proceedings pending in the instant case. The defense simply asserts that the "complaint is similar to

allegations currently under investigation by an investigating Grand Jury." The only information concerning the issues under investigation is derived from target letters received by two defendants.<sup>1</sup> Moreover, most of the Defendants who have joined in this motion to stay have yet to file an answer. The absence of an indictment coupled with the fact that this Court does not have an answer before it, impedes the Court's ability to discern the extent to which the legal and factual issues in the instant case are related to those under investigation. See C3, Inc. v. The United States, 4 Cl. Ct. 790, 792 (1984) (requiring defendants to file an answer to determine the extent to which issues overlap). Consequently, the first factor weighs in favor of denying the stay.

#### **B. State of Parallel Criminal Proceedings**

A court is most likely to grant a stay of civil proceedings where an indictment has been returned. The potential for self-incrimination is the greatest at this stage. Moreover, because the Speedy Trial Act requires the swift resolution of criminal trials, the burdens of delay on the civil litigant is lessened. See Walsh Securities, Inc., 7 F. Supp. at 527. Conversely, because the risk of self-incrimination is reduced at the pre-indictment stage, and because of the uncertainty surrounding when, if ever, indictments

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<sup>1</sup> The defense asserts that Defendants Joseph Davidson, Brian Torchin, D.C., and Christopher Boucher, D.C., have received target letters and that they are defendants in both actions. Plaintiffs' brief only refers to Davidson and Torchin as recipients of such letters. This discrepancy is moot as the Court granted Plaintiff's Motion for Judgment of Default against Defendant Boucher.

will be issued, as well as the effect of the delay on the civil trial, pre-indictment requests for a stay are typically denied. Walsh Securities, Inc., 7 F. Supp. at 527 (citing United States v. Private Sanitation Indus. Ass'n, 811 F. Supp. 802, 805 (E.D.N.Y. 1992)). When a defendant filing a motion to stay has not been indicted, the motion may be denied on that ground alone. United States of America v. Private Sanitation Industry Association of Nassau/Suffolk, Inc., 811 F. Supp. 802 (2nd Cir. 1992); see also S.E.C. v Dresser Indus., Inc., 628 F.2d 1368, 1376 (D.C. Cir. 1980) (holding that the purpose of staying civil proceedings pending criminal proceedings is far weaker when no indictment has been issued).

In the instant case, no indictments have been issued. Only two Defendants, Joseph Davidson and Brian Torchin, D.C. have received target letters. Accordingly, this factor weighs in favor of the plaintiff.

### **C. Prejudice to the Plaintiff**

The Court may insist that the Plaintiff establish more "prejudice" than simply "the right to pursue his case and vindicate his claim expeditiously. See, e.g., Golden Quality Ice Cream Co., 87 F.R.D. at 56. Courts have noted, however, that "it would be perverse if plaintiffs who claim to be the victims of criminal activity were to receive slower justice than other plaintiffs because the behavior they allege is sufficiently egregious to have

attracted the attention of the criminal authorities." Sterling National Bank v. A-1 Hotels International, Inc., 175 F. Supp 2d. 573, 575 (2nd Cir. 2001).<sup>2</sup> Defendants anticipate that an indictment will be issued within 120 days from the filing of this Motion to stay. As of yet, 80 days later, there is no stronger indication that an indictment will be issued. The indefiniteness surrounding the criminal investigation places a burden on the plaintiffs.

The threat of the dissipation of assets during a stay has been recognized as a substantial burden for plaintiffs. See Citibank, N.A., v. Hakim, No. 92 CIV. 6233, 1993 WL 481335 (S.D.N.Y. Nov. 18, 1993). Here, the Plaintiffs assert that "defendants have sold real estate since the pendency of this action, have liquidated other assets, have transferred assets outside the country and have placed assets in the names of other individuals and/or entities" in anticipation of a verdict against them. Such actions would prevent the Plaintiff from having any meaningful recovery in the event that there is a judgement in their favor. As such, the prejudice to the plaintiff in this case is great.

#### **D. Burden on Defendants**

When there are simultaneous criminal and civil proceedings, the defendant faces the difficult choice of asserting his Fifth

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<sup>2</sup> See also Paine, Webber, Jackson & Curtis, Inc. v. Malon S. Andrus, Inc., 486 F. Supp. 1118, 1119 (S.D.N.Y. 1980) (stating that because the "defendant's conduct also resulted in a criminal charge against him should not be availed of him as a shield against a civil suit and prevent plaintiff from expeditiously advancing its claim").

Amendment rights at the risk of losing a civil trial, or waiving these rights to defend himself in civil proceedings at the risk of incriminating himself. See Walsh Securities, Inc., 7 F. Supp. at 528. The Supreme Court, however, has held that it is not unconstitutional to place defendants in this position. See Baxter v. Palmigiano, 425 U.S. 308, 318-319, 96 S.Ct. 1551, 47 L.Ed.2d 810 (1976). At the pre-indictment stage, while many risks to the civil defendant are present, such risks are more remote than for an indicted defendant, making it "inherently unclear to the Court just how much the unindicted defendant really has to fear." Sterling National Bank, 175 F. Supp. 2d at 577. Where civil defendants are not subject to criminal charges, therefore, the "inappropriateness of a stay is manifest." In re Mid-Atlantic Toyota antitrust Litigation, 92 F.R.D. 358, 360 (D. Md. 1981).

#### **E. Interest of the Court**

The Court has an interest in managing its caseload with efficiency. Walsh Securities, Inc., 7 F. Supp. at 528. This case is shrouded with uncertainty as there is no way to predict when, if ever, the criminal investigation will ripen into an indictment or end without one. This "limbo" status weighs against a stay as "it is unrealistic to postpone indefinitely the pending action until criminal charges are brought or the statute of limitations has run for all crimes conceivably committed by" the defendants. Hakim, 1993 WL 481335 at \* 2.

**F. Public Interest**

There is a public interest in having financial institutions promptly recover misappropriated funds, especially when weighed against the interests of defendants facing speculative criminal charges. See Hakim, 1993 WL 481335 at \* 2. This is especially true in the instant case, as the cost of insurance fraud is eventually taken on by the public.

**III. CONCLUSION**

For the foregoing reasons, the Defendant's motion is **DENIED**.  
An appropriate order follows.

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 v. :  
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O R D E R

AND NOW, this 18<sup>TH</sup> day of September, 2002 upon consideration of Defendants' Motion to Stay Civil Discovery Pending Disposition of Criminal Proceedings (Docket No. 35, 36, 42), and Plaintiff's Response to Defendant's Motion to Stay Civil Discovery Pending Disposition of Criminal Proceedings (Docket No. 38), IT IS HEREBY ORDERED that the Defendants' Motion is **DENIED**.

The Court further ORDERS that in light of the denial of Defendants' Motion to Stay, Defendants Trina Ahmad and Sean Ahmad have 20 days to file an Answer to Plaintiff's Amended Complaint.

BY THE COURT:

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HERBERT J. HUTTON, J.