

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

GLADES PHARMACEUTICALS, LLC

v.

CALL, INC. d/b/a PHARM FORCE

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CIVIL ACTION  
NO. 04-4259

O'Neill, J.

March 9, 2005

**MEMORANDUM**

**I. INTRODUCTION**

Plaintiff Glades Pharmaceuticals LLC instituted this action in September 2004 alleging that defendant Call, Inc. d/b/a Pharm Force conspired with Brendan J. Murphy, plaintiff's former employee, to misappropriate Glades' property, infringe on Glades' copyrighted material, and divert Glades' business opportunities. Now before me is defendant's motion for an order dismissing this action or in the alternative, to stay this action. For the reasons stated below I will deny defendant's motion to dismiss for failure to join an indispensable party and will grant defendant's motion to stay proceedings pending disposition of concurrent federal litigation.

**II. BACKGROUND**

Glades is a Georgia-based pharmaceutical company that develops, markets and distributes non-branded versions of branded dermatological products and is a wholly owned subsidiary of Florida-based Stiefel Laboratories, Inc. Pharm Force is a Pennsylvania-based pharmaceutical sales and distribution company that competes against Glades. Murphy, a Georgia resident,

served as Glades' President from 1994 until 2002 and as Glades' Vice President of Business Development and Outsourcing from January 2003 until May 2, 2003, when he resigned from the company. During his employment with Glades, Murphy allegedly entered into several written agreements with the company including a confidential disclosure agreement and a consulting agreement both of which include non-compete and/or confidentiality provisions. At some point following his departure from Glades, Murphy started his own Georgia-based pharmaceutical company, River's Edge Pharmaceuticals, LLC.

Glades alleges that Murphy entered into discussions with Pharm Force regarding the pursuit of a joint business venture to market and distribute generic pharmaceuticals in competition with Glades while he was Glades' Vice President of Business Development and Outsourcing. Glades further asserts that, pursuant to their agreement, Murphy and Pharm Force pursued an opportunity to distribute a generic version of Nizoral brand shampoo with Janssen Pharmaceuticals, Inc. at Glades' expense and while actively concealing their activities from Glades. Glades alleges that, in order to pursue the Nizoral generic opportunity, Murphy and Pharm Force misappropriated a PowerPoint presentation addressing the market potential for Nizoral generic that had been created by Glades' President Jeffrey Thompson several months prior to Murphy's termination. Glades obtained a certificate of registration for the presentation from the Copyright Office of the United States on February 13, 2004.

On August 22, 2003, Murphy and River's Edge filed suit against Glades and Stiefel in Gwinnett County, Georgia seeking a declaratory judgment regarding the scope and validity of his confidentiality and non-compete obligations to Glades. There are no claims in the Gwinnett County action regarding copyright infringement, breach of fiduciary duty, conversion, or unjust

enrichment. Pharm Force is not a party to the Gwinnett County action. Before a hearing on plaintiffs' motion for a temporary restraining order was held, Glades and Stiefel removed the Georgia action to the United States District Court for the Northern District of Georgia. The District Court found that removal was improper and remanded the case to the Gwinnett County Superior Court. On July 2, 2004, following remand, Murphy moved for partial summary judgment as to what obligations he has to Glades with respect to non-competition, use of certain business opportunities and of certain allegedly confidential information. Murphy also filed a motion for an immediate trial on any issues remaining following disposition of the motion for partial summary judgment. The motion for partial summary judgment is now fully briefed.

On May 19, 2004, Glades and Stiefel filed suit against Murphy in the United States District Court for the Southern District of Florida for damages arising from alleged breaches of the non-compete and confidentiality provisions implicated in the Georgia action. Glades' complaint alleged copyright infringement with respect to the Glades PowerPoint presentation that Murphy allegedly misappropriated, breach of fiduciary duty/duty of loyalty, conversion and unjust enrichment. The Florida action was dismissed on the grounds of *forum non conveniens* on November 30, 2004 without prejudice to Glades' right to pursue its claims against Murphy and Pharm Force in Georgia.

On December 30, 2004, Glades filed a complaint against Murphy and River's Edge in the United States District Court for the Northern District of Georgia. The complaint in the Northern District of Georgia action is virtually identical to the complaint previously filed in the Southern District of Florida. Pharm Force was not named a party in either the Southern District of Florida or Northern District of Georgia actions, presumably because there is no basis for alleging

personal jurisdiction over it in those Districts. Pharm Force declined Glades' request that it consent to jurisdiction in Florida so the claims against it could be tried in the same forum as the claims against Murphy and River's Edge. A similar request presumably would be denied as to the action in the Northern District of Georgia.

Glades filed this action against Pharm Force on September 13, 2004. With the addition of a conspiracy claim, the causes of action asserted against Pharm Force in this action are identical to those asserted against Murphy in the Florida action. Glades seeks to enjoin and restrain Pharm Force from further use of its copyrighted works and further seeks compensatory damages related to its lost profits and the cost of resources allegedly diverted by Pharm Force, punitive damages in the amount of at least \$500,000 and attorney's fees, expenses and costs incurred in bringing this action.

### III. DISCUSSION

#### A. Motion to Dismiss for Failure to Join an Indispensable Party

Federal Rule of Civil Procedure 12(b)(7) permits a defendant to present a defense based on a plaintiff's failure to join a party. Federal Rule of Civil Procedure 19(a) provides that a party shall be joined in an action if:

(1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to the substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

"Neither the possibility of inconsistent results nor of multiple litigation makes a party 'necessary' under Rule 19. The rule addresses 'inconsistent obligations,' not inconsistent results." Fed.

Home Loan Mortgage Ins. Corp. v. Commonw. Land Title Ins. Co., No. 92-5255, 1993 U.S. Dist. LEXIS 4051, at \*19 (E.D. Pa. Mar. 31, 1993).

Applying Rule 19(a)(1) to this case, the specific question before me is whether I can grant complete relief in an action for copyright infringement, conspiracy, aiding and abetting breach of fiduciary duty, conversion and unjust enrichment where a joint tortfeasor has not been joined as a defendant. Plaintiff argues Glades can obtain complete relief on its claims against Pharm Force despite Murphy's absence as Pharm Force and Murphy are jointly and severally liable to Glades.

It is a well-settled rule that a joint tortfeasor is not a necessary party under Rule 19(a) to an action against another party with similar liability. A tortfeasor considered to have 'joint and several' liability is simply a permissive party to an action against another with like liability. Because a co-tortfeasor is simply allowable but not necessary for a copyright violation, they are by nature also not indispensable parties.

Multimedia Games, Inc. v. WLGC Acquisition Corp., 214 F. Supp. 2d 1131, 1142 (N.D. Okla. 2001) (citations omitted). See also Temple v. Synthes Corp., 498 U.S. 5, 7 (1990); Olazarra v. Defulvio, No. 97-7833, 1998 U.S. Dist. LEXIS 13244, at \*6 (E.D. Pa. Aug. 26, 1998).<sup>1</sup>

Even if complete relief could not be granted to Glades under Rule 19(a)(1), Murphy is a necessary party under Rule 19(a)(2) because he has a substantial interest in the subject matter of this action. Glades argues that to be deemed a necessary party under Rule 19(a)(2), the absent party must claim a "legally protected interest, and not merely a financial interest, in the action"

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<sup>1</sup>In Laker Airways, Inc. v. British Airways, PLC, 182 F.3d 843, 848 (11th Cir. 1999), quoting Haas v. Jefferson Nat'l Bank, 442 F.2d 394, 398 (5th Cir. 1971), the Court of Appeals for the Eleventh Circuit held that even "a joint tortfeasor will be considered a necessary party when the absent party 'emerges as an active participant' in the allegations made in the complaint that are 'critical to the disposition of the important issues in the litigation.'" Here, Murphy was clearly an active participant in the allegations made against Pharm Force in the complaint as Pharm Force's alleged wrongs could not have taken place without Murphy having provided access to Glades' business opportunities and copyrighted information.

and that Pharm Force has not shown that Murphy has any legally protected interest in the resolution of Glades' copyright and tort claims against it. Spring-Ford Area Sch. Dist. v. Genesis Ins. Co., 158 F. Supp. 2d 476, 484 (E.D. Pa. 2001). Pharm Force counters that Murphy's legal right to use certain information and to market certain products in competition with Glades is a central issue in this action. I agree with Pharm Force that in order to resolve this dispute I will have to adjudicate Murphy's rights to use Glade's allegedly copyrighted information as well as his rights to market certain products in competition with Glades. Murphy's interests will be adversely affected if Glades prevails in this litigation because a favorable decision must be based on the legal conclusion that Murphy misappropriated Glades' property, infringed on Glades' copyrighted material, and diverted Glades' business opportunities. This decision would be made without Murphy.

In Whyham v. Piper Aircraft, 96 F.R.D. 557, 559 (M.D. Pa. 1982), an action alleging defendant had negligently designed, constructed and serviced an aircraft which later crashed, the Court found that two companies who had most recently owned and maintained the plane were necessary and indispensable to determine the issue of liability. The Court explained, "there can be no dispute that Air Navigation and Aero are necessary parties under Rule 19(a)(2)(i). . . . They are more than key witnesses; rather, they are active participants." Id. at 561 (citations omitted). Here Murphy is similarly an "active participant" in the allegations made in the complaint. A determination in this action that Pharm Force conspired with Murphy would likely impair or impede Murphy's ability to protect his interests in the pending action in the Northern District of Georgia. As the Court in Whyham explained,

Admittedly, a determination of liability of the Scottish concerns in this case will

not be binding on any subsequent action for indemnity or contribution against Air Navigation or Aero. It is not necessary, however, that a party be legally bound by principles of res judicata or collateral estoppel to demonstrate prejudice under Rule 19(a)(2)(i). . . To require a decision to be legally binding before it is considered to impede the absent party's ability to protect himself is too analytical and is expressly rejected. . . . Thus, we find that the disposition of Plaintiff's current action without Air Navigation's and Aero's presence may, as a practical matter, impair or impede their ability to protect their interest.

Id. (citations omitted). See also Wiconisco Creek Watershed v. Kocher Coal Co., 641 F. Supp. 712 (M.D. Pa. 1986) (holding that the state Department of Environmental Resources was a necessary party in an action filed by a citizens' group against a coal company alleging violations of the Clean Water Act because if defendants succeeded with their defense that the DER was responsible for complying with the CWA, plaintiff would be denied any recovery).

In Homeamerican Credit Inc. v. Vermillion, No. 97-2139, 1997 U.S. Dist. LEXIS 19651 at \*11-13 (E.D. Pa. Dec. 10, 1997), the Court found that non-party employees had an interest in a lawsuit where the plaintiff sought an injunction to prevent the defendant companies from employing the plaintiff's former employees. The non-party employees were accused of conversion and civil conspiracy. Here, Murphy is similarly accused of conspiracy and has a similar interest in the subject matter of the lawsuit. Although Murphy is not an employee of Pharm Force, as the non-parties were in Homeamerican, his interest in fulfilling the terms of any agreement he has with Pharm Force<sup>2</sup> will be adversely affected if Glades is granted an injunction in this matter. Further, Murphy has a significant interest in protecting himself against allegations of copyright infringement, diversion of business opportunities and misappropriation of his former

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<sup>2</sup>The terms of any alleged contractual or other obligations between Murphy and Pharm Force have not been disclosed to me, but it is likely that if the injunctive relief requested were granted Murphy's business relationship with Pharm Force would be hampered.

employer's property. C.f., Covance, Inc. v. MDS Pharma Services, Inc., No. 02-6546, 2003 U.S. Dist. LEXIS 1316, at \* 6 (E.D. Pa. Jan. 9 2003) ("Because [the non-party] is not accused of theft of trade secrets in the present case, he lacks the significant interest the employees in Homeamerican had in clearing their names.").

In F&M Distributors, Inc. v. American Hardware Supply Co., 129 F.R.D. 494, 498 (W.D. Pa. 1990), plaintiff sued defendant for breach of contract based on a lease agreement between defendant and another non-party company. The Court held that the non-party company was a necessary party under Rule 19(a) where it was "a crucial and active participant in the very transaction which [plaintiff] claime[ed] trigger[ed] [defendant's] liability." The Court explained that the non-party's absence in the action would impair or impede its ability to protect its claimed interest because the court would have to adjudicate its rights along with those of plaintiff and defendant in order to resolve the matters in dispute. As in F&M Distributors, here Murphy has alleged contractual and other obligations to Glades which are central to Glades' claims against Pharm Force and which I will have to adjudicate in order to resolve the question of Pharm Force's liability to Glades. Murphy is therefore a necessary party to this action.

Although Murphy is a necessary party under Rule 19(a), his joinder is not feasible because he is not subject to service of process and is not subject to jurisdiction in this Court. Consequently, I must decide whether in equity or good conscience the action at bar should continue or be dismissed under Rule 19(b). If a party must be joined under Rule 19(a) but cannot be joined, Rule 19(b) provides a nonexhaustive list of factors for the court to consider in determining whether to dismiss the action or proceed without him including:

first, to what extent a judgment rendered in the person's absence might be

prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Fed. R. Civ. P. 19(b).

“The first factor for the court to consider, the extent to which a judgment rendered in a person's absence may be prejudicial to him or to those already parties overlaps in some respects with the considerations in Rule 19(a)(1) and (a)(2).” F&M Distributors, 129 F.R.D. at 499. As noted above, a judgment rendered in Murphy's absence may be prejudicial to him because the adjudication of his rights to use Glade's allegedly copyrighted information and his rights to market certain products in competition with Glades may impair or impede his ability to protect his interest in the pending actions to which he is a party. A judgment rendered in Murphy's absence may also be prejudicial to Pharm Force because it:

subjects Defendant to being judged solely responsible for a liability it possibly shares. . . . Defendant has a clear interest in having the liability issue decided consistently as to all supposed wrongdoers. . . . Defendant may either be forced to assume full responsibility for a liability shared with [Murphy] or to pursue a second action against [him] for indemnity or contribution. The latter alternative subjects Defendant to the unnecessary waste of time, efforts, and costs of a second proceeding. It also subjects defendant to the possibility of inconsistent verdicts.

Whyham, 96 F.R.D. at 562 (citations omitted).

The second factor is the extent to which any prejudice can be lessened by the shaping of relief through the addition of protective provisions to the judgment. It is unclear what modification could be made to a judgment against Pharm Force and Murphy which would protect them from the prejudice such a judgment might subject them to and the parties have not

suggested any alternative shaping of relief.

Referring to the interest of the courts and the public in resolving disputes completely in a single proceeding, the third factor is whether a judgment rendered in Murphy's absence would be adequate. Glades argues that because Pharm Force and Murphy are joint tortfeasors with joint and several liability to Glades, there is no reason why a judgment here would be inadequate. Indeed, if Glades prevails in this action, it can be afforded the complete monetary relief it seeks from Pharm Force. Glades can also be afforded the complete injunctive relief it seeks from Pharm Force. Although it is not entirely clear that this relief would completely protect Glades' interests,<sup>3</sup> this factor alone would not require that I dismiss this action.

As for the fourth factor, Pharm Force asserts that Glades has an adequate remedy if this action is dismissed because it may pursue its claim against Murphy in the other pending actions. However, the question is whether Glades will have an adequate remedy against Pharm Force, and not against Murphy, if this action is dismissed. Glades asserts that Pharm Force is not subject to personal jurisdiction in Georgia and that because Glades' copyright claims against Pharm Force are within the exclusive jurisdiction of the federal courts there is no alternative forum in which it can assert its claims against both Pharm Force and Murphy. "It is undoubtedly more important that there be some forum available to determine the substantial claims presented by the complaint than that defendants should face a future of multiple suits." Potomac Elec. Power Co. v. Babcock and Wilcox Co., 54 F.R.D. 486, 492 (D.Md. 1972) (holding dismissal appropriate

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<sup>3</sup>If Murphy is not a party, he cannot be prevented from using Glades' copyrighted information and other information obtained through his past employment with Glades for his own benefit and to Glades' detriment.

where there was an adequate state remedy). Where no alternative forum is available, equity and good conscience dictate that dismissal is not appropriate. See Young v. United Steelworkers of Am., 49 F.R.D. 74, 75 (E.D. Pa. 1969) (holding dismissal inappropriate where the statute of limitations had expired on plaintiff's claim against the absentee, and dismissal would leave plaintiff "with no remedy, let alone an adequate remedy"); Bellamy v. Roadway Express, Inc., 668 F. Supp. 615, 623 (E.D. Oh. 1987) (holding where dismissal would result in plaintiffs' claims being barred by the statute of limitations, equity and good conscience dictated the action should proceed among the parties already before it); Smith v. American Fed'n Musicians of U.S. & Canada, 47 F.R.D. 152, 154-55 (S.D.N.Y. 1969) (holding dismissal inappropriate where no venue was proper as to all parties).

On balance, the four factors of Rule 19(b) establish that dismissal for failure to join Murphy as an indispensable party is inappropriate. Although Murphy is a necessary party under Rule 19(a), he is not an indispensable party under Rule 19(b) as there is no other forum for Glades' claims against Pharm Force and it is unclear that complete relief could not be granted to Glades in Murphy's absence.

#### B. Colorado River Abstention

Abstention pending resolution of the Gwinnett County action under the Colorado River doctrine is inappropriate here. Under the Colorado River abstention doctrine, a federal court may stay or dismiss an action in favor of a pending state action only under extraordinary circumstances. Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 813 (1976); Wells Fargo Home Mtge., Inc. v. Sec. Title Guar. Corp., 337 F. Supp. 2d 680, 682 (E.D.

Pa. 2004) “[I]t is axiomatic that federal courts have a virtually unflagging obligation . . . to exercise the jurisdiction given them by Congress . . . . This obligation requires federal courts to exercise jurisdiction even if concurrent litigation is pending in state court.” Wells Fargo, 337 F. Supp. 2d at 682, quoting Ryan v. Johnson, 115 F.3d 193, 195 (3d Cir. 1997); citing Colorado River, 424 U.S. at 818; McClellan v. Carland, 217 U.S. 268 (1910). The mere possibility of a *res judicata* effect from the pending state action in Georgia does not warrant dismissal or stay of this action. “The general rule regarding simultaneous litigation of similar issues in both state and federal courts is that both actions may proceed until one has come to judgment, at which point that judgment may create a *res judicata* or collateral estoppel effect on the other action.” Wells Fargo, 337 F. Supp. 2d at 682 (citations omitted).

Under the Colorado River doctrine, I must first consider whether the federal and state proceedings are parallel. Wells Fargo, 337 F. Supp. 2d at 683. Cases are generally parallel when they involve the same parties and claims. Ryan, 115 F.3d, at 196. The parties in the Gwinnett County action and this action are not the same. Although the plaintiff in this action is the declaratory judgment defendant in the Gwinnett County action, Pharm Force is not a party in the state court action. However, exact identity between the parties is not required. Pharm Force argues that while it is not a party in the Gwinnett County action it is substantially the same as Murphy, who is a party in the state court action, because any liability Pharm Force may have to Glades derives from Murphy’s liability to Glades. Two actions may involve different parties and still be parallel so long as there is a substantial similarity between the two actions. See Landis v. North Am. Co., 299 U.S. 248, 254 (1936); Oliver v. Sid Bernstein, Ltd., No. 96-4471, 1997 U.S. Dist. LEXIS 3276, at \*6 n.2 (E.D. Pa. Mar. 12, 1997); Guenveur v. State Farm Mut. Auto. Ins.

Co., 551 F. Supp. 1044, 1046 (D. Del. 1982).

Even if I were to consider any substantial similarity between Pharm Force and Murphy to be sufficient for the purposes of Colorado River abstention, abstention is improper because the claims at issue in this action are not the same as those in the Gwinnett County action. In the Gwinnett County action, Murphy seeks a declaratory judgment rescinding the restrictive covenants contained in a post-employment Consulting Agreement between Steifel and him based on claims that Steifel materially breached the agreement by failing to timely pay him a consulting fee and by attempting to restrict his use of products that Steifel had rejected. He also challenges the enforceability under Georgia law of a 1997 confidentiality agreement between Glades and him. In contrast, in this case, Glades seeks damages and injunctive relief based on Pharm Force's alleged conspiracy with Murphy to misappropriate Glades' property, infringe on Glades' copyrighted material, and divert Glades' business opportunities. The two contracts between Glades and Murphy that are the subject of the Gwinnett County action do not bear on Glades' right to enforce its copyright or on Pharm Force's alleged participation in the diversion of Glades' business opportunities or the theft of its property. As plaintiff asserts, the claims at issue here would exist regardless of whether or not the Consulting Agreement or the 1997 confidentiality agreement are declared unenforceable in the Gwinnett County action. Cf., Vanderveer Group, Inc. v. Petruny, No. 93-5154, 1994 U.S. Dist. LEXIS 7342, at \*7-9 (E.D. Pa. Jun. 3, 1994) (dismissing counterclaim alleging breach of a non-compete provision as not being compulsory in an action alleging copyright or trademark infringement or misappropriation of trade secrets because there were "no legal or factual issues in common"). Therefore, because this action and the Gwinnett County action are not parallel, abstention under the Colorado River

doctrine is inappropriate.<sup>4</sup>

### C. Motion to Stay Pending Disposition of Concurrent Federal Litigation

In contrast to the Gwinnett County action, the pending action in the Northern District of Georgia concerns both parties and issues that are substantially similar. Because of these similarities, Pharm Force has moved for a stay of these proceedings pending disposition of the concurrent federal litigation. Ordinarily, in cases of concurrent federal jurisdiction, the first-filed rule would apply and I would be required to decide the issues in this case as they were brought here before they were brought in the Northern District of Georgia. EEOC v. Univ. of Pennsylvania, 850 F.2d 969, 971 (3d Cir. 1988) (citations omitted) (“in all cases of federal concurrent jurisdiction, the court which first has possession of the subject must decide it”). This action was filed on September 13, 2004, before the complaint in the Northern District Georgia action on December 30, 2004. However, the first-filed rule “is not a rigid or inflexible rule to be mechanically applied.” Id. at 976 (citations omitted). Under this standard, a court must act “with regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to a just result.” Id. at 977 (citations omitted). Given the circumstances of case, departure from the first-filed rule seems appropriate. The Northern District of Georgia action is virtually identical to the action in the Southern District of Florida

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<sup>4</sup>If the actions were parallel, I would need to consider the following six factors in determining whether abstention were appropriate: 1) which court first assumed jurisdiction over any relevant *res*; 2) the relative convenience of the federal court; 3) whether abstention would avoid piecemeal litigation; 4) the order in which jurisdiction was obtained; 5) whether federal or state law applies; and 6) whether the state action can protect the rights of the federal plaintiff. Rycoline Products, Inc. v. C&W Unlimited, 109 F.3d 883, 890 (3d Cir. 1997). Because I find that the actions are not parallel, I will not consider these factors here.

which was filed before this action on May 19, 2004 but dismissed on the grounds of *forum non conveniens*. Because Murphy is a party to that suit and because his actions are central to the resolution of the issues involved in this case, logic dictates that the Northern District of Georgia action proceed first, as resolution of that action may dispose of all or some of the issues here.

“In the exercise of its sound discretion, a court may hold one lawsuit in abeyance to abide the outcome of another which may substantially affect it or be dispositive of the issues.”

Chartener v. Provident Mutual Life Ins. Co., No. 02-8045, 2003 U.S. Dist. LEXIS 19500, at \*3 (E.D. Pa. Oct. 22, 2003), quoting Bechtel Corp. v. Local 215, Laborers' Int'l Union, 544 F.2d 1207, 1214 (3d Cir. 1976).

The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with 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.

Landis, 299 U.S. at 254. Weighing “whether a stay will simplify issues and promote judicial economy,” “the balance of harm to the parties” and “the length of the requested stay,” I conclude the balance here tips in favor of granting the requested stay pending the outcome of the litigation in Glades Pharmaceuticals, LLC v. Murphy, No. 04-3817 (N.D. Ga.). Smithkline Beecham Corp. v. Andrx Pharmaceuticals Corp., No. 99-4304, 2004 U.S. Dist. LEXIS 13907, at \* 23-24 (E.D. Pa. Jul. 16, 2004). See also Chintala v. Diamond Reo Trucks, Inc., 393 F. Supp. 1392, 1393 (E.D. Pa. 1975) (outlining the factors which should be considered before invoking a federal district court's inherent power to stay proceedings).

As is clear from the complaint in this action, whether Glades can prove each of the

Counts in the present action depends upon findings of fact and issues of law involving Murphy's conduct which are central to the suit now filed against him by Glades in the Northern District of Georgia. If the issues in the Northern District of Georgia Action are decided against Glades, those rulings may have collateral estoppel effect in this action, thus narrowing the issues in the present suit and promoting judicial economy by preventing relitigation of Murphy's rights to use Glade's allegedly copyrighted information and his rights to market certain products in competition with Glades. Resolution of the Northern District of Georgia action may well dispose of this action.

Pharm Force argues that a stay would not harm Glades as no discovery has begun in this action and the monetary relief sought by Glades is based solely upon its payments to Murphy and not upon any harm caused to Glades by Pharm Force. This characterization is not entirely accurate as Glades also seeks punitive damages against Pharm Force for its alleged actions and because Glades seeks injunctive relief preventing Pharm Force from using its allegedly copyrighted information. A stay of this action possibly will allow Pharm Force to harm Glades through use of its alleged copyrighted information and other information obtained through Murphy. Also, any award of punitive damages will be delayed. However, because several issues may be eliminated from this litigation if they are decided in the Northern District of Georgia litigation, there is a "risk that the parties will engage in costly, time-consuming discovery that might ultimately be unnecessary" if I decline to stay the proceedings, thus creating a risk of harm to both parties here. Smithkline, No. 99-4304, 2004 U.S. Dist. LEXIS 13907, at \* 30. On balance it appears a stay will minimize the potential harm to both parties by preventing unnecessary discovery while inflicting only a minimal amount of harm on Glades.

Finally, the requested stay would only remain in effect until a resolution is reached in the case between Glades and Murphy in the Northern District of Georgia. Although it is uncertain when the Northern District of Georgia action will be resolved, “the danger that the stay will continue indefinitely can be lessened by requiring the parties to update the Court on the status of [the Northern District of Georgia action] every six months. Any party may move the Court for relief from the stay if it feels that the stay has extended too long or otherwise outlived its usefulness.” Smithkline, No. 99-4304, 2004 U.S. Dist. LEXIS 13907, at \* 33-34.

Because I will grant Pharm Force’s requested stay pending disposition of the Northern District of Georgia Action, I will not at this time consider defendant’s motion to dismiss Counts I-V of plaintiff’s complaint for failure to state a claim upon which relief can be granted.

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

GLADES PHARMACEUTICALS, LLC	:	CIVIL ACTION
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v.	:	
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CALL, INC. d/b/a PHARM FORCE	:	

**ORDER**

AND NOW, this 9th day of March 2005, after consideration of defendant's motion to dismiss or, in the alternative, to stay proceedings and plaintiff's response thereto, and for the reasons set forth in the accompanying memorandum, it is ORDERED that:

1. Defendant's motion to dismiss for failure to join an indispensable party is DENIED.
2. Defendant's motion to stay the proceedings is GRANTED pending resolution of Glades Pharmaceuticals, LLC v. Murphy, No. 04-3817 (N.D. Ga.). The parties shall update the Court on the status of the Northern District of Georgia action every six months.

s/ Thomas N. O'Neill, Jr.

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THOMAS N. O'NEILL, JR., J.