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IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CIVIL DEPARTMENT

JUSTIN E. BRAWNER,

Plaintiff,

vs. Case No. 06 CV 3903

STEPHEN J. SCHNEIDER, D.O., and
SCHNEIDER MEDICAL CLINIC, L.L.C.,
a Kansas Corporation,

Defendants.

KENNETH L. ROBERTS, Individually and as the Special Administrator of the Estate of CHONG (TINA) O. ROBERTS, Deceased, and KENNETH L. ROBERTS, heirs at law of CHONG (TINA) O. ROBERTS, Deceased,

Plaintiff,

vs. Case No. 06 CV 4620

STEPHEN J. SCHNEIDER, D.O.; and
SCHNEIDER MEDICAL CLINIC, L.L.C.,

Defendants.

PATRICIA L. PERKINS, as Special Administratrix of the Estate of MARK E. PERKINS, Deceased; and PATRICIA L. PERKINS, Individually, and on behalf of the Heirs at Law of MARK E. PERKINS, Deceased,

Plaintiff,

vs. Case No. 06 CV 4498

STEPHEN J. SCHNEIDER, D.O.; and
SCHNEIDER MEDICAL CLINIC, L.L.C.,

Defendants.

LORILYNN R. TORNQUIST, Special Administratrix of the Estate of ERIC EUGENE TORNQUIST, JR., Deceased; and LORILYNN R. TORNQUIST, Individually, and on behalf of the Heirs at Law of ERIC EUGENE TORNQUIST, JR., Deceased,

Plaintiff,

vs.

STEPHEN J. SCHNEIDER, D.O.; and SCHNEIDER MEDICAL CLINIC, L.L.C.,

Defendants.

Case No. 06 CV 4500

PATRICIA HAMBELTON, Individually and as the Administrator of the ESTATE OF JEFFERY D. HAMBELTON, deceased, and PATRICIA HAMBELTON, Individually and on behalf of ALLISON HAMBELTON, an adult heir at law and MEGAN HAMBELTON, a minor heir at law of JEFFERY D. HAMBELTON, deceased,

Plaintiff,

vs.

STEPHEN J. SCHNEIDER, D.O.; and SCHNEIDER MEDICAL CLINIC, L.L.C., A Kansas Corporation,

Defendants.

Case No. 07 CV 4738

DALLAS GRIFFON and HEATH GRIFFON, Individually, and on behalf of the Heirs at Law of ROBIN GEIST-WICK, Deceased,

Plaintiffs,

vs.

STEPHEN J. SCHNEIDER, D.O., and SCHNEIDER MEDICAL CLINIC, L.L.C., a Kansas Corporation,

Defendants.

Case No. 08 CV 0896

ROBERT WICK, as Heir-at-Law, and as the Special Administrator of the Estate of ROBIN GEIST-WICK, Deceased, Plaintiffs, vs. STEPHEN J. SCHNEIDER, D.O., and SCHNEIDER MEDICAL CLINIC, L.L.C., a Kansas Corporation, and LAWRENCE M. SIMMONS, M.D., Defendants.	)	Case No. 08 CV 0816
MARY KAY MATTSON Plaintiff, vs. STEPHEN J. SCHNEIDER, D.O.; and SCHNEIDER MEDICAL CLINIC, L.L.C., A Kansas Corporation, Defendants.	)	Case No. 07 CV 4739

PURSUANT TO K.S.A. CHAPTER 60

MOTION TO STAY DISCOVERY

COMES NOW, the Defendant, Stephen J. Schneider, D.O., by and through his counsel of record, and hereby moves the Court for an Order staying discovery in all of the above-captioned matters. For cause:

Recently, the plaintiff in *Roberts vs. Schneider* has filed a motion to designate a new trial date and to stay discovery in that case until after the conclusion of the trial of the criminal charges against Dr. Schneider. The trial of the criminal charges against Dr. Schneider is scheduled to begin February 2, 2009. The Roberts trial date conflicts with the scheduled criminal trial. This same concern applies to at two of the other pending lawsuits, Perkins and Tornquist, which are scheduled

to be in trial immediately before and after the criminal trial, and would therefore interfere with Defendant's ability to assist with the preparation and trials of those cases and the criminal trial.

Plaintiff Roberts has also requested a stay of discovery in that action until after the conclusion of the criminal trial. Defendant does not oppose a stay of discovery, and in fact believes it is appropriate, so long as the stay applies to all of the pending actions. To permit the stay requested by Roberts, but not stay the other pending proceedings, would be unfair and prejudicial to Defendant. Plaintiffs would effectively be permitted to continue discovery, though the other pending actions, while Defendants are precluded from discovery of Roberts' claim against Defendant.

I. BRIEF INTRODUCTION TO THE PENDING ACTIONS, COUNSEL, AND TRIAL SCHEDULES.

There are presently eight lawsuits pending against Defendant Schneider. Plaintiffs Brawner, Roberts, Hambelton are represented by Larry Wall and Chan Townsley. Plaintiffs Tornquist, Perkins, and Griffon are represented by Andrew Hutton. Plaintiff Wick is represented by Gary Patterson and Troy Gott. Plaintiff Mattson is proceeding *pro se* at this time. It should be noted that the Wick and Griffon cases arise out of care to the same decedent, and will not likely proceed as separate lawsuits, but rather as a single action.

Trials are scheduled to occur in Brawner beginning October 14, 2007; in Perkins beginning January 6, 2009; in Roberts beginning January 27, 2009; and in Tornquist beginning March 3, 2009. Trials of Hambelton and Wick/Griffon are scheduled for July and August of 2009, respectively. Mattson is not yet scheduled for discovery or trial. As previously indicated, the trial of the criminal charges against Defendant is scheduled to begin February 2, 2009.

II. INTRODUCTION TO THIS MOTION.

Plaintiff Roberts has filed a motion for a new trial date and to stay discovery in his action. A copy of that motion is attached hereto as Exhibit 1. Defendant has filed a separate response to that motion, in which Defendant advises that he does not oppose the motion so long as certain other conditions also occur. The most significant of those conditions is that a stay be entered in all other pending actions against Defendant as well. Thus, this motion.

Defendant has filed two previous motions to stay. The first was filed in *Hunt v. Schneider* in January, 2006, and resulted in a partial stay for a period of six months. Plaintiff Roberts has attached Defendants' Memorandum in Support of that initial motion to stay to his current motion to stay, and adopted the reasoning stated therein in support of his motion. Defendants' Memorandum is included as part of Exhibit 1. Defendant filed a second motion to stay in June, 2007. Plaintiffs involved at that time, including Roberts, vigorously opposed the motion. The court denied Defendant's second motion to stay.

Since the previous motions to stay were considered by the court, significant changes in circumstances have occurred. First, Defendant has been indicted and a trial of the criminal charges has been scheduled. As will be further discussed below, a primary basis for Plaintiff Hunt's opposition to the initial motion to stay was that Defendant was not subject to any formal criminal charges or proceedings, but rather only an investigation, at that time. The currently pending indictment and formal criminal proceedings toward the trial of the criminal charges, which were not present at the time of the earlier motions, now significantly weigh in favor of the stay.

Defendant's second motion to stay was based primarily on Defendant's very real concern that the discovery process in these civil actions was being improperly used to conduct discovery

designed to benefit the criminal investigation, and thereby place Defendant in an unfair predicament regarding assertion of his Fifth Amendment rights. Plaintiffs' counsel denied that discovery was being conducted for the benefit of the U.S. Attorney's criminal investigation, and that motion was denied. Recently, however, there have been additional indications of cooperation with the U.S. Attorney by Plaintiffs' counsel, contrary to previous representations in arguments to the court. Based on these recent developments, the basis asserted by Defendant in his second motion to stay is strengthened, not only by the further indications of cooperation with the U.S. attorney's office, but by the fact that it is occurring within the context of pending formal criminal charges against the Defendant.

A third circumstance now exists which was not present at the time the previous motions to stay were considered by the Court. Plaintiff Roberts, who previously opposed a stay, now seeks that very remedy. In addition, while no motion has been filed in the Brawner case, counsel for Brawner has informally inquired of Defendants' willingness to also continue the trial of the *Brawner* case until after the criminal trial has concluded.

III. ARGUMENTS AND AUTHORITIES.

A. The Existence of Pending Criminal Charges Weighs in Favor of a Stay.

As stated above, Roberts has attached Defendants' Memorandum in support of the initial motion to stay these proceedings to his current motion to stay, adopting the reasons stated therein in support of his current motion. Defendants' previous memorandum is included as part of Exhibit 1 to this motion, and will not be restated here in any detail. The court is referred to the arguments and authorities presented therein, as well as the response of Plaintiff Hunt to that early motion, which is attached hereto as Exhibit 2.

The Response by Hunt was just short, just five pages long. The majority of that response asserted that a stay was not appropriate because there was no ongoing criminal proceeding. For example, Hunt distinguished *Gaither v. District of Columbia*, relied upon by Defendants, because it "involved a case where there was an ongoing criminal case. It did not involve a situation where a criminal case 'MIGHT' be filed." (Exhibit 2, Hunt's Response at p. 3.) Plaintiff Hunt made the same comments regarding the *Crawford* case relied upon by Defendants. (Id.)

Finally, in her opposition to the initial motion to stay, Plaintiff Hunt quoted the following language from *Maloney v. Gordon*:

> In determining whether to grant a stay, a court must also consider the status of the related criminal proceedings, which can have a substantial effect on the balancing of the equities. If criminal indictments are returned against the civil defendants, then a court should strongly consider staying the civil proceedings until the related criminal proceedings are resolved.

(Exhibit 2, Hunt Response at p. 4.)

A criminal indictment has now been filed against Defendant. As such, circumstances weigh considerably stronger in favor of a stay of these proceedings than they did at the time of the previous two motions to stay. The time frame of the requested stay is now fairly definite, with the trial of the criminal charges now scheduled. Previously, during the investigation stage of the criminal proceedings, the length of any stay which might have been entered was far less definite. Under these circumstances, a stay is appropriate, and is supported even by the arguments previously asserted in opposition to Defendants' initial motion to stay.

B. A Stay Of Only The Roberts Case Would Unfairly Prejudice The Defendants.

Plaintiff Roberts has requested a stay of discovery in his individual action. However, counsel for Roberts also represents Plaintiffs Brawner and Hambelton in their separate lawsuits

against the Defendants. As such, plaintiff's counsel would be free to effectively continue to perform discovery by taking depositions or issuing written discovery in other pending cases.

The defendants have been conducting discovery in the form of depositions in the *Roberts* case over the past several weeks. As a result of Roberts' Motion to Stay, the deposition of one of the treating physicians in that case, Dr. Dwight St. Clair, which was scheduled to occur April 28, 2008, did not occur. The deposition of another treating physician, Dr. Raymond Grundmeyer is scheduled to occur May 9, 2008, and will be precluded by a stay of the *Roberts* discovery. Defendants have also been attempting to take the deposition of the plaintiff, Ken Roberts. Although Mr. Roberts' deposition was previously scheduled, defendants have been unable to obtain that deposition to date. Mr. Roberts' deposition is currently scheduled to occur May 16, 2008, and will be precluded by a stay of the *Roberts* lawsuit.

On the other hand, Plaintiff Brawner has scheduled the deposition of Siobhian Reynolds, to occur May 12, 2008. In addition, while no notices have issued, plaintiff has requested depositions of Connie White, a physician assistant who was employed by the clinic, and Linda Schneider's sister, Pat Hatcher, during the week of May 12th through the 16th. The deposition of Siobian Reynolds has been noticed in only the *Brawner* case, and thus would presumably proceed despite the entry of a stay in the *Roberts* case. Plaintiffs' counsel could similarly issue notices for the depositions of Connie White and Pat Hatcher in the *Brawner* or *Hambelton* lawsuits, again permitting plaintiffs to proceed with discovery, while defendants are effectively precluded from performing the discovery which they seek in the *Roberts* case.

The other lawsuits, in which plaintiffs are represented by counsel other than Roberts' counsel, are similarly implicated. Throughout the course of the various lawsuits to date, counsel

for the various plaintiffs have entered their appearance in lawsuits being handled by other plaintiffs' counsel, so as to permit them to attend and/or participate in discovery in lawsuits other than those in which the plaintiffs' counsel had been actively engaged. Thus, to adequately and fairly protect the defendants from ongoing discovery by plaintiffs, while at the same time effectively precluding discovery which defendants wish to undertake, a stay of all of the currently pending lawsuits is necessary.

C. The Potential For Misuse Of The Discovery Process To Benefit The Criminal Prosecution Also Requires A Stay Of These Proceedings.

1. Some Brief Procedural Background

Subsequent to the expiration of the initial six-month stay of party depositions in early 2006, but while grand jury proceedings were still underway, Plaintiffs issued notices for the deposition of Dr. Schneider. Plaintiffs' counsel were advised prior to the deposition that Dr. Schneider would assert his Fifth Amendment privilege due to the ongoing criminal investigation. Just prior to the deposition, it became apparent that the Plaintiffs would nonetheless question Dr. Schneider at length, forcing repeated assertions of the Fifth Amendment rights, and then attempt to use defendant's assertions of the Fifth Amendment privilege against him in support of motions for summary judgment, motions for punitive damages, or otherwise.

Several months later, the scope and nature of the criminal investigation appeared to change, and the matter was transferred to Assistant U.S. Attorney Tonya Treadway in Topeka, Kansas. After this apparent change in the nature of the criminal investigation, Dr. Schneider informed Plaintiffs that he would withdraw his assertion of his Fifth Amendment rights and make himself available for deposition. Although this occurred at a time when depositions of Dr. Schneider could have been taken within the existing discovery schedules, Plaintiffs instead requested, and received,

a protective order prohibiting Dr. Schneider from changing his previous assertion of the Fifth Amendment privilege in those cases in which he had been deposed.

Counsel for Plaintiffs thereafter indicated that they wished to take the deposition of Dr. Schneider in cases which were not subject to the Court's previous order binding Dr. Schneider to his previous Fifth Amendment assertions. Mr. Wall asked defense counsel to confirm Dr. Schneider's "availability" in regards to whether defendant would assert his Fifth Amendment right. In response to this inquiry, counsel for Dr. Schneider in the present actions contacted Dr. Schneider's criminal defense lawyer, David Schippers.

Mr. Schippers had just received the letter from Larry Wall attached hereto as Exhibit 3. In that letter, Mr. Wall stated that he wished to take Dr. Schneider's deposition, and revealed that his office "is cooperating fully with the U.S. Attorney that is handling the ongoing criminal investigation of Dr. Schneider." The letter goes on: "We are sharing all of the depositions and exhibits, and we intend to continue this complete cooperation throughout the litigation." (See Exhibit 3).

These circumstances gave rise to Defendant's second motion to stay. It plainly appeared to Defendant that the conduct of Plaintiffs' counsel and the Assistant U.S. Attorney General placed Dr. Schneider's constitutional rights in jeopardy by using the civil cases to perform an investigation on behalf of the U.S. Attorney. Defendant further felt that this improper conduct was compounded by using it as the basis of intimidation, placing Dr. Schneider in a position where he was either prejudiced in these civil matters by assertion of his Fifth Amendment rights, or was deprived of constitutional and procedural protections in the criminal proceedings by the improper use of civil discovery in these actions.

Defendant's second motion to stay was denied, and Dr. Schneider's deposition did then occur in the cases which were not subject to the court's previous order binding Dr. Schneider to his previous Fifth Amendment assertions. In light of the representations by plaintiffs' counsel that they were cooperating with the U.S. Attorney's ongoing criminal investigation, Dr. Schneider broadly asserted his Fifth Amendment at that deposition.

2. The Use Of Civil Discovery Tools For Investigation Of Criminal Charges Is Improper.

In *United States v. Handley*, 591 F.Supp. 1257 (N.D.Ala. 1984), a criminal action, defendants sought to suppress evidence of depositions and other discovery obtained in a civil action stemming out of the same events. After an initial FBI investigation had been conducted and the government's file closed without any prosecution, a private law firm filed a civil lawsuit arising out of the same events. *Id.* at 1258-59. Several defendants and witnesses in that civil action sought to assert their Fifth Amendment rights, but were precluded from doing so by an order entered in the civil proceeding. *Id.* at 1260-62. Subsequently, the discovery from the civil action assisted the government in its ability to obtain indictments. *Id.* at 1264-66.

The Court concluded that a continuing purpose of the private law firm in its civil action was to obtain a reopening of the criminal investigation and ultimately to obtain a federal indictment. *Id.* at 1261. In its opinion, the Court referred to the relationship between the private law firm and the government as "a partnership so unusual as to be illegal." *Id.* at 1270. The circumstances of *Handley* are similar to those presented here, i.e., the use of civil discovery by a private litigant to support the government's investigation of criminal charges.

The *Handley* Court compared such use of civil discovery with government action in violation of Fourth Amendment protections against illegal search and seizure:

> [T]he fourth amendment was intended as a restraint on the activities of the government and its agents and is not addressed to actions, legal or illegal, of private parties.
>
> *****
>
> A much more difficult issue arises once the government is contacted. The fourth amendment is given a generous interpretation in order to ensure that its safeguards *are not evaded by circuities. Byars v. United States*, 1927, 273 U.S. 28, 47 S.Ct. 248, 71 L. Ed. 520. *Fourth amendment protections can be effectively undercut by the intervening agency of non-governmental individuals. Accordingly, where federal officials actively participate in a search being conducted by private parties or else standby watching with approval as the search continues, federal authorities are clearly implicated in the search and it must comport with fourth amendment requirements.*

United States v. Handley, 591 F.Supp. 1257, 1268-69 (1984)(emphasis by Court), quoting *United States v. Mekjian*, 505 F.2d 1320, 1327 (5th Cir. 1975). The Court entered an order suppressing evidence obtained by the government through the civil lawsuit, noting that it perceived "dire and long range consequences if the depositions are *not* suppressed where the center was, in effect, the undercover alter ego of the [government]." *Id.* at 1271 (emphasis in original).

Other Court's have noted the potential for civil proceedings to be improperly used as tools of an ongoing criminal investigation. In discussing the concerns regarding parallel civil and criminal proceedings, the District of Columbia Circuit Court of Appeals made the following comments:

> Other than where there is specific evidence of agency bad faith or malicious governmental tactics, the strongest case for deferring civil proceedings until after completion of criminal proceedings is where a party under indictment for a serious offense is required to defend a civil or administrative action involving the same matter. The non-criminal proceeding, if not deferred, might undermine the party's Fifth Amendment privilege against self-incrimination, expand rights of criminal discovery beyond the limits of federal

> rule of criminal procedure 16(b), expose the basis of a defense to the prosecution in advance of criminal trial, or otherwise prejudice the case.

Securities and Exchange Commission v. Dresser Industries, Inc., 628 F.2d 1368, 1375-76 (D.C. Cir. 1980)(*en banc*)(emphasis added) cert. denied, 101 S.Ct. 529.

Parallel proceedings may result in abuse of discovery because the scope of civil discovery is broad and requires nearly total mutual disclosure of each party's evidence prior to trial. Criminal "discovery" under the federal rules, in contrast, is highly restricted. *Afro-Lecon, Inc. v. U.S.*, 820 F.2d 1198, 1203 (Fed. Cir. 1987)(citation omitted). While civil rules allow depositions of all parties to the action, Rule 15 of the Rules of Criminal Procedure permits a party to an action to depose only its own witnesses, and then only pursuant to a Court order in exceptional circumstances. *Id.* Further, Rule 15 provides that the Defendant cannot be deposed without his consent and that the scope of the cross examination must be the same as at trial. *Id.* (citing Fed. R. Crim. P. 15(d)). Criminal procedure Rule 16 also significantly restricts discovery in criminal cases by describing what is discoverable with specificity and detail. *Id.*

Unfortunately, the broad scope of civil discovery may present to both the prosecution, and at times the criminal defendant, an irresistible temptation to use that discovery to one's advantage in the criminal case. *Id.*; *See also*, *Ex Parte Costal Training Institute*, 538 So.2d at 981. These abuses of civil discovery may range from surreptitiously planting criminal investigators in civil depositions, to passive abuses, such as when a civil party, who asserts Fifth Amendment rights, is compelled to refuse to answer questions individually, revealing his weak points to the criminal prosecutor. This point-by-point review of the civil case may lead to a 'link in the chain of evidence' that unconstitutionally contributes to the defendant's conviction.

Afro-Lecon, Inc. v. U.S., 820 F.2d at 1198, citing *Hoffman v. United States*, 341 U.S. 479, 486, 71 S. Ct. 814, 818, 95 L. Ed. 1118 (1951).

3. Ongoing Concerns of Use of the Discovery Process to Assist the Criminal Prosecution weigh in Favor of a Stay of the Civil Proceedings

In response to defendant's second motion to stay, plaintiffs indicated that their cooperation with the United States Attorney consisted of providing copies of depositions, deposition exhibits and substantive motions from the civil lawsuits without need for subpoenas by the government. Plaintiffs' counsel further indicated that there had been no participation in any other manner or part of any criminal investigation.

As discovery has proceeded, Defendant has continued to be concerned that cooperation between plaintiffs' counsel and the U.S. Attorney's office was occurring beyond that which had been previously stated to the court by plaintiffs' counsel in opposition to defendant's second motion to stay. To determine the nature and extent of such cooperation, Defendant issued a request for production to Plaintiffs Brawner, Roberts and Hambelton, requesting copies of all communication between plaintiffs' counsel and the United States Attorney's office, as well as a copy of the documents which had been exchanged between them. An identical Request was issued to each of the plaintiffs in those three cases, and the response issued by each of the plaintiffs was identical.

A copy of the response in the *Brawner* case, consisting entirely of objections to the request, is attached hereto as Exhibit 4. The objections include the following: "To the extent that these plaintiffs and their agents have a common interest with the agencies of the federal government such as the United States Attorney's office, the Federal Bureau of Investigation, the Kansas Bureau of Investigation, the Drug Enforcement Agency, and/or the Department of

Health and Human Services, Office of Inspector General, in successfully exposing defendant's dismal medical practice, plaintiffs assert a joint interest privilege. . . ." (See Exhibit 4.) This objection, asserting a joint interest privilege between plaintiffs and the United States Attorney's office, suggests that communications and cooperation between plaintiffs' counsel and the United States Attorney's office has been broader than simply providing copies of depositions, exhibits and motions as has previously been indicated as the extent of the cooperation.

The court is not called upon here to determine whether improper cooperation has in fact occurred. The mere indication that it has and may continue to occur to the prejudice of Dr. Schneider's constitutional protections related to the criminal proceeding favor the stay of those civil proceedings pending the conclusion of the criminal trial.

Defendant's counsel has written to plaintiffs' counsel in an attempt to resolve plaintiffs' objections to the request for production concerning communications between plaintiffs' counsel and the United States Attorney's office. The time for a response to defendant's counsel's letter has not yet run. However, given the significance to Defendant, both in the civil cases and in the criminal proceeding, of the potential that the civil actions have been used to assist in the criminal investigation and prosecution, Defendant requests that the discovery relating to the single request for production of documents issued to Plaintiffs Brawner, Roberts and Hambelton (see, for example, Exhibit 4) be exempted from any stay permitted herein. This limited exception from a stay will not prejudice any party herein, and will assist the court in ruling upon discovery disputes once the stay has been lifted and discovery of these actions resumes.

D. Recent Efforts by the Government to Obtain Copies of Confidential Settlement Agreements and Offers Weighs Strongly in Favor of a Stay.

Recently, the U.S. Attorney's office issued subpoenas duces tecum to Mr. Townsley, Mr. Wall and Mr. Hutton, commanding that they produce copies of any and all settlement agreements and offers between the plaintiffs they had represented and Stephen Schneider and/or the Schneider Medical Clinic, and/or any employee of Schneider Medical Clinic. (See Exhibit 5.) Dr. Schneider, through his criminal defense counsel, and the Schneider Medical Clinic, through it's counsel, have filed motions to quash the subpoenas. Those motions have not yet been decided.

However, the efforts by the government to obtain copies of the confidential settlement agreements and offers of settlement exchanged between the parties obviously have a chilling effect on any further settlements or settlement negotiations in the civil matters. A stay of these cases until after the conclusion of the criminal trial would remove the potential for settlements of any of the pending civil cases to be obtained by the government and, potentially, used against the defendant in the criminal proceedings. On the other hand, a continuation of these civil suits during the pendency of the criminal action, given the government's efforts to obtain copies of settlement agreements and offers exchanged between the parties, will discourage further settlement negotiations or resolution of these cases by settlement.

IV. CONCLUSION

WHEREFORE, Defendant prays that his motion be granted and that these actions be stayed as requested herein.

Respectfully submitted,

WOODARD, HERNANDEZ, ROTH & DAY, L.L.C.

Chris S. Cole, #16343
Steven C. Day, #09755
Attorneys for Defendant Stephen J. Schneider, D.O.

NOTICE OF HEARING

Please take notice that the above and foregoing **Motion to Stay Discovery** shall be heard before the Honorable Mark Vining, or his designee, on 6th day, May, 2008, at 4:00 p.m., Sedgwick County Courthouse, 525 North Main, Wichita, Kansas 67203.

WOODARD, HERNANDEZ, ROTH & DAY, L.L.C.

Chris S. Cole, #16343
Steven C. Day, #09755
Attorneys for Defendant Stephen J. Schneider, D.O.

CERTIFICATE OF SERVICE

I do hereby certify that I have served a true and correct copy of the above and foregoing **Motion to Stay Discovery** on counsel of record by (__) placing the same in the U.S. mail, first-class postage prepaid, (__) facsimile to telephone numbers below and that the transmissions were reported as complete and without error and that the facsimile machine complied with Supreme Court Rule 119(b)(3), or (**X**) hand-delivery, on this, the 28th **day of April, 2008**, addressed to the following:

Andrew W. Hutton
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Attorneys for Plaintiff Wick

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Wichita, KS 67203
Plaintiff Pro se

Via U.S. Mail

Mr. Don D. Gribble, II
Mr. Randy J. Troutt
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Attorneys for Defendant Schneider Medical Clinic, L.L.C.

a courtesy copy was hand-delivered to:

The Honorable William S. Woolley
District Court Judge
Division 23, Room 5-4
Sedgwick County Courthouse
525 N. Main
Wichita, KS 67203-3790

and the original for filing and one copy were hand-delivered to:

Bernie Lumbreras, District Court Clerk
Sedgwick County Courthouse, Civil Dept., 11th Floor
525 North Main Street
Wichita, KS 67203

Chris S. Cole
Chris S. Cole, #16343
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FILED

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APP DOCKET NO. _____

2008 APR 16 P 2:51

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CIVIL DEPARTMENT

KENNETH L. ROBERTS, Individually and as the Special Administrator of the Estate of CHONG (TINA) O. ROBERTS, Deceased, and KENNETH L. ROBERTS, heirs at law of CHONG (TINA) O. ROBERTS, Deceased,

Plaintiff,

vs.

STEPHEN J. SCHNEIDER, D.O.; and SCHNEIDER MEDICAL CLINIC, L.L.C.,

Defendants.

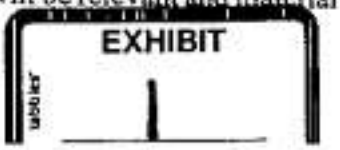
Case No. 06 CV 4620

Pursuant to Chapter 60 K.S.A.

PLAINTIFF'S MOTION FOR NEW TRIAL DATE AND TO STAY DISCOVERY

COMES NOW, the Plaintiff, by and through counsel, Larry Wall of Larry Wall Trial Law and Chan Townsley, Of Counsel with Brennan Law Group, and moves the Court for a new trial setting and to stay pending discovery. In support of this motion, the Plaintiff advises the Court that the federal criminal trial of Defendant Stephen J. Schneider, D.O. and his wife Linda Schneider, is scheduled for February 2, 2009. From the published reports in *The Wichita Eagle*, it appears this is a very, very firm trial date. This trial date will conflict with the trial date herein which is set for January 27, 2009.

It is obvious that facts, witnesses, and evidence will be revealed in the criminal trial of Dr. Schneider, and his wife Linda, that will be relevant and material to the issues in the civil case herein.



Additionally, Defendant Dr. Schneider and witness Linda Schneider may testify in the criminal trial, thus their Fifth Amendment assertions in this civil matter will no longer be valid and they will be subject to discovery depositions. Thus Plaintiff should be allowed to have a short stay of discovery. Plaintiff suggests discovery be stayed until April 1, 2009. Plaintiff also suggests the trial date be scheduled for July of 2009. This Motion for a Stay and a short continuance of the trial date is the first requested by Plaintiff and the Court should be informed that Defendants moved for a stay in related cases and that stay was granted. This request is based on similar reasons. Plaintiff incorporates Defendants' reasoning in it's "Memorandum in Support of Their Joint Motion to Stay Proceedings" which is attached hereto as Exhibit A.

For further reason for a continuance of the trial date herein and a stay of discovery, Plaintiff advises the Court that due to the overwhelming influx of Schneider cases, Counsel requests relief from the current scheduled depositions and discovery due to the press of business. Plaintiff's counsel has currently notified the Kansas Healthcare Stabilization Fund and KaMMCO of 15 additional Schneider claims. Also, Counsel has approximately 15 additional matters under review. Each week Plaintiff's counsel receives numerous telephone inquiries regarding new Schneider cases. Several of these cases have fast-approaching statute of limitations. Therefore Plaintiff requests that the Court grant the continuation of the trial date and the stay of existing discovery in the case herein due to the fact that Plaintiff's counsel is unable to adequately meet his professional obligations due to the extraordinarily high level of new activity in the Schneider cases.

WHEREFORE, Plaintiff prays the Court stay all further discovery in this case, and establish new discovery deadlines and a new date for the trial of this case.

Respectfully Submitted,

Larry Wall, #07732

-AND-

Chan Townsley, #15590
Attorneys for Plaintiff

NOTICE OF HEARING

Please take notice that Plaintiff's Motion For New Trial Date and to Stay Discovery, filed April 16, 2008, will be heard on April 29, 2008, at 4:00 p.m., before Judge William Woolley, in Room 6-4 at the Sedgwick County Courthouse, 525 N. Main, Wichita, KS 67203.

Larry Wall #07732

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 16 day of April, 2008, the above and foregoing **Plaintiff's Motion for New Trial Date and to Stay Discovery** was served via hand delivery as follows:

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IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CIVIL DEPARTMENT

GWEN R. HUNT and LISA L. PERRY as Co-Administrators of the ESTATE OF KANDACE D. BIBLE, Deceased, Plaintiffs, vs. STEPHEN J. SCHNEIDER, D.O., DONNA M. ST. CLAIR, D.O., KIMBERLY L. HEBERT, P.A., CURTIS J. ATTERBURY, P.A., SCHNEIDER MEDICAL CLINIC, L.L.C., Defendants.	Case No. 05 CV 004240

PURSUANT TO K.S.A. CHAPTER 60

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR JOINT MOTION TO STAY PROCEEDINGS

COME NOW defendants Stephen J. Schneider, D.O., Donna M. St. Clair, D.O., Kimberly L. Hebert, P.A., Curtis J. Atterbury, P.A., and Schneider Medical Clinic, L.L.C. (collectively "Defendants"), by and through their counsel of record, and offer the following in support of their Joint Motion To Stay Proceedings. Defendants are seeking an Order from the Court staying these proceedings for six (6) months, other than setting the trial date. In addition, Defendants are requesting a stay of discovery pending the Court's ruling on their motion to stay proceedings and an

EXHIBIT A

extension of time in which to respond to any pending discovery should the Court deny Defendants' Joint Motion To Stay Proceedings.

I. INTRODUCTION

As stated in their joint motion, Defendants seek this stay due to the criminal investigation being conducted by the United States Attorney for the District of Kansas. The U.S. Attorney is in the process of investigating the Defendants' activities and practices at the Schneider Medical Clinic. Although Defendants do not expect the U.S. Attorney to find evidence of any crime, they are faced with the dilemma of responding to discovery in this civil proceeding and, thereby, possibly waiving their Fifth Amendment privilege against self-incrimination in the criminal matter or invoking their Fifth Amendment privilege in this civil proceeding which may lead to adverse inferences. A six-month stay of this civil proceeding will permit Defendants to preserve their Fifth Amendment privilege against self-incrimination while the U.S. Attorney determines whether to file criminal charges against any or all of the Defendants. This period of time in which Defendants do not know whether they will face any criminal charges is especially precarious for Defendants and their counsel due to their inability to know the full scope of legal matters they may be facing.

According to the information available to Defendants, the criminal investigation should be concluded within six months. Because criminal charges are not currently pending, Defendants are requesting a six-month stay, which is an appropriate amount of time under the circumstances. Defendants are not attempting to unreasonably delay the resolution of Plaintiffs' claims, as demonstrated by the fact they are not requesting that the Court delay in scheduling a trial date. With so many parties being involved, it is likely that the trial date will be set in 2008. Thus, the Court may schedule a trial date now that will not be adversely impacted by a six-month stay.

Permitting the requested stay will not delay the trial of this matter. Consequently, without prejudicing Plaintiffs, Defendants will be permitted to preserve their Fifth Amendment right against self-incrimination. If the U.S. Attorney does not file any criminal charges against them, Defendants will avoid the dilemma described above. If at the conclusion of the criminal investigation the U.S. Attorney files any criminal charges against them, Defendants and their counsel will be able to make more informed decisions regarding their Fifth Amendment privilege. In addition, if the U.S. Attorney files criminal charges, the stay preserves the *status quo* which has the potential of benefitting the government and Plaintiffs.

When addressing a request for a stay such as this, the Court is called upon to consider five factors. These factors will be discussed below, and Defendants will demonstrate that the factors weigh in favor of granting their motion. Although a stay in a civil case is an extraordinary remedy, the facts presented here, especially the fact that the requested six-month stay will not adversely impact the trial date, justify granting Defendants' motion to stay proceedings.

II. ARGUMENTS AND AUTHORITIES

A. The Court Has The Power To Grant A Stay And There Are Parallel Criminal And Civil Matters Pending That Justify Defendants' Request For A Stay

Before discussing the five factors the Court must address when making its determination of whether a six-month stay is appropriate, several preliminary matters should be mentioned. First, the Court has the power to stay proceedings. "[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 economy of time and effort for itself, for counsel, and for litigants." *Landis v. North American Co.*, 299 U.S. 248, 254, 57 S. Ct. 163, 81 L. Ed. 153 (1936). A court may decide to stay proceedings for a variety of

reasons. *See e.g., Henry, Administrator v. Stewart*, 203 Kan. 289, 295, 454 P.2d 7 (1969) (district court properly stayed proceedings in state court pending determination of an action in federal court, both were civil actions). A court's decision to grant a stay in a civil action where there are criminal charges pending against a party is an exercise of discretionary power. *State ex rel. Stovall v. Meneley*, 271 Kan. 355, 355, 367, 22 P.3d 124 (2001).

In order to justify a discussion of the basis for Defendants' request for a six-month stay, we should establish that there are parallel proceedings, one a criminal matter and the other this civil action, that involve overlapping issues and facts. In their petition, Plaintiffs allege "Dr. Schneider breached his professional duty of care owed to Defendant Bible by writing, issuing and providing to Decedent Bible prescriptions for numerous addictive pain medications and other drugs." (Petition at ¶ 21.) Plaintiffs make identical allegations against Dr. St. Clair, Ms. Hebert and Mr. Atterbury. (Petition at ¶¶ 36, 53, 68.) Plaintiffs further allege Schneider Medical Clinic is vicariously liable for the actions of Dr. St. Clair, Ms. Hebert and Mr. Atterbury. (Petition at ¶ 81.)

Although the U.S. Attorney has not filed criminal charges against any of the Defendants, Defendants believe there is no dispute among the parties that the U.S. Attorney is currently investigating Defendants' actions and practices at Schneider Medical Clinic and that the focus of the investigation relates to "writing, issuing and providing . . . prescriptions for . . . pain medications and other drugs." Dr. Schneider was scheduled to testify before the United States Grand Jury in December 2005, which was rescheduled for January 2006. In addition, the U.S. Attorney has taken medical records from Schneider Medical Clinic. Some activities relating to the government's investigation have been reported in the local newspaper, *The Wichita Eagle*. Should Plaintiffs dispute the fact that the U.S. Attorney is investigating facts and issues that overlap with this civil

proceeding, Defendants will provide the Court with additional documentation establishing the existence and subject matter of the criminal investigation in their reply.

Due to the parallel criminal investigation and this civil action, Defendants are presented with the decision of whether to invoke their Fifth Amendment privilege against self-incrimination. "An individual's Fifth Amendment right to avoid self-incrimination may be invoked in any proceeding, including civil or administrative." *Winston v. Kansas Dept. of SRS*, 274 Kan. 396, 408, 49 P.3d 1274 (2002). The Fifth Amendment's privilege against self-incrimination is found in the amendment's clause that states no person "shall be compelled in any Criminal Case to be a witness against himself." The Kansas Constitution, Bill of Rights Section 10, contains the same protection and states, "No person shall be a witness against himself." These constitutional protections are reinforced by Kansas' evidence statutes. For example, K.S.A. 60-423(a) provides, "Every person has in any criminal action in which he or she is an accused a privilege not to be called as a witness and not to testify."

Defendants admit that they have no absolute right or constitutional protection not to be forced to choose between testifying in a civil matter and asserting their Fifth Amendment privilege. *See Meneley*, 271 Kan. at 369. "Nevertheless, a court may decide in its discretion to stay civil proceedings, postpone civil discovery, or impose protective orders and conditions 'when the interests of justice seem to require such action, sometimes at the request of the prosecution, . . sometimes at the request of the defense[.]'" *Ashworth v. Albers Medical, Inc.*, 229 F.R.D. 527, 530 (S.D. W. Va. 2005) (quoting *SEC v. Dresser*, 628 F.2d 1368, 1375 (D.C. Cir. 1980)).

Defendants further admit no indictment has been returned against them. As mentioned above, it is Defendants' understanding that the U.S. Attorney's investigation will be completed in

the next six months. This is a primary reason for Defendants' request for only a six-month stay. Even where criminal charges are not currently pending, courts have found a stay is appropriate when a criminal *investigation* is pending. For example, in *Ashworth v. Albers Medical, Inc.*, the United States moved to intervene in a consumer's action, pending in state court, against manufacturers for allegedly selling a counterfeit pharmaceutical product. The United States sought to intervene for the purpose of requesting a stay of discovery in the consumer's action. The court granted the United States' request to intervene and found the stay was appropriate. 329 F.R.D. at 532. The plaintiff and one of the three defendants targeted in the investigation objected to the stay. The United States, however, informed the court that indictments against the defendants would be returned in approximately six weeks. *Id.* Consequently, the court limited the duration of the stay to approximately eight weeks. *Id.*

It should be noted that the plaintiff in *Ashworth v. Albers Medical, Inc.*, requested that the stay be limited in scope and not extend to stay discovery of documentary evidence. 329 F.R.D. at 532. (Typically the Fifth Amendment privilege does not extend to documentary evidence, only evidence that is testimonial in nature. *State v. Leitner*, 272 Kan. 398, 424, 34 P.3d 42 (2001).) The court denied this request and stated "'such a compromise could force the government to become proactive in objecting to specific discovery requests and thereby inadvertently be forced to reveal some aspect of its case prematurely.' The court also noted that allowing discovery would create ancillary litigation concerning the proper scope of discovery, negating the positive impact a stay would have on considerations of judicial economy." 229 F.R.D. at 532 (citing and quoting *Bridgeport Harbour Place I, LLC v. Ganim*, 269 F. Supp. 2d 6, 11 (D. Conn. 2002) (some internal citations omitted). *Ashworth v. Albers Medical, Inc.*, in which the United States intervened in order

to seek a stay, demonstrates that a stay may benefit more than Defendants. As will be discussed in greater detail below, a stay of proceedings may serve many interests, including interests that are not currently represented in this matter.

Now, let us turn to the five factors the Court must consider before making its decision whether to grant Defendants' request for a stay.

B. The Five Factors Which The Court Must Consider Weigh In Favor Of Granting Defendants' Request For A Six-Month Stay Of These Proceedings

In *State ex rel. Stovall v. Meneley*, 271 Kan. 355, 22 P.3d 124 (2001), the court was faced with a defendant's request for a stay in a civil proceeding, pending the resolution of criminal charges against him. The district court denied the request, and on appeal the Kansas Supreme Court found the following five factors should be considered when deciding whether a stay should be granted:

> The decision whether to stay civil proceedings in the face of a parallel criminal proceeding should be made in light of the particular circumstances and competing interests involved in the case. This means the decisionmaker should consider the extent to which the defendant's Fifth Amendment rights are implicated. In addition, the decisionmaker should generally consider the following factors: (1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay; (2) the burden which any particular aspect of the proceedings may impose on defendants; (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources; (4) the interest of persons not parties to the civil litigation; and (5) the interests of the public in the pending civil and criminal litigation.

271 Kan. at 355, Syl. ¶ 6; *see also*, 271 Kan. at 370 (same, quoting *Keating v. Office of Thrift Supervision*, 45 F.3d 332, 324-25 (9th Cir. 1995)).

Other courts have considered the same five factors when determining whether a stay is appropriate. *See e.g., Estate of Gaither v. District of Columbia*, Case No. Civ. 03-1458, 2005 WL 3272130 (D.D.C. Dec. 2, 2005) (court denied plaintiff's motion to lift stay that had been in place for

over two years), attached as Exhibit A; *Ashworth v. Albers Medical, Inc.*, 229 F.R.D. 527, 530-31 (court granted United States' motion to intervene and for stay, over plaintiff's objection, where criminal investigation pending); *Crawford & Sons, Ltd., v. Besser*, 298 F. Supp. 2d 317, 319 (E.D. N.Y. 2004) (court granted defendants' motion to stay action upon finding the civil case or criminal case may be prejudiced in absence of stay); *Javier v. Garcia-Botello*, 218 F.R.D. 72, 74 (W.D. N.Y. 2003) (court denied United States' motion to intervene but entered order for stay after considering five factors, plus a sixth factor – the overlap of issues between civil and criminal cases).

To better understand the court's decision in *State ex rel. Stovall v. Meneley* some facts should be noted. The defendant was the Sheriff of Shawnee County, Kansas. The case involved a *quo warranto* action to oust Meneley from office as Sheriff, which was a civil proceeding. Meneley was simultaneously facing criminal perjury charges, perjury that he allegedly committed while acting in his official capacity as Sheriff. 271 Kan. at 364-66. The Kansas Supreme Court found the first and fifth factors were extremely strong and justified the district court's decision to deny a stay. 271 Kan. at 371.

The following examination of the five factors make it apparent that the factors weigh in favor of granting Defendants' motion to stay proceedings.

1. *Plaintiffs' Interests*

Plaintiffs have an interest in proceeding expeditiously with the litigation of their claims, and the Court must consider any potential prejudice to them created by a stay. Here, Plaintiffs' claims are based upon Kandace D. Bible's care and treatment by Defendants and "ultimately the loss of her life on November 14, 2003." (Petition at ¶ 32.) Plaintiffs did not file this action until November 10, 2005, nearly two years after Ms. Bible's death. This delay suggests that the passage of time is not

overly critical to Plaintiffs. *See Ashworth*, 229 F.R.D. at 531 (plaintiff's argument that a stay would cause her undue prejudice was subverted by her own delay in filing action). Furthermore, to demonstrate undue prejudice, the plaintiff must "'establish more prejudice than simply a delay in her right to expeditiously pursue her claim.'" *Maloney v. Gordon*, 328 F. Supp. 2d 508, 512 (D. Del. 2004) (quoting *In re Adelphia*, 2003 U.S. Dist. LEXIS 9736 at *10).

Here, Plaintiffs' interest in proceeding expeditiously is drastically different than the State of Kansas' interest as plaintiff in *State ex rel. Stovall v. Meneley* to oust Meneley as Sheriff of Shawnee County. Although this factor invariably supports the plaintiff in all cases to some degree, standing alone Plaintiffs' interest is not dispositive. *Ashworth*, 229 F.R.D. at 531. Due to the fact that Defendants are requesting a six-month stay which will not delay the trial of this matter, Plaintiffs' interests in proceeding expeditiously is not negatively impacted.

2. *Defendants' Interests*

The burden placed on Defendants if their motion for stay is not granted is that their Fifth Amendment privilege against self-incrimination may be undermined. *Javier*, 218 F.R.D. at 75. As described in *Javier*, "[i]f discovery moves forward, each defendant will be faced with the difficult choice between asserting his or her right against self-incrimination, thereby inviting prejudice in the civil case, or waiving those rights, thereby courting liability in the criminal case." *Id.* Here, if the criminal investigation results in the return of any indictments, the criminal proceeding will be subject to the discovery rules found in Rule 16 of the Federal Rules of Criminal Procedure, which to a great extent limits discovery to the requests made by the defendant and the defendant's willingness to make reciprocal disclosures. Permitting discovery in this civil action, simultaneously with the criminal investigation, may force Defendants "to disclose matters that otherwise would not be

available to the United States through the criminal rules of procedure." *Ashworth*, 229 F.R.D. at 531-32. Likewise, there is the possibility that through the discovery of this civil matter, the United States may be asked to reveal more than it wishes to or would be required to in a criminal proceeding.

Defendants' interests weigh in favor of granting their motion to stay. Indeed, in *Maloney v. Gordon*, the plaintiffs requested a stay in their civil action. The defendants objected to the request and argued that any burden placed on them by the simultaneous and overlapping civil and criminal proceedings was minimal. The court rejected the defendants' argument and stated, "I hold that the risks to the fair resolution of the criminal case outweigh the benefits of expedition in the civil case." *Maloney*, 328 F. Supp. 2d at 513.

3. *The Court's Interests*

Although the matter before the Court is rather unique in that this civil action is in state court and the U.S. Attorney is conducting the pending criminal investigation, the Court has an interest in maintaining the integrity if both proceedings. Other courts have noted that judicial economy may be served by permitting the criminal case to be resolved first, which may later streamline discovery in the civil case. *See, e.g., Ashworth*, 229 F.R.D. at 532. In *Estate of Gaither v. District of Columbia*, where the court was asked to lift a stay, the court commented that lifting the stay "would – in all likelihood – result in a significant amount of discovery-related litigation relating to motions for protective orders, claims of privilege, and conflicts over witness availability." Exhibit A, 2005 WL 3272130 at *6; *see also Maloney*, 328 F. Supp. 2d at 513 (same).

Here, if the motion for a six-month stay is denied, the civil discovery process will be bogged down by a flurry of motions for protective orders and other legitimate requests to protect Defendants'

rights while they await the conclusion of the U.S. Attorney's investigation. Based on this and the Court's interests in preserving the integrity of both proceedings, the Court's interests weigh in favor of permitting a stay.

4. *Third Party Interests*

The United States, as a third party, is likely interested in avoiding any possibility that the discovery in this civil action not be used to circumvent the more limited scope of discovery in its criminal investigation. This was certainly true in *Ashworth v. Albers Medical, Inc.* and *Javier v. Garcia-Botello* where the United States moved to intervene for the purpose of requesting a stay of the civil action. *Ashworth*, 229 F.R.D. at 528; *Javier*, 218 F.R.D. at 73. In addition, it is possible that discovery may touch on the Fifth Amendment rights of witnesses who are not parties to this civil action but who may be targets of the criminal investigation. *See Ashworth*, 229 F.R.D. at 528. This factor also favors Defendants' request for a six-month stay.

5. *The Public Interest*

The Kansas public has an interest in the resolution of Plaintiffs' claims. The public, however, also has an interest in the U.S. Attorney's criminal investigation. "[T]he public's interest in the integrity of the criminal case is entitled to precedence over the civil litigant." *Javier*, 218 F.R.D. at 75. Many courts have found the public's interest in preserving the integrity of a criminal proceeding out weighs the public's interest in the resolution of an individual litigant's cause of action. *See, e.g.*, Exhibit A, *Estate of Gaither*, 2005 WL 3271230 at *5; *Ashworth*, 229 F.R.D. at 531; *Maloney*, 328 F. Supp. 2d at 513-14. Here, the public interest weighs in favor of a stay.

All the interests and factors the Court must consider in its determination of whether to grant Defendants' stay heavily weigh in favor of the stay, with the possible exception of Plaintiffs'

interests in proceeding expeditiously. Even Plaintiffs' interests will not be unduly prejudiced by a six-month stay. Therefore, a stay is warranted.

C. A Six-month Stay Of This Proceeding May Protect The Interests Of The United States And Plaintiffs, As Well As Defendants

It is apparent in the discussion of the various interests that must be considered that a six-month stay will not benefit only Defendants by preserving their Fifth Amendment privilege against self-incrimination. As mentioned above, the United States moved to intervene in *Ashworth v. Albers Medical, Inc.* and *Javier v. Garcia-Botello* for the limited purpose of requesting a stay. *Ashworth*, 229 F.R.D. at 528; *Javier*, 218 F.R.D. at 73. In *Ashworth*, the court noted that if discovery proceeded in the civil action the government might be forced to object to discovery requests and, thereby, inadvertently reveal some aspect of its case prematurely. *Ashworth*, 229 F.R.D. at 532 (quoting *Bridgeport Harbour Place I, LLC*, 269 F. Supp. 2d at 11.) Also as has been mentioned, depending on the circumstances, it is possible for the United States or Defendants to gain an inappropriate advantage in the criminal proceeding if discovery is permitted to continue in this civil action.

Although Defendants are the parties requesting a stay, it is possible for the plaintiffs in an action to benefit from a stay in certain circumstances. For example, in *Maloney v. Gordon*, the issue of whether a stay was needed was raised on the court's own motion. *Maloney*, 328 F. Supp. 2d at 509. Once raised, the plaintiffs requested a complete stay of the civil proceedings pending the outcome of the criminal case. *Id.* at 511 (plaintiffs had been subpoenaed to testify before a federal grand jury). The court considered the relevant factors and granted plaintiffs' request. *Id.* at 514.

Considering all the discovery disputes that could arise if discovery is permitted to proceed, everyone benefits by the requested six-month stay. At the same time, Plaintiffs are not unduly prejudiced by the stay. The Court, Plaintiffs, the United States and Defendants benefit from preserving the *status quo* and the integrity of the civil and criminal proceedings.

III. CONCLUSION

The Court has the power to control the disposition of this civil action. The overlapping facts and issues in the U.S. Attorney's criminal investigation and Plaintiffs' claims create a situation in which Defendants are be faced with the dilemma of whether to invoke their Fifth Amendment privilege against self-incrimination in this civil action. The interests of all concerned weigh heavily in favor of a stay and avoids the conflict between civil and criminal rules of procedure, while also reserving the integrity of both proceedings.

For the foregoing reasons, defendants Stephen J. Schneider, D.O., Donna M. St. Clair, D.O., Kimberly L. Hebert, P.A., Curtis J. Atterbury, P.A., and Schneider Medical Clinic, L.L.C. respectfully request the Court grant their joint motion and enter an Order staying these proceedings for six (6) months.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of January 2006, she served a true and correct copy of the above and foregoing ***Defendants' Memorandum In Support Of Their Joint Motion To Stay Proceedings*** by facsimile to the following:

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EXHIBIT A

Westlaw.

Slip Copy

Slip Copy, 2005 WL 3272130 (D.D.C.)
(Cite as: Slip Copy)

Briefs and Other Related Documents
Only the Westlaw citation is currently available.
United States District Court, District of Columbia.
ESTATE OF Mikal R. GAITHER, by and through Pearl Gaither, Personal Representative, Plaintiff,
v.
DISTRICT OF COLUMBIA, et al., Defendants.
No. Civ.A. 03-1458CKK.

Dec. 2, 2005.

John Moustakas, Richard Lee Mathewy, Paul Richard Friedman, Goodwin Procter, LLP, Washington, DC, for Plaintiff.
Steven J. Anderson, Office of Corporation Counsel, Washington, DC, for Defendants.

MEMORANDUM OPINION

KOLLARKOTELLY, J.
*1 Presently before the Court is [14] Plaintiff's Motion to Lift the Stay in the above-captioned case, and [18] Plaintiff's Supplemental Motion to Lift the Stay. Upon a consideration of Plaintiff's motions, the record adduced by the parties as to the events surrounding this case, and a searching examination of the relevant case law, the Court shall exercise its discretion, deny both of Plaintiff's motions, and maintain the discovery stay in this case until the completion of criminal proceedings relevant to the events surrounding Plaintiff's claims.

I. BACKGROUND

Plaintiff Pearl Gaither, mother and personal representative of the Estate of Mikal R. Gaither, filed a Complaint in the above-captioned action on July 1, 2003, against Defendants the District of Columbia; Odie Washington, Director of the D.C. Department of Corrections; Marvin L. Brown, Warden of the D.C. Jail; and Dennis Harrison, Associate Warden of Operations of the D.C. Jail. *See* Compl. at 1. In its amended form, Plaintiff's Complaint seeks compensation from Defendants for the stabbing death of her son, Mikal R. Gaither, which occurred while he was in the custody of the D.C. Jail. Plaintiff's Amended Complaint brings claims for negligence (Count I), wrongful death (Count II), and violation of constitutional rights pursuant to Title 42 U.S.C. § 1983 (Count III). *See generally* Am. Compl.

Before the commencement of discovery in this case, Defendants moved with Plaintiff's consent to stay further proceedings in this case "until completion of the related criminal case." *See* Defs.' Mot. for Stay at 1. On October 8, 2003, the Court granted Defendants' motion, staying this case "until further notice from the parties." *See Gaither v. Dist. of Columbia*, Civ. No. 03-1458 (D.D.C. Oct. 8, 2003) (Minute Order). Having heard nothing from the parties for nearly two years, the Court on July 11, 2005 ordered "that the parties in the above-captioned action are to provide the Court with a Status Report regarding the progress of this case by Monday, August 8, 2005, including a projection of the proper time to lift the 'stay' in this case." *Gaither*, Civ. No. 03-1458 (D.D.C. July 11, 2005) (Minute Order).

The Court's July 11, 2005 Order generated an unexpected flurry of filings by the parties: specifically, Plaintiff's Status Report and Motion to Lift the Stay, Defendants' Opposition, Plaintiff's Supplemental Motion to Lift the Stay, and Defendant's Supplemental Opposition. In short, the Court was initially informed that a criminal trial related to this case was scheduled in D.C. Superior Court for November 7, 2005. *See* Defs.' Status Rep. at 2; Pl.'s Mot. to Lift Stay at 5. In this criminal trial, the Government is bringing murder charges against criminal defendants Matthew Ingram and Delonte Kent, alleging that they stabbed Plaintiff's decedent to prevent him from giving testimony against them in their criminal trials. *See* Defs.'

Status Rep. at 2. However, the criminal trial of Messrs. Ingram and Kent has now been continued to February 13, 2006. *See* Pl.'s Suppl. Mot. to Lift Stay at 1; Defs.' Suppl. Opp'n at 1.

*2 Due to the lengthy passage of time since the initial stay in this case, Plaintiff withdraws her consent to the stay and now requests that the Court lift the previously agreed-to stay on discovery. *See* Pl.'s Mot. to Lift Stay at 3. The only justification offered by Plaintiff for the lifting of the stay so that discovery may commence in this action is her assertion that "[e]ach day the stay on discovery remains in effect increases the risk to plaintiff of memories clouding and documents being lost that would show the District's negligence in connection with Mikal Gaither's 2002 death." Pl.'s Suppl. Mot. to Lift Stay at 2.

Defendants oppose Plaintiff's motion on multiple grounds: (1) the U.S. Attorney will be calling multiple inmates as witnesses in the relevant criminal case, and lifting the stay on discovery in this case before the trial is completed could lead to the disclosure of the government witnesses' identities and possible retaliation against them in an effort to block their testimony, Defs.' Status Rep. at 2; (2) the transcript obtained from the criminal trial might resolve many of the issues that would otherwise be a focal point during discovery in this case, saving time, effort, and money in the eventual discovery process, and possibly speeding up Plaintiff's ultimate recovery in this case, Defs.' Suppl. Opp'n at 2; (3) discovery in this case would have an adverse impact on the criminal trial and possibly injure the integrity of murder prosecutions by complicating the tasks of the U.S. Attorney and forcing likely witnesses to give detailed depositions in a civil case before issues of criminal liability are resolved, *id.* at 1-2; (4) Gina Powell, the homicide detective assigned to the case, indicated that the commencement of discovery would be disruptive and not particularly effective, as "[a]ll or large parts " of the physical evidence or MPD files "would likely be protected by the investigatory privilege," Defs.' Status Rep. at 2; and (5) the wait of three additional months-until February 2006-is "not too long to wait to advance the interests of [a] fair trial," Defs.' Suppl. Opp'n at 1.

In response, Plaintiff argues that the kind of blanket stay of discovery effectuated by consent on October 8, 2003, is now unjustified, as many of Defendants' arguments are inapplicable. *See* Pl.'s Mot. to Lift Stay at 3-5. Specifically, Plaintiff contends that (1) only a tiny fraction of the evidence that Plaintiff will seek in discovery would "touch on the limited materials the District wishes to protect," Pl.'s Mot. to Lift Stay at 3; (2) Defendants would not likely satisfy the required elements to establish protection pursuant to investigative privilege, *id.* at 4; (3) discovery could proceed on grounds far removed from those that would otherwise implicate witnesses in the criminal trial until the completion of the trial, *id.* at 4-5; and (4) it is possible that the criminal trial could be postponed rather than proceeding on February 13, 2006 as currently scheduled, Pl.'s Suppl. Mot. to Lift Stay at 1-2.

II: DISCUSSION

*3 It is well-established that a district court has discretionary authority to stay a civil proceeding pending the outcome of a parallel criminal case when the interests of justice so require. *See United States v. Kordel*, 397 U.S. 1, 12 n. 27, 90 S.Ct. 763, 25 L.Ed.2d 1 (1970); *Landis v. North Am. Co.*, 299 U.S. 248, 254, 57 S.Ct. 163, 81 L.Ed. 153 (1936). This authority allows a court to "stay civil proceedings, postpone civil discovery or impose protective orders and conditions when the interests of justice seem to require such action." *Sec. & Exchange Comm'n v. Dresser Indus., Inc.*, 628 F.2d 1368, 1375 (D.C.Cir.1980) (en banc), *cert. denied*, 449 U.S. 993, 101 S.Ct. 529, 66 L.Ed.2d 289 (1980) . Courts are afforded this discretion because the denial of a stay could impair a party's Fifth Amendment privilege against self-incrimination, extend criminal discovery beyond the limits set forth in Federal Rule of Criminal Procedure 16(b), expose the defense's theory to the prosecution in advance of trial, or otherwise prejudice the criminal case. *Id.* at 1376.

However, "[n]othing in the Constitution or the laws requires a stay of civil proceedings pending the outcome of parallel criminal proceedings." *Barry Farm Resident Council, Inc. v. U.S. Dep't of the*

Slip Copy, 2005 WL 3272130 (D.D.C.)
(Cite as: Slip Copy)

Navy, Civ. Nos. 96-1450, 96-1700(HHG), 1997 WL 118412, at *1 (D.D.C. Feb.18, 1997) (citing *Dresser Indus.*, 628 F.2d at 1375). As the D.C. Circuit recognized in *Dresser*,

The civil and regulatory laws of the United States frequently overlap with the criminal laws, creating the possibility of parallel civil and criminal proceedings, either successive or simultaneous. In the absence of substantial prejudice to the rights of the parties involved, such parallel proceedings are unobjectionable under our jurisprudence.

Dresser Indus., 628 F.2d at 1374. Importantly, " [t]he case for staying civil proceedings is 'a far weaker one' when 'no indictment has been returned.' " *FSLIC v. Molinaro*, 889 F.2d 899, 903 (9th Cir.1989) (quoting *Dresser Indus.*, 628 F.2d at 1376).

In determining whether to stay a civil proceeding pending the outcome of a related criminal proceeding, courts within this Circuit have customarily weighed the following factors: (1) the interests of the plaintiff in proceeding with the civil litigation as balanced against the prejudice to them if it is delayed; (2) the public interest in the pending civil and criminal investigation; (3) the interests of and burdens on the defendant; (4) the interest of persons not parties to the civil litigation; and (5) the convenience of the court in the management of its cases and the efficient use of judicial resources. *Barry Farm Resident Council*, 1997 WL 118412, at *1 (citing cases). "The court must make such determinations in the light of the particular circumstances of the case." *Dresser Indus.*, 628 F.2d at 1375; *see also Capital Eng'g & Mfg. Co. v. Weinberger*, 695 F.Supp. 36, 41-42 (D.D.C.1988) (" the court must determine the extent to which the civil discovery threatens the secrecy and integrity of criminal proceedings, and, if the discovery could prove meddlesome, whether to stay discovery entirely or to narrow the range of discovery so as not to impinge upon the criminal proceedings").

*4 Upon a consideration of the relevant factors, the Court in exercising its discretion concludes that the present discovery stay in this case should *not* be lifted, and therefore shall deny Plaintiff's motions seeking such an action. Such a conclusion is based upon the following reasoning:

1. *Plaintiff's Interest*

Both Plaintiff's Motion to Lift the Stay and Plaintiff's Supplemental Motion rely on essentially one major argument: Plaintiff's efforts at recovery in this civil suit will be injured because "[e]ach day that the stay on discovery remains in effect increases the risk to plaintiff of memories clouding and documents being lost that would show the District's negligence in connection with Mikal Gaither's 2002 death." Pl's Suppl. Mot. to Lift Stay at 2. While Plaintiff certainly has an interest in the " expeditious resolution" of her civil case, the Court finds that Plaintiff's interest in this case is not as great as it could otherwise be.

First, unlike the situation outlined in *Dresser Industries*, there has been an indictment secured against criminal defendants Ingram and Kent, making the case for a stay a stronger one than had that not been the case. *See Dresser Indus.*, 628 F.2d at 1376. Second, Plaintiff's decedent, Mikal Gaither, was murdered on December 15, 2002. *See* Am. Compl. ¶ 7. Plaintiff did not bring an action seeking recovery for his death until roughly seven (7) months later, on July 1, 2003. *See* Compl. at 1. Discovery in Plaintiff's case was stayed by Plaintiff's own consent on October 8, 2003, and the agreed-upon stay has remained in place for roughly twenty-eight (28) months. As such, at this point, nearly three (3) full years have passed since the date of Mikal Gaither's death. With a criminal trial relating to Mr. Gaither's death scheduled in Superior Court for February 13, 2006, only three (3) months remain until the likely commencement and conclusion of that related case. Certainly, a delay of only three (3) additional months, when roughly thirty-five (35) months have already passed, is relatively insignificant, especially if dimming memories are considered. Third, as noted by various courts and focused upon by Defendants, a stay of discovery in a civil case until the resolution of a criminal case may well later streamline discovery in the civil case, rebounding to a plaintiff's benefit. *See, e.g., Bridgeport Harbour Place I, LLC v. Ganim*, 269 F.Supp.2d 6, 9

(D.Conn.2002); *Trustees of Plumbers & Pipefitters Nat'l Pension Fund v. Transworld Mech., Inc.*, 886 F.Supp. 1134, 1140 (S.D.N.Y.1995); *Rosenthal v. Giuliani*, Civ. No. 98-8408(SWK), 2001 WL 121944 (S.D.N.Y. Feb. 9, 2001). Such streamlining is likely to be the case here, as the transcript of the criminal trial may well resolve many of the instant discovery issues in this case. Indeed, the trial may establish, *inter alia*, a motive for Mr. Gaither's killers, the weapon(s) used, the circumstances of his death, and the supervision by Defendants afforded both to Mr. Gaither and his killers. In its own way, the criminal trial itself-by placing a wide range of testimony relevant to this case under oath-will actually preserve testimony and prevent memories from clouding, thereby obviating or allaying the central concerns of Plaintiff.

*5 Based upon these considerations, the Court concludes that Plaintiff's interest in lifting the present discovery staff and commencing some form of discovery in this case prior to the resolution of the scheduled criminal trial is not particularly strong.

2. *The Public Interest*

The public interest favors Defendants for one central reason: discovery in this civil case could impact the criminal case to a significant degree. Discovery here could possibly implicate the Fifth Amendment rights of Ingram and Kent, reveal confidential sources and endanger witnesses for the anticipated criminal trial, and divert the attention of the Government and its officers from the preparation of the criminal case. Moreover, starting discovery in this case might unintentionally aid the indicted criminal defendants, who could obtain more information through civil discovery than they are entitled to under the criminal rules of discovery. *See Twenty First Century Corp. v. LaBianca*, 801 F.Supp. 1007, 1010 (E.D.N.Y.1992) ("Allowing civil discovery to proceed ... may afford defendants an opportunity to which they are not entitled under the governing criminal discovery rules."). Ultimately, "[t]he public has an interest in ensuring that the criminal discovery process is not subverted." *Rosenthal*, 2001 WL 121944, at *2.

While Plaintiff suggests that these problems could be worked around and discovery limited, courts have traditionally rejected similar arguments. For instance, the *Bridgeport Harbour* court found that:

> During oral argument, the plaintiff suggested that the more appropriate course of action would be to deny the motion to stay, allow the government to 'monitor' discovery and have the court issue specific sealing and protective orders. The court is concerned, however, that such a compromise could force the government to become proactive in objecting to specific discovery requests and thereby inadvertently be forced to reveal some aspect about its case prematurely. Further, plaintiff's recommendation would likely require further judicial intervention. Under such circumstances, the court finds that a complete stay of discovery offers "a more efficient" resolution.

Bridgeport Harbour Place I, LLC, 269 F.Supp.2d at 11. Accordingly, the Court finds that the public interests favors a continued and complete discovery stay in this civil action.

3. *Interests of/Burden on Defendants*

As noted previously, Defendants would be significantly burdened by the lifting on the present stay and the commencement of discovery in this case. Importantly, discovery in this case before the criminal trial is completed could lead to the disclosure of the government witnesses' identities and possible retaliation against them in an effort to block their testimony. Moreover, discovery in this case could have an adverse impact on the criminal trial and possibly injure the integrity of murder prosecutions by complicating the tasks of the U.S. Attorney and forcing likely witnesses to give detailed depositions in a civil case before issues of criminal liability are resolved. Likewise, the already-apparent divergence in opinion between Plaintiff and Defendants as to the scope of discovery makes it clear that the lifting of the present stay would create a flood of privilege-related litigation, drawing resources away from the effort in prosecuting the related criminal case.

4. Interests of Persons Not Parties to This Litigation

*6 Given the circumstances of this case, the interests of persons not parties to this litigation favors continuation of the present stay. First, the possible Fifth Amendment implications for criminal defendants Ingram and Kent should they be deposed in this case prior to their trial weighs in favor of a continued stay. Second, as previously mentioned, the danger to confidential Government witnesses who may be called to testify in the forthcoming criminal trial also argues in favor of a denial of Plaintiff's twin motions.

5. Convenience of the Court and Judicial Economy

While not as significant as some of the other factors, the Court has an interest in preventing unnecessary conflict and litigation that may otherwise cloud its docket and hamper judicial economy. Here, it is clear that overturning the present stay and allowing discovery in this case at this point in time would-in all likelihood-result in a significant amount of discovery-related litigation relating to motions for protective orders, claims of privilege, and conflicts over witness availability. Such litigation might well prove wholly duplicative and unnecessary if the present stay was continued through the conclusion of the related criminal trial. Accordingly, judicial economy and the convenience of the court weighs in favor of maintaining the present stay in order to head off possibly unneeded and divisive litigation.

III: CONCLUSION

For the reasons set forth above, the Court exercises its discretion and concludes that Defendants have shown "good cause" for maintaining the present discovery stay in this civil case until the conclusion of the related criminal case in Superior Court. Plaintiff's slight interest in commencing civil discovery is significantly outweighed by other relevant interests. Like the *Bridgeport Harbour* court, the Court finds that only a blanket discovery stay would supply the necessary protections required to ensure that justice occurs. Moreover, in its own way, the criminal trial itself will cement relevant testimony provided under oath, preventing the kind of potential memory clouding which so concerns Plaintiff. Accordingly, the Court shall deny Plaintiff's motions to lift the discovery stay, and shall direct that the parties file a joint status report by Tuesday, February 28, 2006 updating the Court as to the progress of the pending criminal case. An Order accompanies this Memorandum Opinion.

D.D.C.,2005.
Estate of Gaither ex rel. Gaither v. District of Columbia
Slip Copy, 2005 WL 3272130 (D.D.C.)

Briefs and Other Related Documents (Back to top)

• 1:03cv01458 (Docket) (Jul. 01, 2003)

END OF DOCUMENT

LARRY WALL TRIAL LAW
2024 North Woodlawn, Suite 405
Wichita, Kansas 67208
(316) 265-6000

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CIVIL DEPARTMENT

GWEN R. HUNT and LISA L. PERRY as Co-Administrators of the ESTATE OF KANDACE D. BIBLE, Deceased,

Plaintiffs,

vs.

STEPHEN J. SCHNEIDER, D.O., DONNA M. ST. CLAIR, D.O., KIMBERLY L. HEBERT, P.A., CURTIS J. ATTERBURY, P.A., SCHNEIDER MEDICAL CLINIC, L.L.C., a Kansas Corporation;

Defendants.

Case No. 05 CV 4240

VIA FACSIMILE

PURSUANT TO K.S.A. CHAPTER 60

PLAINTIFFS' RESPONSE TO DEFENDANTS' JOINT MOTION TO STAY PROCEEDINGS

COME NOW Plaintiffs, Gwen R. Hunt and Lisa L. Perry, as administrators of the estate of Kandace D. Bible, deceased, by and through counsel, Larry Wall of Larry Wall Trial Law and submits the following in response to Defendant's Joint Motion for A Stay.

Defendants have prematurely moved for an extraordinary remedy. Defendants' reliance on the four cases provided to this Court is misplaced and illogical. The Model Rules do not support the granting of a stay and the cases relied on do not support a stay. The only Kansas case on point ruled against granting a stay.

EXHIBIT
2

Defendants' want to stay the proceedings for six (6) months and for an extension of time to respond to any pending discovery.

The reason they want a stay is amusing. The Defendant's have requested a six (6) month stay of discovery because some or all of them may be indicted. In support of the motion the Plaintiff's through Pamela Clancy sent the Court copies of four cases. Plaintiffs requested copies of the material sent to the Court. Said request has been ignored. Plaintiffs renew the request. (See Exhibit A).

DEFENDANTS' FOUR CASES INVOLVE AN ACTUAL ONGOING CRIMINAL CASE NOT A CRIMINAL CASE THAT MIGHT BE FILED

Landis v. North American Co.
229 U.S. 248, 254, 57 S. Ct. 163, 81 L. Ed. 153 (1936)

In Landis the motion for the stay was requested by the United States Attorney General. The United States Attorney's signature or request for a stay in this civil action is notably absent.

Landis involved strictly civil disputes and did not hold or even suggest that a doctor sued for malpractice should be entitled to a stay of discovery in a malpractice suit because he MIGHT BE INDICTED IN THE FUTURE.

Ashworth v. Albers
229 F.R.D. 527, 530 (S.D. W. Va. 2)
(quoting *SEC v. Dresser*, 628 F.2d 1368, 1375 (D.C. Cir. 1980)

Defendants' reliance on Ashworth is amusing. In Ashworth the United States Attorney moved to intervene in a state civil case between a consumer and some pharmaceutical companies. The United States Attorney argued the discovery in the civil case could possibly hurt a PENDING criminal case. The United States Attorney for the District of Kansas has not

intervened. Ashworth shows that if the United States Attorney in Kansas was worried that this civil case would hurt the as yet unfiled criminal case he could intervene in this case. The lack of intervention in this case by the United States Attorney in Kansas clearly shows the folly of defendants' positions, postures, and arguments in their "joint" motion to stay discovery.

Gaither v. District of Columbia
Case No. Civ. 03-1458, 2005 WL 3272130 (D.D.C. Dec. 2, 2005)

In the estate of Kandace D. Bible, defendant's reliance on *Gaither v. District of Columbia* is also very much misplaced. The Gaither case involved a case where there was an ongoing criminal case. It did not involve a situation where a criminal case "MIGHT" be filed.

Gaither also clearly shows that these types of stays can result in serious delays. After the Order of Stay in Gaither was granted there was no activity for nearly two years.

Gaither also states as follows:

> Importantly, "[t]he case for staying civil proceedings is 'a far weaker one' when 'no indictment has been returned.'" *FSLIC v. Molinaro*, 889 F.2d 899, 903 (9th Cir. 1989) (quoting *Dresser Indus.*, 628 F 2.d at 1376).

Crawford & Sons, Ltd. v. Besser
298 F. Supp. 2d 317, 319 (E.D. N.Y. 2004)

The defendant's reliance on *Crawford and Sons, Ltd. v. Besser* is also misplaced and actually favors not granting a stay. Crawford involved a situation where there was an "ACTUAL" criminal case, not one that "MIGHT" be filed.

As the Court noted "a stay of a civil case is an extraordinary remedy". This Court is being asked to stay the proceedings in malpractice cases when there is no "ongoing" criminal prosecution.

Maloney v. Gordon
328 F. Supp. 2d 508, 512 (D. Del. 2004)
(quoting *In re Adelphia*, 2003 U.S. Dist. LEXIS 9736 at *10)

The defendant's reliance on *Maloney v. Gordon* is as misplaced as all of the aforementioned cases.

The Court in Maloney utilized the following language:

> "In determining whether to grant a stay, a court must also consider the status of the related criminal proceedings, which can have a substantial effect of the balancing of the equities." If criminal indictments are returned against the civil defendants, then a court should strongly consider staying the civil proceedings until the related criminal proceedings are resolved.

This Court should not stay discovery in this case. If the Defendants are indicted, it may make sense for those Defendant's indicted to renew their motion. However, the only reported case in Kansas approved **a denial** of a stay.

CONCLUSION

The Plaintiff urges this Court to closely read and follow the rulings and reasoning in *State ex rel. Stoval v. Meneley, 271 Kan. 355, 22 P.3d 124 (2001)*. The syllabus to the Meneley case is attached. (See Exhibit B). The public has a right to know if Dr. Schneider is practicing below standard of care.

The Kansas Supreme Court in *Stoval v. Meneley* stated as follows:

> "*371 Whether a party's Fifth Amendment rights are implicated is a significant factor for the district court to consider, "but if is only one consideration to be weighted against others." *Federal Sav. And Loan Ins. Corp. V. Molinaro*, 889 F.2d 899, 902-03 (9th Cir. 1989). In the present case, we find the first and fifth factor to be extremely strong, justifying the district court's refusal to grant the stay in this

> matter. Because Meneley was a public officer, the State had a strong interest in "proceeding expeditiously" with the litigation. The public interest was similarly strong in progressing with the ouster trial. Meneley could have taken the stand in the ouster trial and asserted his Fifth Amendment** *139* rights as needed while still defending himself against the charges. The district court did not abuse its discretion in denying Meneley's request for a stay in the civil ouster trial."

This case involves a doctor who is treating a large number of patients. The public interest in protecting these patients is extremely strong. The fact that the Defendants' might be indicted is interesting but hardly compelling basis for a ruling.

WHEREFORE, the Defendants' Joint Motion to Stay Proceedings should be overruled.

Respectfully Submitted,

LARRY WALL TRIAL LAW

By _____

Larry Wall (#07732)
2024 North Woodlawn, Suite 405
Wichita, Kansas 67208
- ***Attorney for Plaintiffs***

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16th day of January, 2006, a true and correct copy of the above and foregoing **Plaintiff's Response to Defendants' Joint Motion to Stay Proceedings** was served via facsimile to the following:

Ms. Pamela Clancy
WOODARD, HERNANDEZ, ROTH & DAY, L.L.C.
P.O. Box 127
Wichita, Kansas 67201
- Attorneys for Defendants, Stephen J. Schneider, D.O., and Schneider Medical Clinic, L.L.C.

Mr. Brian C. Wright
LAW OFFICE OF BRIAN C. WRIGHT
4312 10th Street Place
Great Bend, Kansas 67530
- Attorney for Defendant, Kimberly L. Hebert, P.A.

Mr. Gary M. Austerman
KLENDA, MITCHELL, AUSTERMAN & ZUERCHER, L.L.C.
301 North Main Street, Suite 1600
Wichita, Kansas 67202
- Attorneys for Defendant, Curtis J. Atterbury, P.A.

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ATTORNEY AT LAW
257 North Broadway, Suite 300
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VIA FACSIMILE TRANSMISSION ON:

January 11, 2006

Ms. Pamela Clancy
WOODARD, HERNANDEZ, ROTH & DAY, L.L.C.
P.O. Box 127
Wichita, Kansas 67201
Fax No. (316) 263-0125

Re: *Hunt/Bible v. Schneider Medical Clinic, L.L.C., et al.*
Sedgwick County District Court Case No. 05 C 4240

Dear Pamela:

I received a copy of your letter of January 9, 2006, to Judge Vining enclosing four cases cited in your memorandum in support of defendants' joint motion to stay proceedings. I note that you did not provide copies of the four cases to me.

Please send me an exact copy of the cases you provided to Judge Vining, including any highlights or underlining.

Thank you.

Sincerely yours,

LARRY WALL TRIAL LAW

By 
Larry Wall

LW:sc

cc: Mr. Andrew W. Hutton @ Fax No. (316) 686-1077
Mr. Gary M. Austerman @ Fax No. (316) 267-0333
Mr. Brian C. Wright @ Fax No. (620) 793-8525
Mr. Randall H. Elam @ Fax No. (316) 263-0125
Mr. Nicholas S. Daily @ Fax No. (316) 265-3819

⇐283 Officers and Public Employees
⇐283I Appointment, Qualification, and Tenure
⇐283I(G) Resignation, Suspension, or Removal
⇐283k66 k. Grounds for Removal. Most Cited Cases

The "prior term rule" is a common-law rule which generally prohibits a public officer from being removed from office for misconduct occurring during a previous term of the office.

[77] KeyCite Notes

⇐283 Officers and Public Employees
⇐283I Appointment, Qualification, and Tenure
⇐283I(G) Resignation, Suspension, or Removal
⇐283k66 k. Grounds for Removal. Most Cited Cases

The principal rationale of the prior term rule, which generally prohibits a public officer from being removed from office for misconduct occurring during a previous term of the office, is that reelection or reappointment of the officer amounts to condonation of his prior misconduct.

EXHIBIT B

[78] KeyCite Notes

⇐283 Officers and Public Employees
⇐283I Appointment, Qualification, and Tenure
⇐283I(G) Resignation, Suspension, or Removal
⇐283k66 k. Grounds for Removal. Most Cited Cases

The prior term rule, which generally prohibits a public officer from being removed from office for misconduct occurring during a previous term of the office, should not be applied where: (1) the officer steadfastly denied any wrongdoing; (2) the officer had a continuing duty to make restitution; or (3) the officer has an important and vital societal role.

****130 *355** Syllabus by the Court

1. The privilege against self-incrimination is personal as it adheres basically to the person, not to information that may incriminate him or her. An accused cannot assert a third-person privilege for a nonparty witness.
2. It is within the district court's discretion whether to grant a stay or continuance in a civil trial where there are criminal charges pending against a party arising from the same set of facts. The appellate court reviews the district court's refusal to stay civil proceedings pending criminal outcome on an abuse of discretion standard of review.
3. The Fifth Amendment to the United States Constitution does not mandate a stay of civil proceedings pending the outcome of similar or parallel criminal proceedings. There is no general federal constitutional, statutory, or common-law rule barring the government from prosecuting both a civil and criminal action at the same time against the same party even where both actions are the result of the same set of circumstances.
4. A defendant has no absolute right not to be forced to choose between testifying in a civil matter and asserting his or her Fifth Amendment privilege. Not only is it permissible to conduct a civil proceeding at the same time as a related criminal proceeding, even if that necessitates invocation of the Fifth Amendment privilege, but also it is even permissible for the trier of fact to draw adverse inferences from the invocation of the Fifth Amendment in a civil proceeding.
5. The contention that being forced to choose between the compulsion to testify in a civil suit in order to avoid an ***356** adverse result on the merits undermines the right to remain silent in a criminal matter, while having surface appeal, will not stand analysis. While the choice between testifying or invoking the Fifth Amendment privilege may be difficult, it does not create the basis for a stay.
6. The decision whether to stay civil proceedings in the face of a parallel criminal proceeding should be made in light of the particular circumstances and competing interests involved in the case. This means the decisionmaker should consider the extent to which the defendant's Fifth Amendment rights are implicated. In addition, the decisionmaker should generally consider the following factors: (1) the interest of the plaintiffs in proceeding expeditiously with this

litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay; (2) the burden which any particular aspect of the proceedings may impose on defendants; (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources; (4) the interest of persons not parties to the civil litigation; and (5) the interests of the public in the pending civil and criminal litigation.
7. The attorney-client privilege should be strictly confined within the narrowest possible limits.
8. The assertion of the privilege depends on the finding of an attorney-client relationship. An attorney-client relationship is not dependent on the payment of a fee, nor is there a requirement that the relationship be memorialized by contract. The relationship may be implied from the conduct of the parties. The relationship is sufficiently established when it is shown that the advice and assistance of the attorney is sought and received in matters pertinent to the profession. The party asserting the privilege bears the burden of proof for establishing all of the essential elements.
9. A client's disclosure to a third party of a communication made during a confidential consultation with his or her attorney eliminates whatever privilege the communication may have originally possessed, whether because disclosure is viewed as an indication ***131** that confidentiality is no longer intended or as a waiver of the privilege.
10. When considering whether an attorney or firm should be disqualified in a given case, the appellate court decides whether the trial court's findings of fact are (1) supported by substantial competent evidence and (2) sufficient to support the conclusions of law.
***357** 11. It is a fundamental rule of statutory construction, to which all other rules are subordinate, that the intent of the legislature governs if that intent can be ascertained. The legislature is presumed to have expressed its intent through the language of the statutory scheme it enacted. When a statute is plain and unambiguous, the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be. Stated another way, when a statute is plain and unambiguous, the appellate courts will not speculate as to the legislative intent behind it and will not read such a statute so as to add something not readily found in it.
12. A panel of three judges has historically been used in ouster proceedings. There is nothing in the quo warranto statutes, however, which requires a three-judge panel. K.S.A. 60-1201. Likewise, there is nothing in Kansas case law which mandates the use of a three-judge panel.
13. The trial court's ruling on a motion for a continuance will not be disturbed on appeal absent an abuse of discretion.
14. K.S.A. 60-521, by negative implication, retains governmental immunity from the statute of limitations for causes of action arising out of a governmental function. Governmental functions are those performed for the general public with respect to the common welfare for which no compensation or particular benefit is received. Proprietary functions, on the other hand, are exercised when an enterprise is commercial in character or is usually carried on by private individuals or is for the profit, benefit, or advantage of the governmental unit conducting the activity.
15. When faced with an affidavit of prejudice filed pursuant to K.S.A. 20-311d, this court has unlimited review, and on appeal must decide the legal sufficiency of the affidavit and not the truth of the facts alleged. We examine whether the affidavit provides facts and reasons pertaining to the party or his or her attorney which, if true, give fair support for a well-grounded belief that he or she will not obtain a fair trial. We determine whether the charges are grounded in facts that would create reasonable doubt concerning the court's impartiality, not in the mind of the court itself, or even necessarily in the mind of the litigant filing the motion, but rather in the mind of a reasonable person with knowledge of all the circumstances.
16. Where the trial court has made findings of fact and ***358** conclusions of law, the function of an appellate court is to determine whether the findings are supported by substantial competent evidence and whether the findings are sufficient to support the trial court's conclusions of law. Substantial evidence is evidence which possesses both relevance and substance and which furnishes a substantial basis of fact from which the issues can be reasonably resolved. The appellate court does not weigh conflicting evidence, pass on credibility of witnesses, or redetermine questions of fact.
17. We review a trial court's application or denial of the doctrine of laches under an abuse of discretion standard of review. The doctrine of laches is based upon the maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as the neglect to assert a right or claim which, taken together with the lapse of time and other circumstances causing prejudice to the adverse party, operates as a bar in a court of equity. Laches is the neglect or omission to assert a right that, taken in conjunction with lapse of time and other circumstances, causes prejudice to an adverse party. In order to invoke the doctrine of laches, the moving party must show that it has been prejudiced or put at disadvantage by the delay.
18. The doctrine of laches does not apply when a cause of action is brought by the State seeking to protect the public.
19. The prior term rule is a common-law rule which generally prohibits a public ***132** officer from being removed from office for misconduct occurring during a previous term of the office.
20. The principal rationale of the prior term rule is that reelection or reappointment of the officer amounts to

condonation of his or her prior misconduct. Condonation of an offense implies knowledge of the offense, and, if the officer's misconduct in the prior term was concealed or not known to the electorate or the appointing official at the time of reelection or reappointment, the rule should not be applied.
21. The prior term rule should not be applied where (1) the officer steadfastly denied any wrongdoing; (2) the officer had a continuing duty to make restitution; or (3) the officer has an important and vital societal role.
Margie J. Phelps, of Topeka, argued the cause, and Jonathan B. Phelps, of Phelps Chartered, of Topeka, was with her on the brief for appellant.
*359 M. J. Willoughby, assistant attorney general, argued the cause, and John R. Dowell, assistant attorney general, and Carla J. Stovall, attorney general, were with him on the brief for appellee.

The opinion of the court was delivered by ABBOTT, J.:
This is a quo warranto action to oust the defendant, David R. Meneley, from the office of Sheriff of Shawnee County, Kansas. The case was heard by two trial judges who found the State had sustained its burden of proof on 3 of 13 counts and entered an order of ouster from office. This court has jurisdiction pursuant to Supreme Court Rule 8.02 (2000 Kan.Ct.R.Annot. 55) (transferred to Supreme Court on motion) and K.S.A. 20-3016(a)(2), (3), and (4).
Meneley raises 14 issues on appeal.
The trial judges unanimously found, by clear and convincing evidence, that Meneley committed willful misconduct, as contemplated in K.S.A. 60-1205(1), in that he knowingly and willfully concealed evidence of Deputy Timothy Oblander's theft of drug evidence from the sheriff's office, he willfully gave false testimony under oath at an Attorney General's inquisition by denying his knowledge of Oblander's illegal drug use and treatment for drug addiction, and he willfully gave false testimony under oath in the Shawnee County District Court by denying that he had any knowledge regarding Oblander's illegal drug use and treatment for drug addiction.
In November 1992, Meneley was elected Sheriff of Shawnee County, Kansas. Meneley was elected a second time in November 1996, and continued in office until the ouster order at issue here.
In 1993, Meneley created a special services unit, which, in addition to investigating burglaries, provided manpower for surveillance support for the narcotics unit. Oblander and Scott Baker were original members assigned to the special services unit that included a K-9 program, which was Oblander's original assignment in the unit. Between January 1993 and May 1994, the Shawnee County Sheriff's office narcotics unit included Detective Daniel Jaramillo, Detective Scott Holladay, and Deputy Phil Blume. Captain Roger Lovelace was the division commander of both the special services unit and narcotics unit.
*360 In late 1993 or early 1994, Oblander started consuming small amounts of cocaine and methamphetamine, taking the drugs from the evidence packets used to train his dog. Drug evidence was checked out to Oblander, as a K-9 officer, for months at a time. He carried the drugs with him daily. The drugs were weighed when they were checked in or out. On two occasions, there was a weight discrepancy in the drugs. These discrepancies were supposed to be noted on reports signed by the property room officer and Oblander, but nothing was ever done to resolve the discrepancies.
In late 1994 or early 1995, Oblander began making drug buys on the street. Oblander occasionally consumed some of the drugs that he purchased on the street. Oblander testified that he never used the drugs in the presence of anyone else, not even his partner, Frank Good, nor did he tell anyone about his drug use.
**133 In May or June 1994, Jaramillo and Blume were assigned to the FBI Federal Drug Task Force, a multi-jurisdictional task force engaged in undercover narcotics operations. During their time with the task force, Jaramillo and Blume would report back to the sheriff's office to provide information and update Meneley regarding their activities. Jaramillo and Blume met with Meneley in November 1994, February 1995, and July 1995.
In late July 1994, Officer J.D. Sparkman retrieved a bag of evidence from the drug evidence locker located at the sheriff's office in the basement of the Shawnee County Courthouse. The evidence was from the *Caldwell* case which involved state and federal drug charges. After weighing the evidence, Sparkman determined that some of the cocaine evidence was missing. The officer assigned to the *Caldwell* case was Holladay. Holladay had checked out the evidence on June 22, 1994, for use in federal court proceedings which ended in a judgment of acquittal for Caldwell. After returning from federal court on July 5, 1994, Holladay held the *Caldwell* cocaine evidence in his desk until July 15, 1994, and eventually put the drugs in the evidence locker. An earlier related state court proceeding had ended in a plea in January 1992. Thus, by the time Sparkman retrieved the drugs from the evidence locker, all litigation concerning the drug evidence had been concluded. The *Caldwell* drugs were slated for use in the K-9 program or destruction. *361 Upon discovering the missing cocaine, Sparkman contacted Holladay. The missing cocaine was reported to Meneley, who ordered an internal investigation. The investigation was assigned to Detective Mike Ramirez.
During the investigation, Holladay told Ramirez that he had checked the drugs before putting them in the locker. They were all in the bag and the bag was intact.

LARRY WALL
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May 29, 2007

VIA FACSIMILE AND U.S. MAIL
Mr. David P. Schippers
Schippers & Bailey
20 North Clark Street, Suite 3600
Chicago, IL 60602

Re: *Kandace Bible, et al. v. Stephen J. Schneider, D.O., et al.*

Dear Mr. Shippers,

I understand you still represent Dr. Stephen Schneider in several matters which may result in federal charges being filed against him.

We spoke at Dr. Schneider's first and only deposition in several medical malpractice cases on file in Sedgwick County. At that time, you advised Dr. Schneider to take the Fifth Amendment.

Since that time, his civil defense lawyers have indicated that Dr. Schneider is willing to testify in some civil cases. The same lawyers also indicate they plan to file a motion to overturn a prior ruling prohibiting Dr. Schneider from testifying in the cases in which he used the Fifth Amendment.

You should be advised, and so should your client, that this office is cooperating fully with the Assistant U.S. Attorney that is handling the ongoing criminal investigation of Dr. Schneider. We are sharing all of the depositions and exhibits, and we intend to continue this complete cooperation throughout litigation.

We need to know if Dr. Schneider is available for a deposition. We want to depose him in a medical malpractice lawsuit on behalf of his deceased patient, Chong "Tina" Roberts. We are anxious to take his deposition, but we do not want to take it without a full disclosure to you and to Dr. Schneider.

We believe that the deposition will touch on many areas that are overlapping and congruent with the criminal investigation. We are very hopeful that the deposition of Dr. Schneider can take place with the least amount of inconvenience. Please advise if you plan on attending this deposition.

EXHIBIT
3

Very truly yours,

LARRY WALL TRIAL LAW

Larry Wall

LW/jt

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Fax (316) 267-3567

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CIVIL DEPARTMENT

JUSTIN E. BRAWNER,

Plaintiff,

vs.

Case No. 06 CV 3903

STEPHEN J. SCHNEIDER, D.O., and SCHNEIDER MEDICAL CLINIC, L.L.C., a Kansas Corporation,

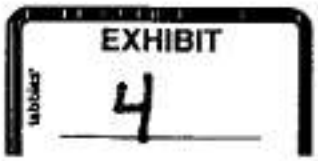
Defendants.

PURSUANT TO K.S.A. CHAPTER 60

PLAINTIFF'S RESPONSE TO DEFENDANT STEPHEN SCHNEIDER, D.O.'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

COMES NOW Plaintiff, by and through counsel Larry Wall of Larry Wall Trial Law, and Chan Townsley, Of Counsel with Brennan Law Group, and pursuant to K.S.A. 60-233, and hereby submits the following responses to Defendant Stephen J. Schneider, D.O.'s Second Request for Production of Documents to Plaintiff.

1. A copy of all documents and correspondence including email communications transmitted between you and your attorneys and any United States Attorney or other representative of the United States Attorney's office, including all enclosures or attachments to such communications.



RESPONSE: Objection. This request seeks to invade the attorney-client privilege and attorney work-product immunity by seeking disclosure of counsel's work-product, including but not limited to strategy, tactics and opinions of counsel in the very civil matter in which this discovery is served. A request for disclosure of details of counsel's conduct years after the fact of injury to Plaintiff are not designed to discover admissible evidence, nor is such discovery relevant to trial of the claims or defenses in this matter. Defendant seeks disclosure of protected, privileged and/or immune materials and information with no showing of any attempt to procure the same material or information from other sources and without demonstrating need by the exhaustion of attempts to procure same from other sources for the same information. Counsel's communications to third parties are neither testimony nor evidence relevant to the claims and defenses applicable to this litigation. The discovery process is not designed for and is not intended to be used for unbounded "fishing expeditions." Seeking the work product of other counsel is no replacement for original thought during representation of a party. Plaintiff further objects that the request is impermissibly and unduly vague, because, short of saying "gimme what you got," counsel propounding the request cannot enunciate or describe what materials have been requested.

To the extent that these Plaintiffs and their agents have a common interest with the agencies of the federal government such as the United States Attorney's Office, the Federal Bureau Of Investigation, the Kansas Bureau of Investigation, the Drug Enforcement Agency, and/or the Department of Health And Human Services, Office of Inspector General, in successfully exposing the Defendants' dismal medical practices, Plaintiffs assert a joint-interest

privilege, such as the privilege claimed between insurance companies and independent counsel employed to defend third parties, and/or the privilege asserted between independent and separate counsel prosecuting claims against a common defendant, such as described in *Burton v. R.J. Reynolds Tobacco Co.*, 177 F.R.D. 491, 499 (D.Kan. 1997).

Chan P. Townsley, #15590

Respectfully Submitted,

Larry Wall, #07732
LARRY WALL TRIAL LAW
2024 N. Woodlawn, Suite 405
Wichita, KS 67208

-AND-

Chan Townsley, #15590
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11th day of April, 2008, the above and foregoing **Plaintiff's Responses to Stephen J. Schneider, D.O.'s Second Request for Production of Documents** were hand delivered to:

Mr. Randy Troutt
Mr. Don Gribble
HITE, FANNING & HONEYMAN, L.L.P.
100 N. Broadway, Suite 950
Wichita, Kansas 67202
- Attorneys for Defendant Schneider Medical Clinic

Steven C. Day, Esq.
Christopher S. Cole, Esq.
Woodard, Hernandez, Roth & Day, L.L.P.
P.O. Box 127
Wichita, KS 67201-0127
Attorneys for Defendant Stephen J. Schneider, D.O.

Larry Wall, #07732
Attorney for Plaintiff

UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE

SUBPOENA DUCES TECUM

TO: CHAN TOWNSLEY
Brennan Law Group
2024 N. Woodlawn Street
Suite 405
Wichita, KS 67208
Fax: 316-682-6222

YOU ARE HEREBY COMMANDED TO APPEAR BEFORE

Tanya J. Treadway, Assistant United States Attorney
U. S. Attorney's Office
Frank Carlson Federal Building
444 SE Quincy, Room 290
Topeka, KS 66683

an official of the U.S. Department of Justice, and you are hereby required to bring with you and produce the following:

SEE ATTACHMENT.

which are necessary in the performance of the responsibility of the U.S. Department of Justice to investigate Federal health care offenses, defined in 18 U.S.C. § 24(a) to mean violations of, or conspiracies to violate: 18 U.S.C. §§ 669, 1035, 1347, or 1518; and 18 U.S.C. §§ 287, 371, 664, 666, 1001, 1027, 1341, 1343; or 1954 if the violation or conspiracy relates to a health care benefit program (defined in 18 U.S.C. § 24(b)).

PLACE AND TIME FOR APPEARANCE:

U.S. Attorney's Office, Frank Carlson Federal Building, 444 SE Quincy, Room 290, Topeka, KS 66683 on April 21, 2008 at 9:00 a.m.

IN LIEU OF YOUR PERSONAL APPEARANCE, the requested material may be sealed and mailed, addressed to: Tanya J. Treadway, Assistant United States Attorney, Frank Carlson Federal Building, 444 SE Quincy, Room 290, Topeka, KS 66683, prior to your scheduled date to appear.

Failure to comply with the requirements of this subpoena will render you liable to proceedings in the district court of the United States to enforce obedience to the requirements of this subpoena, and to punish default or disobedience.

Issued under authority of Sec. 248 of the Health Insurance Portability & Accountability Act of 1996, Public Law No. 104-91 (18 U.S.C. § 3486)

EXHIBIT
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IN TESTIMONY WHEREOF

Tanya J. Treadway

the undersigned official of the U.S. DEPARTMENT OF JUSTICE, has hereunto set her hand this

7th day of April, 2008.

Tanya J. Treadway
(Signature)

Fo
Ma

m CRM-180
r. 97

RETURN OF SERVICE

I, being a person over 18 years of age, hereby certify that a copy of this subpoena was duly served on the person named herein by means of --

1. personal delivery to an individual, to wit: via fax

CHAN TOWNSLEY
Brennan Law Group
2024 N. Woodlawn Street
Suite 405
Wichita, KS 67208
Fax: 316-682-6222

2. personal delivery to an address, to wit:

_____
(Description of premises)

_____
(Address)

3. Federal Express or United States Postal Service (certified mail) mailing to:

at 10:17 (X) a.m. ( ) p.m. on April 7, 2008

Angie Bramhall
Legal Assistant
Title

UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE

SUBPOENA DUCES TECUM

Upon contumacy or refusal to obey, this subpoena shall be enforceable by order of the appropriate United States District Court.

ATTACHMENT TO SUBPOENA

Chan Townsley
Brennan Law Group
2024 N. Woodlawn Street
Suite 405
Wichita, KS 67208
FAX: 316-682-6222

Please provide copies of any and all settlement agreements and offers between plaintiffs you have represented and Stephen J. Schneider, and/or Schneider Medical Clinic, and/or any employee of Schneider Medical Clinic.