

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

MEDICAL SUPPLY CHAIN, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-CV-0210-CV-ODS
)	
NOVATION, LLC, et al.,)	
)	
Defendants.)	

**DEFENDANTS' MOTION TO STAY
RULE 26(f) CONFERENCE AND DISCOVERY**

TO THE HONORABLE JUDGE OF THIS COURT:

Defendants respectfully request that the Court stay all discovery proceedings, including the Rule 26(f) conference, currently required to be held on or before June 13, 2005, until the resolution of the pending motions for transfer, motions to dismiss, and and/or motions for sanctions.

1. Plaintiff filed its Complaint in this case on March 7, 2005, seeking several billions of dollars in damages which it alleges arose from Plaintiff's inability to lease desired office space, to obtain financing, and to establish escrow accounts allegedly necessary to enter the medical supply market. Plaintiff asserts that these harms flowed from a vast conspiracy involving, *inter alia*, various entities and individuals in the nationwide hospital supply market, venture capital firms, a bank, a law firm, and a magistrate of the U.S. District Court for Kansas. Plaintiff also alleges that several of the Defendants comprise a cartel which defrauds Medicare, Medicaid and Champus into paying inflated prices for medical supplies and seeks to recover the overpayments allegedly made by those entities.

2. This Court has issued an order requiring the parties to hold a Rule 26(f) conference by June 13, 2005, to exchange Rule 26 disclosures ten days later, and to provide the Court with a joint proposed discovery/scheduling plan by June 27, 2005.

3. Defendants have filed a motion to transfer the case to the U.S. District Court in Kansas, which has previously dismissed two Complaints in which Plaintiff asserted claims based on the same facts at issue in this case. Plaintiff has opposed that transfer, primarily on the basis of its contention that Kansas is a lawless, corrupt and dangerous venue.

4. In addition, several of the Defendants have filed Rule 12(b)(6) Motions to Dismiss the action in its entirety, arguing, among other things, that Plaintiff's claims are barred by res judicata, collateral estoppel and lack of standing. In fact, the legal defects of Plaintiff's claims are so numerous and fundamental that several of the Defendants have filed Motions for Sanctions against Plaintiff and its counsel. The determination of the legal issues presented in the motions to dismiss does not require discovery; indeed, Plaintiff filed oppositions to the motions without requesting leave to conduct discovery prior to filing its oppositions.

5. Defendants recognize that the pendency of motions to transfer venue, to dismiss, and for sanctions does not automatically entitle Defendants to a stay of discovery. However, the circumstances of this case justify a stay of discovery, the Rule 26(f) conference, and related deadlines pursuant to the Court's inherent power to control its docket in the interest of judicial efficiency and for the interest of the parties. *See Landis v. North American Co.*, 299 U.S. 248, 254 (1936). In *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), the U.S. Supreme Court has recognized that because discovery can be "wide-ranging, time consuming" and involve "considerable cost," staying discovery until the disposition of threshold dispositive issues, such as the immunity issues implicated in the *Harlow* case, is warranted. *Id.* at 817, n. 29.

6. It would be inefficient and costly to conduct discovery prior to the Court's determination of whether this case should be heard in this Court or transferred to Kansas, whether the Complaint asserts any legally viable claim, and whether the Complaint was filed in violation of Plaintiff's counsel's Rule 11 duties. In addition, several of the individual Defendants have asserted objections to this Court's exercise of *in personam* jurisdiction over them and it would be inappropriate to require those Defendants to move forward with discovery obligations until the jurisdictional issue is resolved.

7. While it is always hoped that the Rule 26 process will proceed in an efficient and cooperative manner, there is reason to believe that the positions of the parties regarding the proper scope of discovery in this case will be widely divergent. Plaintiff's counsel, by an email note on June 1, 2005, informed Defendants' counsel that it believes that there are "millions" of relevant documents in the possession of Defendants and that presentation of Plaintiff's case to the jury will require 90 days. *See* Email from Bret Landrith to Defendants' counsel, attached as Exhibit A. Defendants will vigorously oppose any proposed discovery plan and trial schedule of such an enormous and unwarranted scope.

8. The proposed stay will obviate the time and expense necessary to address these issues in advance of the resolution of the pending motions. Any resulting delay in the commencement of discovery will not prejudice the Plaintiff and, in any event, is justified by the judicial efficiency benefits of the stay.

WHEREFORE, for all of these reasons, Defendants pray this Court enter an Order staying discovery, and the need to hold a Rule 26(f) Conference, prepare a proposed joint discovery plan and scheduling order, and exchange Rule 26 disclosures until the resolution of the

pending Motions to Dismiss, Motions for Sanctions, and Motions to Transfer Venue and for any other further relief to which they are entitled.

HUSCH & EPPENBERGER, LLC

By: /s/ John K. Power

John K. Power, # 35312
Joel K. Goldman, #40453
1200 Main Street, Suite 1700
Kansas City, MO 64105
Telephone: (816) 421-4800
Facsimile: (816) 421-0596

ATTORNEYS FOR DEFENDANTS NOVATION,
LLC, VOLUNTEER HOSPITAL ASSOCIATION,
CURT NONOMAQUE, UNIVERSITY
HEALTHSYSTEM CONSORTIUM, ROBERT J.
BAKER

CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2005, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to the following:

Andrew M. DeMarea
Jonathan H. Gregor
Kathleen Ann Hardee
Bret D. Landrith
Mark A. Olthoff
Logan Wade Overman

ademarea@stklaw.com
jgregor@stklaw.com
khardee@stklaw.com
landrithlaw@cox.net
molthoff@stklaw.com
logan.overman@stklaw.com

/s/ John K. Power
John K. Power