

ORIGINAL



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,
PENNSYLVANIA
CIVIL ACTION – LAW

Michael J. McQueary,

Plaintiff,

vs.

The Pennsylvania State University,

Defendant.

) Docket No. 2012-1804

) Type of Case:

) Whistleblower

) ☐ Medical Professional Liability
) Action (check if applicable)

) Type of Pleading:

) Second Motion to Stay Proceedings

) Filed on Behalf of:

) Defendant, The Pennsylvania State
) University

) Counsel of Record for this Party:

) Nancy Conrad, Esquire

) White and Williams LLP

) 3701 Corporate Parkway, Suite 300

) Center Valley, PA 18034

) (610) 782-4909

) conradn@whiteandwilliams.com

) PA I.D. Number 56157

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2016 MAY 31 PM 1:42
DEBRA C. IMEL
PROTHONOTARY
CENTRE COUNTY, PA

WHITE AND WILLIAMS LLP
Nancy Conrad, Esq.
PA Identification No. 56157
3701 Corporate Parkway, Suite 300
Center Valley, PA 18034
610.782.4909/ Fax 610.782.4935
conradn@whiteandwilliams.com

Attorneys for Defendant,
The Pennsylvania State University

MICHAEL J. MCQUEARY,	:	IN THE COURT OF COMMON
	:	PLEAS OF CENTRE COUNTY
Plaintiff,	:	
v.	:	
	:	CIVIL ACTION NO. 2012-1804
THE PENNSYLVANIA STATE	:	
UNIVERSITY,	:	
	:	
Defendant.	:	

**THE PENNSYLVANIA STATE UNIVERSITY'S
SECOND MOTION TO STAY PROCEEDINGS¹**

Defendant, The Pennsylvania State University (the "University"), hereby requests that this Honorable Court stay this civil action and in support thereof avers as follows:

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CENTRE COUNTY, PA

¹ On December 20, 2012, this Court denied The Pennsylvania State University's Motion to Stay Proceedings. Since that time, Mr. Timothy Curley and Mr. Gary Schultz have appeared for depositions in this matter and asserted their Fifth Amendment Rights to all substantive questions related to Plaintiff's claims and the University's defenses, as set forth below.

FACTS AND PROCEDURAL POSTURE

1. Plaintiff, Michael J. McQueary (hereinafter “Plaintiff”), commenced this action on or about May 8, 2012 by filing a Praecipe to Issue Writ of Summons against the University.

2. On October 2, 2012, Plaintiff filed a three-count Complaint alleging Whistleblower (Count I), Defamation (Count II), and Misrepresentation (Count III) claims against the University (hereinafter “Complaint”).

3. Plaintiff supports a large portion of his claims with numerous allegations related to the actions or inactions of former University employees who are subject to parallel and well-publicized ongoing criminal proceedings, including Timothy Curley and Gary Schultz, captioned as Commonwealth of Pennsylvania v. Timothy Mark Curley, Court of Common Pleas, Dauphin County, No. CP-22-CR-5165-2011; and Commonwealth of Pennsylvania v. Gary Charles Schultz, Court of Common Pleas, Dauphin County, No. CP-22-CR-5164-2011. See Complaint, ¶¶ 13-19, 21-23, 26-27, 39, 46-47, 60-64.

4. In particular, in Paragraph 15 of the Complaint, Plaintiff alleges that he “met with Athletics Director Curley and Senior Vice President Schultz in a conference room in the Bryce Jordan Center and told them about the aforementioned highly inappropriate sexual misconduct that he had witnessed the night of February 9, 2001.” Id., ¶ 15.

5. Plaintiff further alleges that “Senior Vice President Schultz and Athletics Director Curley thanked the Plaintiff for providing them with this information, told the Plaintiff that they thought this was a serious matter, that they would see it was properly investigated and that appropriate action be taken.” Id., ¶ 16.

6. In Count I of the Complaint (Whistleblower), Plaintiff claims that the University violated the Pennsylvania Whistleblower Law when it discriminated against him allegedly because of his “cooperation with investigators for the Pennsylvania Attorney General, his provision of truthful testimony to the Statewide Investigating Grand Jury, his truthful testimony at the criminal preliminary hearings for Athletics Director Curley and Senior Vice President Schultz and further because Plaintiff is expected to be a key prosecution witness at the criminal trials of the Athletics Director Curley and Senior Vice President Schultz.” Id., ¶ 46.

7. The Plaintiff further alleges in the Whistleblower Count that Plaintiff’s “aforementioned reports ... [and] testimony ... were truthful, and made without malice or consideration of personal benefit.” Id., ¶ 47.

8. As a result of the above alleged violations, Plaintiff seeks damages, including back pay, reinstatement or front pay, plus general damages as

compensation for distress, anxiety, embarrassment, plus costs of litigation, including counsel fees for this claim.

9. In Count II of the Complaint (Defamation), Plaintiff alleges that the University issued a written statement on November 4, 2011 and a verbal statement on November 7, 2011, that “clearly suggest that the Plaintiff was lying in his reports and testimonies that he had reported the sexual misconduct he had witnessed on February 9, 2001 to Athletics Director Curley and Senior Vice President Schultz.” Id., ¶ 50.

10. The plaintiff further alleges in the Defamation Count that the “written statement released by the University President Spanier on November 4, 2011 ... and the verbal statement made by University President Spanier to the Athletic Department staff meeting on November 7, 2011, clearly suggest that the Plaintiff had lied to law enforcement officials and committed perjury to the Statewide Investigating Grand Jury when he stated and testified that he had reported the sexual misconduct he had witnessed on February 9, [2001] to Athletics Director Curley and Senior Vice President Schultz.” Id., ¶ 51.

11. As a result of the above alleged statements Plaintiff seeks damages in excess of \$4,000,000.00 for this claim.

12. In Count III of his Complaint (Misrepresentation), Plaintiff alleges that “during the meeting in February [2001] Athletics Director Curley and Senior

Vice President Schultz intentionally misrepresented to the Plaintiff that they thought [the reported incident] was a serious matter, that they would see that it was properly investigated and that appropriate action would be taken.” Id., ¶ 60 (emphasis added).

13. Plaintiff further alleges in the Misrepresentation Count that “Athletics Director Curley and Senior Vice President Schultz intended that their misrepresentation induce the Plaintiff not to report the matter to any other law enforcement authority.” Id., ¶ 61.

14. Plaintiff claims as a result of the above alleged intentional misrepresentations, Plaintiff suffered “irreparable harm to his ability to earn a living” and he seeks damages in excess of \$4,000,000.00 for this claim. Id., ¶ 63.²

15. Per this Court’s April 16, 2013 Order, the University filed an Answer with New Matter to the Complaint.

16. The parties have engaged in extensive discovery, including, but not limited to, serving and responding to extensive written discovery and conducting over twenty (20) depositions.

17. Per the Court’s directives, this Motion is due on or before May 31, 2016, the discovery deposition deadline in this matter is June 15, 2016, dispositive

² The Court’s December 20, 2012 Order on the University’s Motion to Stay did not address Plaintiff’s misrepresentation claim. This claim is based solely on the above referenced alleged communications between Mr. Schultz, Mr. Curley, and Plaintiff regarding the report. See Court Order, dated December 20, 2012.

motions are due on or before June 30, 2016, and trial is to commence on October 17, 2016. See Court Correspondence, dated January 13, 2016.

18. While the University has diligently pursued discovery, it has been unable to access or otherwise ascertain critical information related to Messrs. Curley or Schultz that is necessary to formulate its defenses.

19. More specifically, the alleged conduct of Messrs. Curley and Schultz, individually and in connection with the University, continues to remain a central point of contention in the instant civil action.

20. Messrs. Curley and Schultz remain subject to pending criminal charges which include endangering the welfare of children and failing to report suspected child abuse, and the factual allegations related to these charges are intrinsically intertwined with Plaintiff's claims in this civil action.

21. On March 9, 2016, the parties deposed Mr. Schultz, where the scope of questions focused on the specific allegations of this case.

22. During the deposition, Mr. Schultz asserted his Fifth Amendment Rights to all substantive questions related to Plaintiff's claims and the University's defenses.

23. Specifically, Mr. Schultz asserted his Fifth Amendment Rights with respect to questions that involve: (1) all facts and circumstances regarding Mr. Schultz's knowledge and involvement in a 1998 incident involving Mr. Gerald

Sandusky and a child; (2) all facts and circumstances regarding Mr. Schultz's 2001 involvement with Plaintiff's alleged report of "highly inappropriate sexual misconduct" as between Mr. Gerald Sandusky and a young boy; (3) all information regarding the 2001 alleged verbal communications and meeting(s) between Mr. Schultz and Plaintiff regarding the aforementioned report; (4) information related to his employment history and job duties with the University during the relevant time periods of this case; and, (5) various 2011 communications as between Mr. Schultz and non-parties regarding the alleged misconduct and Plaintiff's report.

24. During Mr. Schultz's deposition, University counsel engaged in the following specific colloquy:

[Nancy Conrad]: I direct your attention, Mr. Schultz, back to Exhibit 20.

A. (Witness complies)

Q. On Page 4, Paragraph 15; on Paragraph 15, Mr. McQueary alleges in his Complaint that he met with you and Mr. Curley sometime after February 11, 2001. Are the allegations in Paragraph 15 consistent with your recollection of any such meeting

MS. MCNALLY: Objection. I'll direct Mr. Schultz not to answer that question.

Q. Directing your attention then to Paragraph 16. In Paragraph 16, Mr. McQueary alleges that during a meeting that took place sometime after February 10, 2001, Mr. Curley and you made certain statements as referenced in Paragraph 16. Are Mr. McQueary's allegations contained in Paragraph 16 consistent with

your recollection of any statements that either Mr. Curley or you made?

MS. MCNALLY: Objection. I'll direct Mr. Schultz not to answer that question.

(26-Page Plaintiff's Answers to Defendant First Set of Interrogatories marked Schultz Exhibit No. 21.)

A. Reviewing.

Q. I handed you a document that's been marked Schultz 21. I'm not going to ask you – you're welcome to review the entire document, but I'm going to ask you questions with respect to particular items.

Directing your attention to Page 8, the Answer contained to Interrogatory No. 18. In this Answer, Mr. McQueary makes certain allegations about statements that Mr. Curley and you made during that meeting we previously discussed.

Are Mr. McQueary's allegations consistent with your recollection with regard to the statements that were made in that meeting?

MS. MCNALLY: I'll direct Mr. Schultz not to answer.

Q. Were the statements that you made in that meeting about Mr. Curley and Mr. McQueary and yourself, truthful statements?

MS. MCNALLY: Objection. I'll direct Mr. Schultz not to answer.

Q. Were the statements that you made – were the statements that you made in the February 2001 meeting, with Mr. McQueary, made with the intent to mislead Mr. McQueary?

MS. MCNALLY: Objection. I direct Mr. Schultz not to answer.

Q. Direct your attention to Page 9 of Interrogatory Answers and in particular Answer Number 23. Mr. McQueary alleges in his Answer to Interrogatory Number 23 that you made certain statements to his father as referenced in Answer 23. Are these statements consistent – or strike that. Are [those] allegations consistent with your recollection of any statement that you made to Mr. McQueary’s father?

MS. MCNALLY: Objection. I’ll direct Mr. Schultz not to answer.

Q. I’m going to direct your attention to paragraph – page 22, Interrogatory Number – or Number 2 on that page. In Answer Number 2, Mr. McQueary alleges that he would expect you to testify to certain items as referenced in Number 2. Is it your position that you would be testifying to those items as alleged by Mr. McQueary in Number 2?

MS. MCNALLY: Objection. I’ll direct Mr. Schultz not to answer.

Q. I have no further questions.

Deposition Transcript of Gary C. Schultz, dated March 9, 2016, at 62-65.

25. During the deposition, this Court ruled that Mr. Schultz properly invoked his Fifth Amendment Rights.

26. On April 1, 2016, the parties also deposed Mr. Curley, where the scope of questions again focused on the specific allegations of this case.

27. During his deposition, Mr. Curley asserted his Fifth Amendment Rights to all substantive questions related to Plaintiff’s claims and the University’s defenses.

28. Mr. Curley asserted his Fifth Amendment Rights with respect to the questions that involved: (1) all facts and circumstances regarding Mr. Curley's knowledge and involvement in a 1998 incident involving Mr. Gerald Sandusky and a child; (2) all facts and circumstances regarding Mr. Curley's 2001 involvement with Plaintiff's alleged report of "highly inappropriate sexual misconduct" as between Mr. Gerald Sandusky and a young boy; (3) all information regarding the 2001 alleged verbal communications and meeting(s) between Mr. Curley and Plaintiff regarding the report; (4) information related to his employment history and job duties with the University during the relevant time periods of this case; and, (5) various 2011 communications as between Mr. Curley and non-parties regarding the allegations of the Complaint.

29. During Mr. Curley's deposition, University counsel engaged in the following specific colloquy:

[Nancy Conrad]: At any time did Mr. McQueary report to you that he had witnessed, quote, "inappropriate and illegal sexual conduct," on the night of February 9, 2001?

MS. ROBERTO: On behalf of Mr. Curley, we assert the privilege.

Q. ... In Paragraph 15, Mr. McQueary alleges that at some point in time, he met with you and Mr. Schultz in a conference room in the Bryce Jordan Center and informed you about the highly inappropriate sexual misconduct that was previously described in the Complaint. Is that allegation contained in Paragraph 15 consistent with your recollection of a meeting that took

place among Mr. Curley – among Mr. Schlutz, Mr. McQueary, and you?

MS. ROBERTO: Assertion of the privilege.

Q. Paragraph 17, Mr. McQueary alleges that he formed certain beliefs and relied upon certain statements that were made during the meeting. Is your recollection of the statements that were made during the meeting with Mr. Schultz and Mr. McQueary, is your recollection consistent with the allegations contained in Paragraph 17:

MS. ROBERTO: Assertion of the privilege.

Q. In Paragraph 18, Mr. McQueary alleges certain facts in conjunction with your role with respect to the meeting that took place with Mr. McQueary. Are the allegations asserted in Paragraph 18, consistent with your understanding of your position at that time?

MS. ROBERTO: Assertion of the privilege.

* * *

Q. Mr. Curley, I've handed you a document identified as Curley 9 and we'll represent to you these are Answers that Mr. McQueary provided to interrogatories in conjunction with [this] lawsuit. I want to direct your attention to certain answers; however, if you want to read the entire document we certainly can wait until you've completed it.

Q. So in Curley Number 9, I would like to direct your attention to Page 6, Number 12. In Answer to Interrogatory Number 12, Mr. McQueary asserts that on the night of February 9, 2001, he observed an exchange between Mr. Sandusky and a boy that he describes as, in quote, sexual intercourse, end quote. At any point during your interactions with Mr. McQueary, did he report to you that he had observed an incident that was in – that he described as sexual intercourse?

MS. ROBERTO: Assertion of the privilege.

Q. On Page 7, Interrogatory Answer Number 17, in the first part of the Answer to Interrogatory Number 17, Mr. McQueary asserts that he received a telephone call from you and in that first paragraph he describes the exchange. Is that – is Mr. McQueary's statement in the first paragraph consistent with your recollection of your telephone exchange with Mr. McQueary.

MS. ROBERTO: Assertion of the privilege.

Q. In the second paragraph of the Answer to Interrogatory Number 17, Mr. McQueary states an exchange that took place in a meeting among Mr. Schultz, Mr. McQueary, and yourself. Is your recollection consistent with how Mr. McQueary describes it in that second paragraph of Interrogatory Answer Number 17?

MS. ROBERTO: Assertion of the privilege.

Q. In Interrogatory Answer Number 18, Mr. McQueary asserts certain acknowledgements and statements that Mr. Schultz and you made during that meeting with him. Is your recollection of your statements and Mr. Schultz's statements consistent with the information that Mr. McQueary asserts in Answer Number 18?

MS. ROBERTO: Assertion of the privilege.

* * *

Q. In the Answer to the Interrogatory Number 36, Mr. McQueary asserts information that he received from you in a telephone call. Is your recollection of the information that you provided to Mr. Curley – or to Mr. McQueary, consistent with the information that Mr. McQueary provides in the Answer to Interrogatory Number 36?

MS. ROBERTO: Assertion of the privilege.

* * *

Q. On Page 21, Interrogatory Number 73, Mr. McQueary lists witnesses that he intends to call at trial. And Witness Number 1 would be yourself, Tim Curley Can you provide information to me about that alleged information?

MS. ROBERTO: Assertion of the privilege.

Q. Mr. McQueary asserts that you would be expected to testify [about] what you did subsequent to receiving that report. Could you provide me information about what you did subsequent to receiving that report?

MS. ROBERTO: Assertion of the privilege.

Q. Mr. McQueary asserts that you would be expected to testify about your meeting with Mr. McQueary concerning what the Plaintiff has witnessed. Can you provide information to me about what occurred in that meeting?

MS. ROBERTO: Assertion of the privilege.

Q. Mr. McQueary asserts that you would be expected to testify to his job performance and the results of the poll of the Athletic Department staff concerning who ought to succeed Coach Paterno when he retired. Could you provide to me information about the alleged – about his job performance and the results of this alleged poll?

MS. ROBERTO: Assertion of the privilege.

Deposition Transcript of Timothy M. Curley, dated April 1, 2016, at 46-54.

30. Following the deposition, this Court was informed of Mr. Curley's assertion of his Fifth Amendment Rights.

31. The University is severely prejudiced in its ability to defend against Plaintiff's claims, which involve critical knowledge and information that is solely possessed by Messrs. Schultz and/or Curley.

LEGAL BACKGROUND

32. This Court has broad discretion to stay civil proceedings, and, in doing so, the goal is to balance the various interests of the parties, the Court, and the public. In Re Adelphia Communications Securities Litigation, Civ. A. No. 02-1781, 2003 WL 22358819, at *2 (E.D. Pa. May 13, 2003).

33. “[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the cases on its docket with the economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.” Id.

34. When deciding whether to stay a civil case pending the resolution of a related criminal case, a court can consider the following factors: “(1) the extent to which the issues in the civil and criminal cases overlap; (2) the status of the criminal proceedings, including whether any defendants have been indicted; (3) the plaintiff's interests in expeditious civil proceedings weighed against the prejudice to the plaintiff caused by the delay; (4) the burden on the defendants; (5) the

interests of the court; and (6) the public interest.” Id., at *3 (citing Walsh Securities, Inc. v. Cristo Prop. Mgmt. Ltd., 7 F.Supp.2d 523 (D.N.J. 1998)).

35. An additional factor to be considered is the interests of persons not parties to the civil litigation. Golden Quality Ice Cream Co. v. Deerfield Specialty Papers, Inc., 87 F.R.D. 53, 56 (E.D. Pa. 1980) (listing factors similar to those in Adelphia Communications in addition to the interests of these non-parties).

DISCRETIONARY FACTORS WEIGH IN FAVOR OF A STAY

The Issues In This Case and the Related Criminal Proceedings Overlap Substantially

36. The extent to which the issues in the civil and criminal cases overlap is the most important factor in determining whether or not to grant a stay. Adelphia Communications, 2003 WL 22358819, at *3 (citing Walsh Securities, 7 F.Supp.2d at 527).

37. The issues and parties in the civil and criminal cases need not be identical, but rather merely “implicate similar facts or issues of law.” Resco Products, Inc. v. Bosai Minerals Group Co., Ltd., Civ. A. No. 06-235, 2010 WL 2331069, at *4 (W.D. Pa. June 4, 2010) (finding that courts within the Third Circuit “have stayed proceedings in numerous cases where another pending action contained similar questions of fact or law”).

38. There are substantial overlapping factual issues that are integral to both this civil litigation and the related criminal proceedings of Mr. Schultz and Mr. Curley.

39. As outlined above, both Mr. Schultz and Mr. Curley invoked their Fifth Amendment privilege with respect to the following subject matters of this case: (1) all facts and circumstances regarding their knowledge and involvement in a 1998 incident involving Mr. Gerald Sandusky and a child; (2) all facts and circumstances regarding their 2001 involvement with Plaintiff's alleged report of "highly inappropriate sexual misconduct" as between Mr. Gerald Sandusky and a young boy; (3) all information regarding the 2001 alleged verbal communications and meeting(s) between them and Plaintiff regarding the aforementioned report; (4) information related to their employment histories and job duties with the University during the relevant time periods of this case; and, (5) various 2011 communications as between them and non-parties regarding the allegations of the Complaint. See supra, at ¶¶ 21-29.

40. The facts and circumstances of this case are intrinsically intertwined with the key factual issues of the underlying criminal matters.

41. There can be no doubt that these overlapping issues are integral to both the present civil litigation and the related criminal proceedings and, therefore, the first and most important factor weighs heavily in favor of granting a stay.

The University Will Continue To Suffer Substantial Prejudice Without a Stay.

42. The denial of a stay in this matter would prejudice the University's ability to defend against the claims asserted in this case.

43. As set forth more fully above, the University is severely constrained and unable to develop its defenses to Plaintiff's \$4,000,000.00 claims because the facts and claims are intrinsically intertwined with the factual allegations in the underlying criminal charges against Mr. Schultz and Mr. Curley.

44. Plaintiff's whistleblower, defamation and intentional misrepresentation claims raise factual issues that relate to information Plaintiff allegedly communicated to Mr. Schultz and Mr. Curley and the alleged responses of Mr. Schultz and Mr. Curley regarding the report of the alleged misconduct. In particular, Plaintiff's intentional misrepresentation claim involves the state of mind of Mr. Schultz and Mr. Curley, as well as remaining substantial questions of fact as to the substance of communications between them and Plaintiff regarding the report of misconduct.

45. Without the testimony from Mr. Schultz or Mr. Curley, the University is unable to adequately develop its defenses to this case, including developing a record to test the veracity of what Plaintiff claims to have allegedly caused him millions of dollars in damages.

46. Further, and in light of the remaining pending charges against Mr. Schultz and Mr. Curley, these individuals will again assert their Fifth Amendment Rights at the October 2016 trial in this case.

47. The assertions of the Fifth Amendment by both Mr. Schultz and Mr. Curley on pivotal factual issues will not only prejudice the University's defenses but will also cause jury confusion.

48. If this matter proceeds to trial at this time, Plaintiff will be at an unfair advantage to testify about alleged communications with and to argue the intent of Mr. Schultz and Mr. Curley, while the University will be at the extreme disadvantage of being unable to illicit testimony from any of the only other witnesses on the same factual matters.

49. Under these circumstances, the University is suffering and will continue to suffer from severe prejudice and, therefore, an immediate stay of proceedings is warranted.

The Stage of the Related Criminal Proceedings Favor a Stay

50. When 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." Adelphia Communications, 2003 WL 22358819, at *3.

51. If criminal proceedings have resulted in indictments being issued against individuals accused of crimes, this factor strongly favors staying the civil proceedings. Id.

52. The strongest case for a stay of discovery in the civil case occurs during a criminal prosecution after an indictment is returned. Id.

53. The potential for self-incrimination is greatest during this stage, and the potential harm to civil litigants arising from delaying them is reduced due to the promise of reasonably prompt resolution of the criminal case under the jurisdiction's speedy-trial rules. Walsh Securities, 7 F.Supp.2d at 527 (quoting Parallel Civil and Criminal Proceedings, 129 F.R.D. 201, 203 (1989)).

54. Further, "the indicted defendants risk exposing their criminal defense strategy during civil discovery." Adelphia Communications, 2003 WL 22358819, at *3.

55. In the present case, indictments have been handed down against Mr. Schultz and Mr. Curley which are intrinsically intertwined with the same critical facts and circumstances that underlie the claims asserted by Plaintiff in this case.

56. Mr. Schultz and Mr. Curley have invoked their Fifth Amendment privilege and refuse to discuss the claims in the instant civil action until the criminal proceedings are concluded.

57. Per an April 30, 2016 statement by Attorney General Kathleen Kane, “no further resources ... will be expended to pursue a possible appeal” as related to the underlying charges against Mr. Curley and Mr. Schultz and the Attorney General’s Office is now preparing for the criminal trials.

58. Further, the court in the criminal case issued a Scheduling Order dated May 25, 2016 directing Messrs. Schultz and Curley to file all pretrial motions and supporting briefs by July 1, 2016 and the Commonwealth to file its responses by July 31, 2016. The criminal case is moving forward.

59. Under these circumstances, a stay of the instant proceedings is warranted pending conclusion of the underlying criminal trials.

Plaintiff Will Not Be Harmed By a Stay of This Case

60. When considering the prejudice to the plaintiff caused by a stay, the plaintiff must establish “more prejudice than simply a delay in his right to expeditiously pursue his claim.... Instead, the plaintiff must demonstrate a particularly unique injury, such as the dissipation of assets or an attempt to gain an unfair advantage from the stay.” Adelphia Communications, 2003 WL 22358819, at *4.

61. In Adelphia Communications, the District Court found that the plaintiffs did not demonstrate sufficient prejudice to warrant lifting the stay, as they had not shown “any prejudice other than delay in pursuing their suits, which

is insufficient to support vacating the stay.” Id. at *4 (citing Walsh Securities, 7 F.Supp.2d at 528).

62. Here, Plaintiff cannot establish a particular unique injury.

63. Plaintiff has already received a voluminous amount of written discovery and he has conducted numerous depositions of his self-identified key witnesses.

64. Plaintiff will also not suffer any economic harm from a stay, as if he is successful on any of his claims, he will be able to recover interest as part of his judgment. See Walsh Securities, 7 F.Supp.2d at 528.

65. Not only will Plaintiff not be prejudiced, it is actually in his interest to have this case stayed.

66. Plaintiff’s claims relate to and require evidence from Mr. Schultz and Mr. Curley,³ and until the respective criminal proceedings for these individuals are resolved, he, like the University, will remain unable to obtain this critical evidence prior to October 2016.

67. Under these circumstances, a stay is warranted and Plaintiff will not suffer any prejudice.

³ In fact, Plaintiff noticed the depositions in this action during which Messrs. Curley and Schultz asserted their Fifth Amendment Rights.

The Interests of the Court Favor Staying This Case

68. This Court “has an interest in efficiently managing its caseload,” and staying the matter promotes judicial efficiency. Adelphia Communications, 2003 WL 22358819, at *5.

69. If this matter is stayed, there will be no need to continue to engage in piecemeal litigation and trial practice, which is generally disfavored by courts as inefficient and costly to all involved. See, e.g., McClendon v. Dougherty, No. 2:10-CV-1339, 2011 WL 4345901, at *1 (W.D. Pa. Sept. 15, 2011); Carpenter Technology Corp. v. Armco, Inc., Civ. A. No. 90-0740, 1990 WL 61180, at *4 (E.D. Pa. May 8, 1990).

70. As fully discussed above, to date, the University has been unable to adequately develop its defenses to Plaintiff’s claims and is not in a position to proceed to trial at this time. Any bifurcation of issues that are not trial ready will result in substantial inefficiencies, prejudice, and costs. *See id.*

71. Staying this civil action will preserve judicial resources, promote judicial efficiency, save the parties unnecessary expense, and prevent the parties from engaging in further piecemeal litigation, which has already resulted in significant fees and costs, as evidenced by the depositions of Mr. Schultz and Mr. Curley where the Fifth Amendment was asserted on all matters of significance to this case. *See supra*, at ¶¶ 18, 23.

The Public's Interest Favors a Stay

72. The public interest will not be harmed by staying this civil action.

73. There is no need to deny the stay to protect the public, such as in cases where allowing the civil case to proceed will protect the public by halting the distribution of mislabeled drugs or preventing the dissemination of misleading information to the investing public. See Walsh Securities, 7 F.Supp.2d at 529.

74. The public would benefit from a stay by allowing the Commonwealth to complete, unimpeded, its criminal prosecution of the cases against Mr. Schultz and Curley. See Adelpia Communications, 2003 WL 22358819, at *6.

75. Under these circumstances, the public's interest weighs in favor of a stay.

The Interests of Non-Parties Favor a Stay

76. The last factor – the interests of persons not parties to the civil litigation – also favors a stay.

77. As discussed above, non-parties, such as Mr. Schultz and Mr. Curley have already faced self-incrimination issues in this case. See, e.g., Golden Quality Ice Cream, 87 F.R.D. at 58 (holding that “the pressures of civil discovery are likely to weigh most heavily on certain key managerial officials in defendant companies;” these individuals, facing criminal charges, may be forced to invoke their constitutional rights against self-incrimination). “The dilemma for such

persons is severe because they face serious penalties in the event of a criminal conviction, and because they are not themselves parties to th[e] civil action.” Id.

78. If this matter proceeds to trial before resolution of the underlying criminal charges, these non-parties will again be presented with self-incrimination issues via pre-trial motions and further questioning at trial.

79. The interests of these non-parties weigh in favor of a stay.

80. Balancing the factors discussed above, it is clear that they all favor granting a stay.

WHEREFORE, Defendant, The Pennsylvania State University, respectfully requests that this Honorable Court grant its Second Motion to Stay Proceedings.

Respectfully submitted,

WHITE AND WILLIAMS LLP

By: 

Nancy Conrad, Esq.
Attorney PA I.D. No. 56157
3701 Corporate Parkway, Suite 300
Center Valley, PA 18034
610.782.4909/ Fax 610.782.4935
conradn@whiteandwilliams.com
Attorneys for Defendant,
The Pennsylvania State University

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WHITE AND WILLIAMS LLP
Nancy Conrad, Esq.
Identification No. 56157
3701 Corporate Parkway, Suite 300
Center Valley, PA 18034
610.782.4909
conradn@whiteandwilliams.com

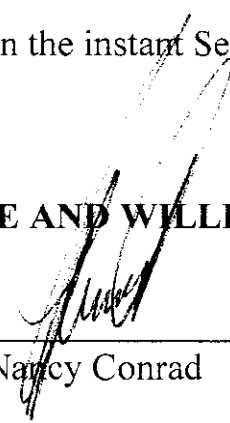
Attorneys for Defendant,
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	:	PLEAS OF CENTRE COUNTY
Plaintiff,	:	
v.	:	
	:	CIVIL ACTION NO. 2012-1804
THE PENNSYLVANIA STATE	:	
UNIVERSITY,	:	
	:	
Defendant.	:	

CERTIFICATE OF NON-CONCURRENCE

Pursuant to Centre County Rule 208.2(d), I, Nancy Conrad, certify that I made a good faith effort to seek concurrence in the instant Second Motion from Plaintiff, and that it has been denied.

WHITE AND WILLIAMS LLP

By: 
Nancy Conrad

Date: May 31, 2016

WHITE AND WILLIAMS LLP
Nancy Conrad, Esq.
Identification No. 56157
3701 Corporate Parkway, Suite 300
Center Valley, PA 18034
610.782.4909
conradn@whiteandwilliams.com

Attorneys for Defendant,
The Pennsylvania State University

MICHAEL J. MCQUEARY,	:	IN THE COURT OF COMMON
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Plaintiff,	:	
v.	:	
	:	CIVIL ACTION NO. 2012-1804
THE PENNSYLVANIA STATE	:	
UNIVERSITY,	:	
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

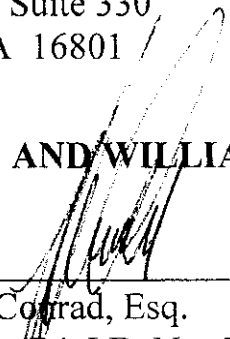
I, Nancy Conrad, Esquire, hereby certify that on this 31st day of May, 2016, a true and correct copy of the foregoing SECOND MOTION TO STAY PROCEEDINGS, PROPOSED ORDER, and CERTIFICATE OF NON-CONCURRENCE was served upon the following persons via email and/or first class, United States mail, postage prepaid as follows:

Elliot A. Strokoff, Esquire
Strokoff & Cowden, PC
132 State Street
Harrisburg, PA 17101

William T. Fleming, Esquire
Fleming Law Offices
111 Sowers Street, Suite 330
State College, PA 16801

WHITE AND WILLIAMS LLP

By: _____


Nancy Conrad, Esq.
Attorney PA I.D. No. 56157
3701 Corporate Parkway, Suite 300
Center Valley, PA 18034
610.782.4909/ Fax 610.782.4935
conradn@whiteandwilliams.com
Attorneys for Defendant,
The Pennsylvania State University