

OF COUNSEL:

MARGARET JANE PORTER
Chief Counsel

JOY WHETSTONE DAWSON
Associate Chief Counsel for Enforcement
Food and Drug Administration

order should be granted.¹

Argument

The discovery rules vest broad discretion in the district court with respect to the control of the discovery process. Marine Petroleum Co. v. Champlin Petroleum Co., 641 F.2d 984, 991 (D.C. Cir. 1980). Where necessary, courts may grant for good cause shown "any order which justice requires" to deny, limit, or qualify discovery in order to protect a party from undue burden or expense. Fed. R. Civ. P. 26(c). See, e.g., Brennan v. Local Union No. 639, Int'l Brotherhood of Teamsters, 494 F.2d 1092, 1100 (D.C. Cir. 1974); Gallella v. Onassis, 487 F.2d 986, 997 (2d Cir. 1973). Such an order may provide, inter alia, that discovery not be had, that it be delayed, or that it be had only by a method other than that selected by the party seeking discovery. Fed. R. Civ. P. 26(c)(1)-(3). Given this generous discretion, this Court "should not hesitate to exercise appropriate control over the discovery process." Herbert v. Lando, 441 U.S. 153, 177 (1979); see Fed. R. Civ. P. 26(c). Accord Laborers Int'l Union of North America v. Department of Justice, 772 F.2d 919, 921 (D.C. Cir. 1984).

It is entirely appropriate to stay discovery pending the outcome of a dispositive motion, see Founding Church of Scientology v. United States Marshals Service, 516 F. Supp. 151,

¹ Defendant notes that plaintiff's first interrogatory, seeking information on why the Compassionate Investigational New Drug Program for marijuana was terminated, is answered in defendant's dispositive motion and accompanying declarations.

156 (D.D.C. 1980), for it is simply logical that when

the determination of a preliminary question may dispose [of the claims against a party], applications for discovery may properly be deferred until the determination of such questions.

O'Brien v. Arco Corp., 309 F. Supp. 703, 705 (S.D.N.Y. 1969). In Blair Holdings Corp. v. Rubenstein, 159 F. Supp. 14, 15 (S.D.N.Y. 1954), the Court stated that:

"[I]t would seem to present the possibility of oppression of such parties to compel them to participate in the taking of what might be lengthy general depositions when the very right of the plaintiff to bring them into court in this district is still undetermined. No facts have been shown by the plaintiff in the moving papers which would indicate that it will be prejudiced in securing any necessary evidence if the taking of depositions generally is postponed until the issue of jurisdiction as to two of the principal defendants is determined.

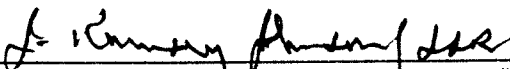
See also United Transport Service v. National Mediation Board, 179 F.2d 445, 453-54 (D.C. Cir. 1949).

The rationale set forth in Blair Holding Corp., supra, with regard to depositions is equally applicable to other forms of discovery such as requests for documents and interrogatories. Thus, defendant submits that the Court should grant its motion for a protective order and stay the discovery sought by plaintiff until the issues set forth in defendant's dispositive motion are determined.

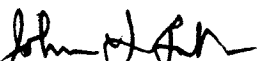
Conclusion

For the foregoing reasons, defendant respectfully submits that its motion for a protective order should be granted.

Respectfully submitted,



J. RAMSEY JOHNSON, D.C. BAR #243253
United States Attorney



JOHN D. BATES, D.C. BAR #934927
Assistant United States Attorney



MARINA UTGOFF BRASWELL, D.C. BAR #416587
Assistant United States Attorney

OF COUNSEL:

MARGARET JANE PORTER
Chief Counsel

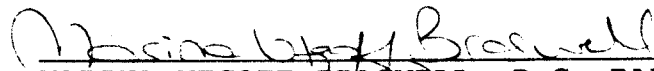
JOY WHETSTONE DAWSON
Associate Chief Counsel for Enforcement
Food and Drug Administration

CERTIFICATE OF SERVICE

I certify that the accompanying Defendant's Motion For A Protective Order, with proposed protective order, was served upon plaintiff pro se by first-class U.S. mail, addressed to:

Mr. Ladd Huffman
Post Office Box 201
Calumet, Iowa 51009

on this 17th day of June, 1993.


MARINA UTGOFF BRASWELL, D.C. BAR #416587
Assistant United States Attorney
Judiciary Center - Room 4824
555 4th Street, N.W.
Washington, D.C. 20001
(202) 514-7226