

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

RICHARD V. ANDERSON,)	
et. ux.)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 02C-12-091 HdR
)	
AIRCO, INC., et al.)	
)	
Defendants.)	

ORDER

Plaintiff Richard V. Anderson has filed this action seeking to recover for injuries sustained as a result of exposure to vinyl chloride monomer during his employment at an oil refinery in New Castle. Certain Defendants have moved the Court to issue a protective order staying discovery until the Court decides a pending motion to dismiss.¹ Plaintiff opposes, claiming he will be prejudiced by any delay in discovery. Because Anderson’s discovery requests are extensive, and the Motion to Dismiss will be decided soon, I conclude that the burden and expense of discovery in the interim outweighs any prejudice that may inhere to Anderson. Accordingly, Defendants’ motion is granted.

1

Of the several defendants in this case, the present motion is brought by the American Chemistry Council, ConocoPhillips Co., Goodrich Corp., ICI Americas, Inc., Polyone Corp., PPG Industries, Inc., Shell Oil Co., Uniroyal, Inc., and Zeneca, Inc. *See* Def. Mot., D.I. 46. Defendant Borden Chemical, Inc., also has joined in the motion. *See* Def. Notice of Joinder, D.I. 50.

I.

Superior Court Civil Rule 26(c) authorizes the Court to regulate discovery and, in the Court's discretion, to "make any order which justice requires to protect a party or person from . . . undue burden or expense," including those that contain "specified terms and conditions."² A stay of discovery should not be granted automatically.³ Moreover, "discovery should be permitted to go forward absent a showing by the movant that the Court should exercise its discretion and stay it."⁴ A stay of discovery is appropriate where a "potentially case dispositive motion is pending, and there is no prejudice to the non-moving party."⁵

In *Szeto v. Schiffer*, the Chancery Court granted a protective order staying discovery pending the disposition of a previously filed motion to dismiss.⁶ In doing so, the Court enumerated several factors for decision. First, the Court noted the balance between the "potential benefits of efficiency and conservation of resources"

² SUPER. CT. CIV. R. 26(c). *See also American Ins. Co. v. Synvar Corp.*, 199 A.2d 755 (Del. 1964)

³ *Szeto v. Schiffer*, 1993 Del. Ch. LEXIS 264 (Del. Ch. 1993); WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE: CIVIL § 2040 (1970).

⁴ *Id.*; *see also Boxer v. Husky Oil*, 1981 Del. Ch. LEXIS 565, at *4-5; *Voegel v. Arduser*, 1978 Del. Ch. LEXIS 672, at *2.

⁵ *ABB Flakt, Inc. v. National Union Fire Ins. Co.*, 731 A.2d 811, 815 (Del. 1999).

⁶ 1993 Del. Ch. LEXIS 264.

and the “risk of prejudice to the nonmoving party.”⁷ In addition, the Court noted:

If discovery is inevitable, either in this forum or another, then the motion to stay discovery normally should not be granted because any discovery taken will not be wasted regardless of the outcome of the motion to dismiss.⁸ Finally, the Court addressed the length of the stay, noting that the shorter the interim between discovery and the disposition of the pending motion to dismiss, the more willing a court should be in granting the request.⁹

II.

Defendants seek a Protective Order Staying Discovery, citing the quantity of materials Anderson has requested. For example, Defendants note that Anderson has requested “all” documents related to events that occurred decades ago, and nearly thirty interrogatories with numerous subparts. Based on the volume of these requests, Defendants claim that with a case dispositive motion pending, extensive discovery should be delayed pending the motion’s resolution.

In response, Anderson contends that granting the order will create a prejudicial delay, regardless of the motion’s disposition. Specifically, Anderson notes that several of the defendants in this case have responded to similar discovery requests in prior litigation, and that the remaining requested documents must be produced without delay because of their necessity to his case. According to Anderson, any further postponement will result in undue burden and expense, especially if the

⁷ *Id.* at *2 (citing *Singer v. Magnavox Co.*, 1980 Del. Ch. LEXIS 606).

⁸ *Id.*

⁹ *Id.* (“ [I]f the pending motion to dismiss will be decided shortly, then the stay is more appropriately granted, especially when it does not appear that either party will be prejudiced by the stay.”).

Anderson v. Airco, et al.
C.A. No. 02C-12-091 HdR
February 23, 2004

Motion to Dismiss is eventually denied.

III.

The practical brevity of a stay at this time is significant. The length of the delay before a decision on the Motion to Dismiss will be relatively short. If the Complaint or portions of it are dismissed, needless and extensive document production may be avoided. If the Motion to Dismiss is denied, the further delay will be brief. Because the conservation of the parties' resources outweighs any risk of prejudice to Anderson, a stay of discovery is warranted. Should circumstances change, Anderson may seek appropriate relief.

Accordingly, the Motion to Stay Discovery Pending Resolution of the Motion to Dismiss is **GRANTED**.

IT IS SO ORDERED.

/s/ Henry duPont Ridgely

President Judge

Dated: February 23, 2004

ds
oc: Prothonotary
xc: All Counsel of Record