

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

SOUTHEAST READY MIX, LLC, et al.,

Plaintiffs,

v.

ARGOS NORTH AMERICA CORP.  
F/K/A ARGOS USA CORP., et al.,

Defendants.

Civil No. 1:17-CV-02792-ELR

**INTERVENOR UNITED STATES' MEMORANDUM  
IN SUPPORT OF ITS UNOPPOSED MOTION FOR A LIMITED  
DISCOVERY STAY**

Intervenor United States of America respectfully submits this Memorandum in support of its unopposed motion for a six-month stay of all discovery in this action. If the Court grants the request, the United States reserves the right to seek a reasonable extension of the stay if warranted by the circumstances; conversely, if developments in the criminal investigations obviate the need for the stay prior to the end of the six months, the United States will notify the Court promptly.

## I. BACKGROUND

The Antitrust Division of the U.S. Department of Justice (“the United States”) is conducting criminal investigations into possible violations of Section 1 of the Sherman Act (15 U.S.C. § 1) in the ready mix concrete and cement industries. The details of these criminal investigations are set forth more fully in the accompanying Declaration of Mark C. Grundvig, filed *ex parte* and under seal.

On August 24, 2018, Plaintiffs filed their Amended Complaint alleging that the Defendants participated in “two separate but related cartels in the markets for portland cement and ready mix concrete in coastal Georgia and South Carolina.” (Doc. 92, at 2.) On or about October 26, 2018, the United States learned that Plaintiffs served the first round of discovery requests on Defendants seeking, *inter alia*, warrants, subpoenas, and requests, as well as any documents provided to government authorities thereunder. In turn, Defendants requested, *inter alia*, any documents or responses received by Plaintiffs in discovery. Discovery responses were initially due on November 26, 2018; however, on November 19, 2018, the United States learned that the parties had agreed to a 60-day extension, resulting in a new deadline of January 25, 2019. On December 20, 2018, the Court directed the parties to file an updated Joint Preliminary Report and Discovery Plan within 30 days. The United States understands that this filing is due on January 18, 2019.

The United States has conferred with counsel for Plaintiffs and Defendants and understands that they have no objections to a six-month discovery stay.

## **II. ARGUMENT**

### **A. The Court Has Broad Discretion to Stay Civil Proceedings Where There is a Parallel Criminal Investigation**

A district court has the discretion to stay proceedings pursuant to its inherent power to control its docket. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936); *SEC v. Shanahan*, No. 4:07-CV-1262-JCH, 2007 U.S. Dist. LEXIS 80309, at \*4 (E.D. Mo. Oct. 30, 2007). “[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.” *Air Line Pilots Ass’n v. Miller*, 523 U.S. 866, 879 n.6 (1998) (quoting *Landis*, 299 U.S. at 254–55). This discretion “includes the power to manage civil litigation to avoid interfering with a criminal prosecution.” *See SEC v. LeCroy*, No. 2:09-CV-02238-AKK, 2011 WL 13233788, at \*1 (N.D. Ala. Mar. 23, 2011).

Even where no indictment has been issued, federal district courts frequently grant stays of discovery in civil cases to protect criminal investigations where the issues overlap. For example, in *Walsh Securities v. Cristo Property Management*, 7 F. Supp. 2d 523, 527 (D.N.J. 1998), the government had been conducting an active

investigation, arising out of real estate transactions, that involved the same issues as the civil action. Although no indictment had been handed down, the government had executed search warrants and issued subpoenas, and it expressed concern that discovery in the civil matter could harm its investigation. *Id.* The district court stayed interrogatory and deposition discovery for six months. *Id.* at 529; *see also SEC v. Healthsouth Corp.*, 261 F. Supp. 2d 1298, 1326–27 (N.D. Ala. 2003) (staying the civil action pending the completion of a related and active criminal investigation, though no indictment was pending); *United States v. Hugo Key & Son, Inc.*, 672 F. Supp. 656, 658–59 (D.R.I. 1987) (staying civil action while the government considered bringing criminal proceedings based on allegations that were the subject matter of the civil proceedings).

Similarly, in *SEC v. Offill*, No. 3:07-CV-1643-D, 2008 U.S. Dist. LEXIS 28977 (N.D. Tex. Apr. 9, 2008), although no indictment had yet been issued, the government moved to stay all discovery on grounds that the defendants would be able to acquire evidence, including testimony and documents, to which they would not be entitled in a criminal proceeding. *Id.* at \*2–4. The court stayed discovery to a date certain, but provided that if an indictment resulted by that time, the stay would continue until the end of the criminal proceedings. *Id.* at \*14.

Federal courts have frequently granted discovery stays in civil cases specifically to protect the United States' criminal antitrust investigations. For example, in *In re Municipal Derivatives Antitrust Litigation*, No. 1:08-CV-2516-VM-GWG (S.D.N.Y. May 27, 2010), ECF No. 755, at the request of the United States, the magistrate judge limited the witnesses who could be deposed by plaintiffs so as not to interfere with its bid-rigging criminal investigation and prosecutions. Acknowledging that "an active criminal investigation may require such a stay pending the resolution of that investigation," one district court in this circuit stayed several depositions for six months to prevent interference with the Antitrust Division's criminal investigation and prosecutions. *LeCroy*, 2011 WL 13233788, at \*1; *LeCroy*, No. 2:09-CV-02238 (N.D. Ala. Mar. 17, 2011), ECF No. 74 (extending the discovery stay); *see also In re Auto. Parts Antitrust Litig.*, No. 2:12-md-02311-MOB-MKM (E.D. Mich. Dec. 23, 2013), ECF No. 664 (staying certain civil discovery for a period of six months, subject to the government's renewal, to protect a criminal investigation); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 3:07-md-1827-SI (N.D. Cal. Sept. 25, 2007), ECF No. 300, at 2 (staying certain civil discovery and concluding that the production of grand jury documents "would reveal the nature, scope and direction of the ongoing criminal investigation, as well as the identities of others who may be

producing evidence to the grand jury or the government, and the identities of potential witnesses and targets”); *In re Ready-Mixed Concrete Price Fixing Antitrust Litig.*, No. 1:05-CV-979-SEB-VSS (S.D. Ind. Nov. 28, 2005), ECF No. 65 (limiting discovery to certain classes of documents on the ground that unlimited discovery would have an adverse effect on the ongoing grand jury investigation). Similarly, in *Albee v. Korean Air Lines Co., Ltd.*, No. 2:07-CV-5107-SJO-AGR (C.D. Cal Oct. 24, 2008), ECF No. 218, the district court, finding that the public interest in the related grand jury investigation outweighed the civil parties’ interest in discovery, granted a six-month stay of discovery related to a criminal antitrust investigation, including documents, interrogatories, and depositions.

As detailed in the accompanying *ex parte* Declaration submitted to the Court, the United States’ ongoing criminal investigations provide equally compelling justifications for temporarily staying civil discovery in this case.

**B. Overlapping Issues, the Public Interest, the Interests of the Parties, the Impact on the Court, and the Status of the Criminal Case All Weigh in Favor of a Temporary Stay of Discovery**

In the Eleventh Circuit, “a court must stay a civil proceeding pending resolution of a related criminal prosecution only when ‘special circumstances’ so require in the ‘interests of justice.’” *United States v. Lot 5, Fox Grove, Alachua Cty.*,

Fla., 23 F.3d 359, 364 (11th Cir. 1994) (citing *United States v. Kordel*, 397 U.S. 1, 12 & n.27 (1970)). “To determine whether ‘special circumstances’ exist to warrant a stay, courts balance the interests of the parties, the courts and the public, including such considerations as:

(1) the extent to which the issues in the criminal case overlap with those presented in the civil case; (2) the status of the case, including whether the defendants have been indicted; (3) the private interests of the plaintiffs in proceeding expeditiously weighed against the prejudice to plaintiffs caused by the delay; (4) the private interests of and burden on the defendants; (5) the interests of the courts; and (6) the public interest.”

*Love v. City of Lanett*, No. 3:09-CV-622-MEF, 2009 WL 2525371, at \*2 (M.D. Ala. Aug. 17, 2009); *see also SEC v. Rand*, No. 1:09-CV-01780-AJB, 2010 WL 11549601, at \*5 (N.D. Ga. Dec. 14, 2010).

*i. Overlap of the United States’ Criminal Investigations and the Civil Case*

The most significant issue for a court to assess in determining whether to grant a stay of discovery is the degree of overlap between the civil case and the criminal investigation. *Lanett*, 2009 WL 2525371, at \*2; *Volmar Dist., Inc. v. New York Post Co., Inc.*, 152 F.R.D. 36, 39 (S.D.N.Y. 1993).

Section 1 of the Sherman Act (15 U.S.C. § 1) is a felony statute that outlaws conspiracies in unreasonable restraint of trade, including conspiracies among competitors to fix prices, rig bids, and allocate customers. *See United States v. Cargo Serv. Stations, Inc.*, 657 F.2d 676, 683 (5th Cir. Unit B 1981); *United States v. Flom*, 558 F.2d 1179, 1183 (5th Cir. 1977). Price fixing, bid rigging, and customer allocation are prosecuted criminally by the Antitrust Division. Section 4 of the Clayton Act (15 U.S.C. § 15) allows persons injured by a Sherman Act violation to sue for treble damages.

In their Amended Complaint, Plaintiffs describe their case as “brought against the participants of two separate but related cartels in the markets for portland cement and ready mix concrete in coastal Georgia and South Carolina.” (Doc. 92, at 2.) Among other anticompetitive conduct, Plaintiffs allege price fixing, bid rigging, and customer allocation by Defendants in violation of Section 1. As detailed in the accompanying *ex parte* Declaration, there is a degree of overlap between the criminal investigation and civil action and potential for discovery in the latter to interfere with former.

***ii. Public Interest***

When the threshold issue of overlap is established, the effect on the public interest is “perhaps the most important factor in the equation.” Judge Milton



Pollack, *Parallel Civil and Criminal Proceedings*, 129 F.R.D. 201, 205 (1990)). In this case, the public interest in criminal enforcement strongly favors the requested stay. “There is a clear cut distinction between private interests in civil litigation and the public interest in a criminal prosecution” and priority goes “to the public interest in law enforcement.” *Campbell v. Eastland*, 307 F.2d 478, 487 (5th Cir. 1962). “This seems so necessary and wise that a trial judge should give substantial weight to it in balancing the policy against the right of a civil litigant to a reasonably prompt determination of his civil claims or liabilities.” *Id.*; see also *SEC v. Nicholas*, 569 F. Supp. 2d 1065, 1069–71 (C.D. Cal. 2008); *Hugo Key & Son*, 672 F. Supp. at 658.

Courts frequently grant government-requested stays of civil discovery pending the outcome of a closely related criminal proceeding in part to prevent the use of civil discovery rules from being used to circumvent the more limited rules of criminal discovery. See *Campbell*, 307 F.2d at 487 n.12; *Rand*, 2010 WL 11549601, at \*7–8; *In re: Urethane Antitrust Litig.*, No. 04-MD-1616-JWL, 2010 U.S. Dist. LEXIS 113796, at \*48 (D. Kan. Oct. 21, 2010) (collecting cases); see also *SEC v. Huff*, No. 09-200087-CIV-LENARD/GARBER, 2010 WL 11447249, at \*4 (S.D. Fla. Jan. 19, 2010) (granting the government’s motion to stay discovery in the civil action based, in part, on the court’s finding that the government possessed “a legitimate concern that the civil discovery process could be abused to the detriment

of its criminal prosecution”). The rules of criminal discovery protect the integrity of criminal proceedings, and it is in the public’s interest that criminal proceedings remain untainted by perjury, manufactured evidence, witness intimidation and unfairness due to the limited ability of the government to discover evidence from potential targets and defendants. *See, e.g., Campbell*, 307 F.2d at 487; *see also Huff*, 2010 WL 11447249, at \*4 (recognizing that “[t]he public has a strong interest in protecting the integrity of criminal prosecutions”). Given the liberal discovery rules applicable to civil proceedings, the requested stay is necessary to protect the United States’ interests in its criminal investigations. *See Rand*, 2010 WL 11549601, at \*11; *see also Eastwood Enters., LLC v. Farha*, No. 8:07-CV-1940-T-33EAJ, 2010 WL 2836719, at \*2 (S.D. Fla. July 19, 2010) (finding that “special circumstances” warranted a stay of the civil action in light of a related criminal proceeding based, in part, on the danger of “premature disclosures to the [i]ndividual [d]efendants and others of potential government witnesses and information, and the impact of the ongoing civil discovery on the integrity of the criminal investigation”).

***iii. Interests of the Plaintiffs, Defendants, and the Impact on the Court***

Other factors the Court should consider in deciding whether to grant a stay of discovery are the interests of the parties and the impact on the Court. The United States understands that neither Plaintiffs nor Defendants oppose this motion. As

such, this factor weights in favor of a stay. *See Rand*, 2010 WL 11549601, at \*5 (weighing the absence of any objection from the plaintiff in favor of granting a stay).

Moreover, the Court has an interest in “the disposition of the causes on its docket with economy of time and effort[.]” *Air Line Pilots Ass’n*, 523 U.S. at 879 n.6 (quoting *Landis*, 299 U.S. at 254–55). “Although stays delay civil proceedings, they may prove useful as the criminal process may determine and narrow the remaining civil issues.” *Grand Jury Proceedings (Williams) v. United States*, 995 F.2d 1013, 1018 n.11 (11th Cir. 1993). Here, a stay advances the interest of the Court because further development of the United States’ criminal investigation may resolve some of the overlapping issues in the civil and criminal proceedings. *See Rand*, 2010 WL 11549601, at \*10, \*11 (finding that judicial economy weighed in favor of staying the civil case pending the outcome of criminal proceedings). A temporary stay may also avoid the need for the Court to address conflicts that otherwise would arise with simultaneous criminal and civil litigation, such as the need for the Court to address invocation of Fifth Amendment protections in civil depositions by witnesses who are still subject to criminal prosecution by the United States. *See, e.g., Healthsouth Corp.*, 261 F. Supp. 2d at 1325, 1331 (finding that when a number of witnesses assert their Fifth Amendment rights, civil discovery is “all but meaningless,” and “the potential for an unjust result outweighs the

efficiencies gained by allowing the case to proceed”). Temporarily staying discovery may enable the Court to resolve the civil case in a much more efficient manner once the stay is no longer necessary. *See, e.g., Walsh Sec., Inc.*, 7 F. Supp. 2d at 528 (acknowledging that, in six months, “individual defendants could have more information about the extent of the Government’s investigation and their own exposure to criminal liability”).

*iv. Status of the Criminal Case*

The final factor courts often consider in determining whether to grant a stay of civil discovery is the status of the related criminal case. “Courts generally ‘recognize that the case for a stay is strongest where the defendant has already been indicted.’” *Rand*, 2010 WL 11549601, at \*6 (quoting *Chao v. Fleming*, 498 F. Supp. 2d 1034, 1037–38 (W.D. Mich. 2007)). Though an indictment has not yet issued here, that circumstance does not bar a stay. *See supra* pp. 3–4 (discussing cases limiting or staying discovery pre-indictment). Nor does that circumstance negate the potential harm to the ongoing, active criminal investigations from immediate discovery in the civil action, as set forth in the accompanying sealed, *ex parte* Declaration. Given the status of the criminal investigations described therein, this factor should weigh in favor of granting a stay.

### III. CONCLUSION

The overlap between the United States' criminal investigations and the civil action, the public interest in permitting criminal investigations to be conducted without interference from civil litigation, the lack of prejudice to the parties in the civil litigation, the interest of the Court in judicial economy, and the ongoing and active nature of the criminal investigations all support entry of the requested temporary stay of discovery for six months.

Respectfully submitted this 18th day of January, 2019.

/s/ Eyitayo St. Matthew-Daniel  
Eyitayo St. Matthew-Daniel  
New York Bar No. 4443842  
Somadinna Nwokolo  
Florida Bar No. 120126

Trial Attorneys  
Washington Criminal II Section  
U.S. Department of Justice  
Antitrust Division  
450 5th Street, N.W.  
Washington D.C. 20001  
Tel: (202) 598-8660  
Fax: (202) 598-2428  
Eyitayo.St.Matthew-Daniel@usdoj.gov

**CERTIFICATE OF FONT AND POINT SELECTION**

Pursuant to Local Rule 7.1D, I hereby certify that the foregoing Intervenor United States' Memorandum in Support of its Unopposed Motion for a Limited Discovery Stay has been prepared with one of the font and point selections (Times New Roman, 14 point) approved by the Court in Local Rules 5.1B and 5.1C.

*/s/ Eyitayo St. Matthew-Daniel*

Eyitayo St. Matthew-Daniel

New York Bar No. 4443842

Trial Attorney

Washington Criminal II Section

U.S. Department of Justice

Antitrust Division

450 5th Street, N.W.

Washington D.C. 20001

Tel: (202) 598-8660

Fax: (202) 598-2428

Eyitayo.St.Matthew-Daniel@usdoj.gov

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date electronically filed the foregoing Intervenor United States' Memorandum in Support of its Unopposed Motion for a Limited Discovery Stay with the Clerk of the Court using the CM/ECF system which will automatically send email notification of such filing to all counsel of record for all parties to this action.

*/s/ Eyitayo St. Matthew-Daniel*

Eyitayo St. Matthew-Daniel

New York Bar No. 4443842

Trial Attorney

Washington Criminal II Section

U.S. Department of Justice

Antitrust Division

450 5th Street, N.W.

Washington D.C. 20001

Tel: (202) 598-8660

Fax: (202) 598-2428

Eyitayo.St.Matthew-Daniel@usdoj.gov