

DJW/bh

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**JOHN GOIN,**

**Plaintiff,**

**CIVIL ACTION**

**v.**

**No: 06-2165-KHV-DJW**

**STATE OF KANSAS, et al.,**

**Defendants.**

**MEMORANDUM AND ORDER**

Pending before the Court is Defendants' Motion to Stay (doc. 28). No opposition to the motion has been filed. For the reasons set forth below, the Court will grant the Motion and will vacate the scheduling order and stay all Rule 26 and other pretrial proceedings until the Court has ruled on the pending Motion to Dismiss (doc. 25).

The Court finds that a stay is appropriate under the factors set forth in *Wolf v. United States*.<sup>1</sup> *Wolf* held that it is appropriate for a court to stay discovery until a pending motion is decided "where the case is likely to be finally concluded as a result of the ruling thereon; where the facts sought through uncompleted discovery would not affect the resolution of the motion; or where discovery on all issues of the broad complaint would be wasteful and burdensome."<sup>2</sup>

The Court also finds a stay to be appropriate given that Defendants' Motion to Dismiss raises issues as to Eleventh Amendment immunity. Defendants are entitled to have questions of immunity

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<sup>1</sup>157 F.R.D. 494, 495 (D. Kan. 1994)

<sup>2</sup>*Id.* (citing *Kutilek v. Gannon*, 132 F.R.D. 296, 297-98 (D. Kan. 1990)).

resolved before being required to engage in discovery and other pretrial proceedings.<sup>3</sup> “One of the purposes of immunity . . . is to spare a defendant not only unwarranted liability, but unwarranted demands customarily imposed upon those defending a long drawn out lawsuit.”<sup>4</sup> The Supreme Court has made it clear that until the threshold question of immunity is resolved, discovery should not be allowed.<sup>5</sup>

For the reasons cited above, Defendants’ Motion to Stay (doc. 28) is granted. All settings and deadlines, including the March 30, 2007 Pretrial Conference and August 7, 2007 trial setting, are vacated, and all pretrial and Rule 26 proceedings, including discovery, are hereby stayed until the Court has ruled on the pending Motion to Dismiss (doc. 25).

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this 8th day of January, 2007.

s/ David J. Waxse  
David J. Waxse  
U.S. Magistrate Judge

cc: All counsel and pro se parties

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<sup>3</sup>*Siegert v. Gilley*, 500 U.S. 226, 232-33, 111 S.Ct. 1789, 1793, 114 L.Ed.2d 277 (1991); *Parks v. State of Kan.*, No. 06-2155-KHV-DJW, 2006 WL 2331162, at \*1 (D. Kan. Aug. 10, 2006).

<sup>4</sup>*Siegert*, 500 U.S. at 232.

<sup>5</sup>*Id.* at 233; *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed. 2d 396 (1982)).