

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

<b>BUTLER NATIONAL SERVICE CORPORATION, et al.,</b>	)	
	)	
	)	
<b>Plaintiffs,</b>	)	<b>CIVIL ACTION</b>
	)	
<b>v.</b>	)	<b>Case No. 09-2466-JWL-DJW</b>
	)	
<b>NAVEGANTE GROUP, INC., et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	
	)	
<b><u>NAVEGANTE GROUP, INC.,</u></b>	)	
	)	
<b>Plaintiff,</b>	)	<b>CIVIL ACTION</b>
	)	
<b>v.</b>	)	<b>Case No. 09-2554-JWL-DJW</b>
	)	
<b>BUTLER NATIONAL SERVICE CORPORATION,</b>	)	
	)	
	)	
<b>Defendant.</b>	)	
	)	
	)	
<b><u>LARRY J. WOOLF,</u></b>	)	
	)	
<b>Plaintiff,</b>	)	<b>CIVIL ACTION</b>
	)	
<b>v.</b>	)	<b>Case No. 10-2444-CM-JPO</b>
	)	
<b>CLARK D. STEWART, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
<hr style="width: 100%;"/>		

**MEMORANDUM AND ORDER**

On February 10, 2010, the Court ordered that *Navegante Group, Inc. v. Butler National Service Corporation*, Case No. 09-2554-JWL-DJW be consolidated for all pre-trial proceedings with *Butler National Service Corporation, et al. v. Navegante Group, Inc., et al.*, Case No. 09-2466-JWL-DJW. The Court further ordered that *Butler National Service Corporation, et al. v. Navegante Group, Inc., et al.*, Case No. 09-2466-JWL-DJW be designated the lead case.

Now pending before the Court is the Motion to Consolidate and to Stay this Action and Suggestions in Support (ECF No. 73) filed by Butler National Service Corporation (“Butler”) and BHCMC, LLC (“BHCMC”). Butler and BHCMC move the Court to consolidate a third case with this action: *Larry J. Woolf, et al. v. Clark D. Stewart, et al.*, Case No. 10-2444-CM-JPO. In support of their Motion, Butler and BHCMC state that while discovery was ongoing in this action, Larry J. Woolf (Navegante Group, Inc.’s owner, CEO, and President and a defendant in Case No. 09-2466-JWL-DJW) filed Case No. 10-2444-CM-JPO on August 10, 2010 against individuals associated with Butler, namely its CEO, Clark Stewart, and a contractor, Douglas Smith. Butler and BHCMC argue this third action, Case No. 10-2444-CM-JPO, is based on the same set of facts as those at issue in the two cases already consolidated.

Butler and BHCMC also filed a motion to consolidate in *Larry J. Woolf, et al. v. Clark D. Stewart, et al.*, Case No. 10-2444-CM-JPO, and they request that the Court stay this case pending resolution of that motion. In addition, Butler and BHCMC ask that the Court amend the schedule and jury trial in this case in light of the new litigation.

Navegante Group, Inc. (“Navegante”) filed a response to the Motion. Although Navegante does not agree with all statements made in the Motion, Navegante does acknowledge that in general the three cases revolve around the same set of material facts and should be consolidated pursuant to Fed. R. Civ. P. 42. Navegante also states that it does not oppose a modest amendment to the schedule in this case in order to accommodate the new lawsuit, although Navegante asks that discovery continue to move forward at an appropriate pace.

Federal Rule of Civil Procedure 42(a) allows a court to consolidate “any or all matters at issue in the actions” if the actions involve a “common question of law or fact.”<sup>1</sup> The decision

---

<sup>1</sup> Fed. R. Civ. P. 42(a).

whether to consolidate such actions is left to the sound discretion of the trial court.<sup>2</sup> The Court notes that the parties are in agreement that these cases should be consolidated. After reviewing the pleadings, the Court finds that consolidation for discovery purposes would serve the interests of judicial economy. However, at this time, the Court denies without prejudice the parties' request that the cases also be consolidated for trial purposes. The parties may file a motion to consolidate these cases for trial purposes at the close of all discovery.

In addition, while the Court does not believe that a stay is necessary, the Court does believe that the schedule should be modified to accommodate the newly consolidated action, Case No. 10-2444-CM-JPO. The Court therefore schedules a Telephone Scheduling Conference to discuss the schedule in the consolidated actions for **November 16, 2010 at 4:00 p.m.** before Magistrate Judge David J. Waxse. The parties shall meet on or before **November 5, 2010** and attempt to agree on a proposed new schedule. The parties shall submit a completed report of parties' planning conference to the Court by **November 10, 2010**.

The Court therefore grants in part and denies in part the Motion and the lead case shall continue to be Case No. 09-2466.

**IT IS THEREFORE ORDERED** that the Motion to Consolidate and to Stay this Action and Suggestions in Support (ECF No. 73) filed by Butler National Service Corporation and BHCMC, LLC is hereby granted in part and denied in part.

**IT IS FURTHER ORDERED** that *Larry J. Woolf, et al. v. Clark D. Stewart, et al.*, Case No. 10-2444-CM-JPO is consolidated for all pre-trial proceedings with the two cases previously consolidated: *Butler National Service Corporation, et al. v. Navegante Group, Inc., et al.*, Case No.

---

<sup>2</sup> See *Shump v. Balka*, 574 F.2d 1341, 1344 (10th Cir. 1978).

09-2466-JWL-DJW and *Navegante Group, Inc. v. Butler National Service Corporation*, Case No. 09-2554-JWL-DJW.

**IT IS FURTHER ORDERED** that *Butler National Service Corporation, et al. v. Navegante Group, Inc., et al.*, Case No. 09-2466-JWL-DJW, shall continue to be designated the lead case.

**IT IS FURTHER ORDERED** that the parties may file a motion to consolidate these cases for trial purposes at the close of all discovery.

**IT IS FURTHER ORDERED** that the request for a stay is denied.

**IT IS FURTHER ORDERED** that a Telephone Scheduling Conference to discuss the schedule in the consolidated actions is set for **November 16, 2010 at 4:00 p.m.** before Magistrate Judge David J. Waxse. The parties shall meet on or before **November 5, 2010** and attempt to agree on a proposed new schedule. The parties shall submit a completed report of parties' planning conference to the Court by **November 10, 2010**.

**IT IS SO ORDERED.**

Dated in Kansas City, Kansas on this 2<sup>nd</sup> day of November 2010.

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

cc: All counsel and *pro se* parties