

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

DIANE PETRELLA, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 10-2661-JWL-KGG
	)	
SAM BROWNBACK, Governor of Kansas,	)	
in his official capacity, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**ORDER GRANTING MOTION TO STAY DISCOVERY**

Before the Court is Plaintiffs’ Motion for a Stay of Discovery in which Plaintiffs request that all discovery be stayed “until the Tenth Circuit determines Plaintiffs’ pending appeal.” (Doc. 136.) For the reasons set forth below, the Court **GRANTS** this motion.

The facts of this case were recently summarized in the District Court’s Memorandum and Order (Doc. 119), which denied Defendants’ motion to dismiss or stay (Doc. 90), Plaintiffs’ motion for summary judgment (Doc. 93), and Plaintiffs’ motion for preliminary injunction (Doc. 28). That background (Doc. 119, at 2-3) is incorporated herein by reference.

Plaintiffs advance two arguments in support of a stay. First, Plaintiffs contend that a stay is proper because jurisdiction of the case has transferred to the

Tenth Circuit while the appeal is pending. (*Id.*, at 3.) Defendants respond that “[a]n appeal from an interlocutory order denying a preliminary injunction does not divest the district court of jurisdiction to proceed with the underlying action on the merits.” (Doc. 137, at 3, citing *State of Colorado v. Idarado Mining Co.*, 916 F.2d 1486, 1490 n.2 (10th Cir. 1990), *cert. denied*; *Pinson v. Pacheco*, Nos. 10-1553, 10-1576, 2011 U.S. App. LEXIS 10766, \*13 (10th Cir., May 26, 2011), citing *United States ex rel. Bergen v. Lawrence*, 848 F.2d 1502, 1512 (10th Cir. 1998).) The Court agrees with Defendants that “the district court retains power to act on the case pending appeal” under 28 U.S.C. § 1292(a)(1). *Idarado Mining Co.*, 916 F.2d, at n.2, citing 16 C. Wright, A. Miller, E. Cooper & E. Gressman, Federal Practice and Procedure § 3921 at 26 (1977).

Plaintiff also argues, however, that a stay is appropriate given the Court’s discretionary authority to control its docket. (Doc. 136, at 4.) Rule 26(c) of the Federal Rules of Civil Procedure governs requests to stay discovery. Although stays are generally disfavored, whether to stay or otherwise limit discovery is within the sound discretion of the Court. *Tennant v. Miller*, No. 13-2143-EFM-KHV, 2013 WL 4848836, \*1 (D. Kan. Sept. 11, 2013) (internal citations omitted).

As the Honorable District Judge presiding over the present case held in *Beltronics USA, Inc. v. Midwest Inventory Distribution*, regardless of who prevails on appeal,

resolution of this issue by the Tenth Circuit could clarify the appropriate parameters for future discovery and motion practice in this case, thereby streamlining the course of this litigation. Additionally, [the nonmoving plaintiff] has not persuaded the court that it will suffer any demonstrable prejudice by the delay that might be caused by the pending appeal, as the court suspects that the Tenth Circuit will resolve this appeal fairly promptly . . . . Accordingly, the court believes that the time and effort of the parties and the court would be best served by staying [the plaintiff's] damage claims while the appeal is pending.

545 F.Supp.2d 1188, 1190 (D. Kan. 2008). The same is true in the matter currently pending before the Court. Plaintiffs' Motion for a Stay of Discovery (Doc. 136) is, therefore, **GRANTED**. All discovery in this case is hereby **stayed** pending the ruling of the Tenth Circuit on Plaintiff's Interlocutory Appeal.

**IT IS SO ORDERED.**

Dated at Wichita, Kansas, on this 13<sup>th</sup> day of January, 2014.

S/ KENNETH G. GALE  
KENNETH G. GALE  
United States Magistrate Judge