

Stanford Group Company, and Stanford Capital Management (“the Stanford entities”). They also include Laura Pendergest-Holt (“Holt”), the chief investment officer of the Stanford Financial Group.

The Court froze Defendants’ assets and appointed a Receiver to “marshal, conserve, protect, and hold funds and assets” obtained in connection with this scheme. The Court assumed jurisdiction over and took possession of Defendants’ “assets, monies, securities, properties, real and personal, tangible and intangible, of whatever kind and description, wherever located.” Am. Order Appointing Receiver [157] at 1–2. The Court appointed Ralph S. Janvey as the Receiver of these assets, and vested him “with full power of an equity receiver under common law as well as such powers as are enumerated herein in this order.” *Id.* at 2.

Several months after this civil enforcement action began, the Government brought a parallel criminal case against Stanford, Holt, and several others in the Southern District of Texas. The Commission filed its complaint in this civil case on February 17, 2009. The Government’s indictment against Stanford and Holt in the criminal case was unsealed on June 19, 2009. Order of June 19, 2009, *United States v. Robert Allen Stanford et al.*, Criminal Action No. 09-CR-0342 (S.D. Tex., filed June 18, 2009). About a month later, the Government moved to intervene in this case. It also moved to stay civil discovery pending resolution of the parallel criminal trial. The criminal case is presently set for trial in approximately one year, on January 24, 2011. Order of Dec. 18, 2009, *United States v. Stanford et al.*

II. THE COURT GRANTS THE GOVERNMENT'S MOTION TO INTERVENE

The Government argues that it has a right to intervene in this case under Federal Rule of Civil Procedure 24(a). The Court need not address this argument because it will exercise its discretion to allow intervention under Rule 24(b), whether or not the Government has a right to intervene under Rule 24(a).

“On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.” FED. R. CIV. P. 24(b)(1). “In exercising its discretion [under Rule 24(b),] the court must consider whether intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” FED. R. CIV. P. 24(b)(3).

First, the Government’s motion to intervene is timely. Holt suggests the Government’s motions to intervene and stay discovery are not timely because the Government did not file them until some six months after the S.E.C. action commenced. Def.’s Resp. to the Government’s Mot. to Intervene [702] at 3. The Court does not find the Government’s delay to be unreasonable, especially given that its criminal indictment against Stanford, Holt, and others was not unsealed until June 19, 2009, approximately a month before it moved to intervene in this case.

Second, the Government’s claims share common questions of law and fact with the S.E.C. enforcement proceeding. Defendants do not contest this point.

Third, allowing the Government to intervene in this case would not unduly prejudice the rights of existing parties. The Court does not find that existing parties would be unduly

prejudiced by the Government's intervention. The Court discusses in detail below the issue of prejudice, which is central to the Government's motion to stay discovery.

II. THE COURT GRANTS THE GOVERNMENT'S MOTION TO STAY DISCOVERY

"[A] district court may stay a civil proceeding during the pendency of a parallel criminal proceeding." *United States v. Little Al*, 712 F.2d 133, 136 (5th Cir. 1983) (citing *S.E.C. v. First Fin. Group of Tex., Inc.*, 659 F.2d 660, 668 (5th Cir. 1981)). In ruling on whether to stay a civil proceeding, "[j]udicial discretion and procedural flexibility should be utilized to harmonize the conflicting rules and to prevent the rules and policies applicable to one suit from doing violence to those pertaining to the other." *S.E.C. v. Offill*, 2008 WL 958072, at *2 (N.D. Tex. 2008) (quoting *United States v. Gieger Transfer Serv., Inc.*, 174 F.R.D. 382, 385 (S.D. Miss. 1997)). "Such a stay contemplates 'special circumstances' and the need to avoid 'substantial and irreparable prejudice.'" *Little Al*, 712 F.2d at 136.

The process of determining "whether 'special circumstances' warrant a stay" involves measuring "the relative weights of competing constitutional and procedural interests." *Alcala v. Tex. Webb County*, 625 F. Supp. 2d 391, 398 (S.D. Tex. 2009) (citing *First Fin.*, 659 F.2d at 668; *Wehling v. Columbia Broad. Sys.*, 608 F.2d 1084, 1088 (5th Cir. 1979); *LeBouef v. Global X-Ray*, 2008 WL 239752, at *2 (E.D. La. Jan. 29, 2008)). When district courts weigh these competing interests, they typically apply a variation of a test first articulated in *Trustees of the Plumbers and Pipefitters National Pension Fund v. Transworld Mechanical, Inc.*, 886 F. Supp. 1134 (S.D.N.Y. 1995). Courts in the Northern District of Texas, applying a variation of the *Plumbers and Pipefitters* test, weigh six factors: (1) the

extent to which the issues in the criminal case overlap with those presented in the civil case; (2) the status of the criminal case, including whether the defendant has been indicted; (3) the private interests of the plaintiff in proceeding expeditiously, weighed against the prejudice to the plaintiff caused by a delay; (4) the private interests of and burden on the defendant; (5) the interests of the courts; and (6) the public interest. *See, e.g., Offill*, 2008 WL 958072, at *2.²

A. The Balance of Interests

The balance of the relevant interests in this case weighs in favor of staying merits discovery pending resolution of the parallel criminal case.

1. *Overlapping Issues.* — The Court must first consider the extent to which issues in the parallel criminal case overlap with issues in this case. This case and the parallel criminal case involve allegations based on substantially the same set of facts. Allegations in both cases arise from the same alleged Ponzi scheme involving the Stanford entities and their officers and directors. Accordingly, this factor weighs in favor of a stay.

2. *Status of the Criminal Case.* — Also important to the Court's determination is status of the parallel criminal case, especially the issue of whether an indictment has been

²For more examples of Courts in the Northern District applying these six factors, see *United States v. Simcho*, 2008 WL 2053953, at *3 (N.D. Tex. Mar. 31, 2008); *S.E.C. v. AmeriFirst Funding, Inc.*, 2008 WL 866065, at *2 (N.D. Tex. Mar. 17, 2008); *Lewis v. City of Garland*, 2005 WL 2647956, at *2 (N.D. Tex. Oct. 14, 2005); *S.E.C. v. Mutuals.com, Inc.*, 2004 WL 1629929, at *3 (N.D. Tex. July 20, 2004); *Frierson v. City of Terrell*, 2003 WL 22479217, at *2 (N.D. Tex. Aug. 4, 2003); *Librado v. M.S. Carriers, Inc.*, 2002 WL 31495988, at *1 (N.D. Tex. Nov. 5, 2002); *Heller Healthcare Fin., Inc. v. Boyes*, 2002 WL 1558337, at *2 (N.D. Tex. July 15, 2002).

returned. “A stay of a civil case is most appropriate where a party to the civil case has already been indicted for the same conduct.” *Mutuals.com*, 2004 WL 1629929, at *3 (quoting *Plumbers and Pipefitters*, 886 F. Supp. at 1139)). The Government has formally charged Defendants, who have a trial date set for January 2011. Accordingly, this factor weighs in favor of a stay.

3. *Interests of Plaintiff.* — The Court must also consider Plaintiff’s interests in proceeding expeditiously with the civil suit. “[A] civil plaintiff has an interest in the prompt resolution of its claims and in obtaining discovery while information is still fresh in witnesses’ minds.” *Mutuals.com*, 2004 WL 1629929, at *3 (quoting *S.E.C. v. Mersky*, 1994 WL 22305, at *3 (E.D. Pa. Jan. 25, 1994)). Here, Plaintiff Commission does not oppose the Government’s request for a stay of discovery. Accordingly, this factor weighs in favor of a stay.

4. *Private Interests of and Burdens on Defendant.* — Defendants remind the Court that it must consider potential prejudice to them from a discovery stay. Defendants argue that a stay would prejudice them by slowing the process through which they might clear their names in this case. They also argue that their need to defend themselves in the civil case is particularly pressing given that their assets remain frozen by the Court’s order. Stanford and the Stanford entities argue that they need to clear their names in order to stop the Receiver’s liquidation of the estate. It is true that in some cases, district courts have denied the Government’s request for a stay in light of defendants’ interest in expeditiously clearing their names. *See, e.g., S.E.C. v. Jones*, 2005 WL 2837462, at *1-2 (S.D.N.Y. 2005) (“Godden’s

reputation and credibility have been called into question, and he deserves a timely opportunity to clear his name.”). Here, given that the criminal trial is set for approximately one year from now, and given the complex nature of this case, the Court finds that the delay contemplated is not unreasonable, despite some potential hardship to Defendants. To the extent this factor weighs against a stay, it is insufficient to outweigh the balance of factors, which favor a stay.

5. Interest of the Courts. — The Court must consider its own interests in efficiency and managing its docket in determining whether to stay discovery. Staying discovery pending resolution of a criminal case promotes judicial economy in various ways. *See, e.g., United States v. Mellon Bank, N. A.*, 545 F.2d 869, 873 (3d Cir. 1976) (“[I]t might well have been that resolution of the criminal case would moot, clarify, or otherwise affect various contentions in the civil case.”); *Offill*, 2008 WL 958072, at *3 (noting that resolving a criminal case increases the prospect of settlement in a parallel civil case). *See generally* Judge Milton Pollack, S.D.N.Y., Parallel Civil and Criminal Proceedings, Address Before the Transferee Judges’ Conference (Oct. 17-19, 1989), *in* 129 F.R.D. 201, 204 (discussing the various ways staying civil discovery pending resolution of a parallel criminal proceeding serves the interests of judicial economy). Given the ways a stay would promote judicial economy here, the Court finds that this factor weighs in favor of a stay.

6. The Public Interest. — The Court must also consider the public interest in determining whether a stay is appropriate. On one hand, the public has a strong interest in law enforcement. *See Campbell v. Eastland*, 307 F.2d 478, 487 (5th Cir. 1962). But “[i]n

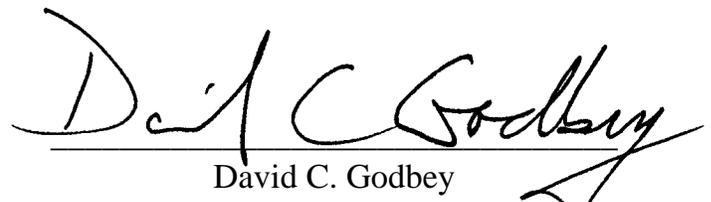
the context of a civil enforcement suit, the plaintiff's interest and the public interest are intertwined." See *Mutuals.com*, 2004 WL 1629929, at *3 (citing *Mersky*, 1994 WL 22305, at *3). In other words, the public also has a strong interest in a speedy resolution of this case.

Despite the seeming tension between these two interests, the Court finds that a stay is in the public interest for three reasons. First, neither the Commission, which represents the public interest, nor the Examiner, who represents the investors' interests, oppose the Government's motion to stay discovery. Second, the Court's Order exempts from the stay the Receiver's asset-recovery efforts, so the Receiver will continue zealously gathering assets for distribution to creditors and investors. Finally, judicial economy in this case also serves the public's interest. To the extent that issues related to Defendants' liability are unnecessarily litigated more than once, receivership assets are wasted, leaving less money available for distribution to creditors and investors. Accordingly, this factor weighs in favor of a stay.

CONCLUSION

For reasons stated above, the Court grants the Government's motion to intervene and grants in part its motion to stay discovery.

Signed January 5, 2010.


David C. Godbey
United States District Judge