

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 75-1996  
 )  
 UNITED STATES DEPARTMENT OF )  
 JUSTICE, et al., )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

MOTION FOR A PROTECTIVE ORDER AND  
OPPOSITION TO PLAINTIFF'S "MOTION  
FOR AN ORDER DESIGNATING FREDERICK,  
MARYLAND AS A PLACE OF TAKING OF  
ZUSMAN DEPOSITION

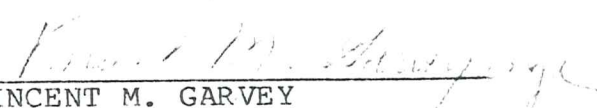
1. Pursuant to Rule 26(c), Defendant U.S. Department of Justice hereby moves for a protective order staying the discovery requested by plaintiff in his Notice of Depositions dated April 29, 1982, until this Court has ruled on the parties' dispositive contentions regarding the "consultancy contract" issue, including the suggestion that this Court lacks subject matter jurisdiction of the matter, pursuant to 28 U.S.C. § 1346(a)(2). The grounds for this motion are given in the attached memorandum.

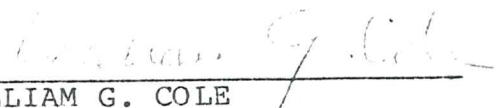
2. Defendant U.S. Department of Justice also opposes plaintiff's motion requesting that the deposition of Lynne K. Zusman be held at the home of plaintiff in Frederick, Maryland for reasons given in the attached memorandum.

Respectfully submitted,

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Assistant Attorney General

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United States Attorney

  
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MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION FOR A PROTECTIVE  
ORDER AND IN OPPOSITION TO PLAINTIFF'S  
"MOTION FOR AN ORDER DESIGNATING  
FREDERICK, MARYLAND AS PLACE OF TAKING  
ZUSMAN DEPOSITION"

On April 29 1982, plaintiff gave notice of his intent to depose Mrs. Lynne K. Zusman, Deputy General Counsel for Litigation of the Department of Health and Human Services, and Daniel J. Metcalfe, Co-Director of the Office of Information and Privacy, Office of Law and Policy, Department of Justice on the subject of the so-called "consultancy contract." Defendant moves for a protective order staying this and all discovery on the "consultancy contract" issue until this Court has ruled on a pending motion filed on February 20, 1982, determining whether either party is entitled to judgment as a matter of law and whether jurisdiction is properly in this Court. If, as defendants contend in their March 24, 1982 memorandum opposing the pending motion, exclusive jurisdiction of this issue is vested in the Court of Claims under 28 U.S.C. § 1346(a)(2), plaintiff's discovery would be proper only in the context of a different lawsuit filed in that court. See Memorandum In Opposition to Motion to Pay Consultancy Fee, filed March 24, 1982, pp. 7-8.

The Federal Rules of Civil Procedure vest broad discretion in the federal district courts to control the discovery process. In the proper case, courts may grant orders to deny, limit, or qualify discovery in order to protect a party from unnecessary or undue burden or expense, or to promote the ends of justice. Fed. R. Civ. P. Rules 26(c), see, e.g., Chemical and Industrial Corp.

v. Druffel, 301 F.2d 126 (6th Cir. 1962); Bowman v. General Motors Corp., 64 F.R.D. 62 (E.D. Pa. 1974). A frequent and logical basis for issuing a protective order staying discovery is where, as here, a pending dispositive motion may render all discovery moot. See, e.g., Scroggins v. Air Cargo, Inc., 534 F.2d 1124 (5th Cir. 1976); Brennan v. Local 639, International Brotherhood of Teamsters, 494 F.2d 1092 (D.C. Cir. 1974), cert. denied, 429 1123 (1977); Cannon v. United Insurance Co. of America, 352 F. Supp. 1212 (D. S.C. 1973); Kelleher v. Omark Industries, Inc., 19 Fed. Rules Serv. 2d 725, 727 (D. Mass. 1974). This Court's action on plaintiff's February 20, 1982 and defendant's March 24, 1982 memorandum opposing the motion, may similarly render all discovery moot.

On March 18, 1982, this Court declined to rule on the pending motion because of pending appeals by all parties of earlier orders in the case. This jurisdictional impediment to a dispositive order no longer exists due to an April 8, 1982 Court of Appeals order staying appellate proceedings "until all motions in the District Court are finally disposed of."

\* \* \*

If this Court now disposes of plaintiff's motion in such a way as to permit further discovery on the "consultancy contract," defendants do not oppose the taking of depositions of either Mr. Metcalfe or Mrs. Zusman so long as they are neither unreasonable, oppressive, (Rule 45(b)) annoying nor unduly burdensome (Rule 26(c)).

The April 29, 1982 Notice of Deposition would set Mr. Metcalfe's deposition at his Justice Department office. Such an arrangement is satisfactory to defendants should this Court require that the deposition be taken. The deposition of Mrs. Zusman, however, has been noticed for plaintiff's home at 7627 Old Receiver Road, Frederick, Maryland 21701, outside of the mileage limit set by Rule 45(d)(2). By his April 30, 1982 Motion,

plaintiff seeks to have this Court waive the requirements of Rule 45(d)(2) as to Mrs. Zusman's deposition and rule that Mr. Weisberg's home is a convenient and proper place for it to be taken. Defendant opposes the setting of Mrs. Zusman's deposition at Mr. Weisberg's home.

Mrs. Zusman, a high-ranking official at the Department of Health and Human Services, is not averse to being deposed on the "consultancy contract" issue. However, the demands on her time are such that a journey to Frederick, Maryland would be disruptive of her schedule and of the work of her department.

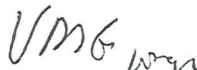
In plaintiff's memorandum, Mr. Weisberg's poor health is cited as the only reason for Mrs. Zusman to be deposed in Frederick. Plaintiff's memorandum, pp. 2-3. However, Mr. Weisberg is not a pro se plaintiff. His attorney, Mr. James Lesar, has been intimately involved in the "consultancy contract" controversy and is eminently well qualified to represent his client's interests. Should this Court permit discovery to proceed, deposing Mrs. Zusman in her office at the Department of Health and Human Services would be convenient to both Mr. Lesar and defendants' counsel and would be least disruptive of Mrs. Zusman's schedule.

For the reasons given, defendants request that all discovery be stayed and plaintiff's "Motion for an Order Designating Frederick, Maryland as Place of Taking of Zusman Deposition" be denied.

Respectfully submitted,

J. PAUL McGRATH  
Assistant Attorney General

STANLEY S. HARRIS  
United States Attorney

  
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VINCENT M. GARVEY

  
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ORDER

Upon consideration of defendants' motion for a protective order staying all discovery concerning the alleged "consultancy contract," it is hereby

ORDERED that defendant's motion is granted and that no such discovery shall be permitted until further order of the Court; and

ORDERED that plaintiff's "Motion for an Order Designating Frederick, Maryland as Place of Taking of Zusman Deposition" is denied.

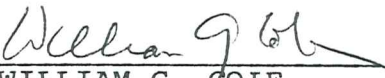
Dated: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 10<sup>th</sup> day of May, 1982, the foregoing Memorandum and proposed order were served by mail, postage prepaid, to:

James H. Lesar  
1000 Wilson Blvd.  
Suite 900  
Arlington, Virginia 22209

  
WILLIAM G. COLE