

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

RANDOLPH HALE KORSIK, )		
	)	
Plaintiff, )		
	)	
v. )	1:15-cv-00220-JDL	
	)	
UNITED STATES OF AMERICA, )		
	)	
Defendant. )		

**MEMORANDUM OF DECISION ON MOTION TO STAY<sup>1</sup>**

In this action, Plaintiff alleges that he received substandard medical care at the Togus VA Medical Center of the United States Department of Veterans Affairs in Augusta in 2008. The matter is before the Court on Defendant’s Motion to Stay (ECF No. 8).<sup>2</sup> Through its motion, Defendant seeks to stay the proceedings until the Court rules on dispositive motions filed in four similar actions pending before the Court.

As explained below, after consideration of the parties’ arguments, the Court concludes that a stay is appropriate.

**Background**

Plaintiff Randolph Hale Korsiak alleges that he was harmed as the result of the negligence of a Department physician during a surgical procedure performed on Plaintiff’s ankle in March

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<sup>1</sup> The motion to stay is not dispositive of any claims or defenses and does not seek injunctive relief. Accordingly, on referral the matter is addressed by order rather than by recommended decision. 28 U.S.C. § 636(b)(1)(A); *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 279 (1988) (“An order by a federal court that relates only to the conduct or progress of litigation before that court ordinarily is not considered an injunction . . . .”); *Gonzalez v. GE Grp. Adm’rs, Inc.*, 321 F. Supp. 2d 165, 166 – 67 (D. Mass. 2004) (citing *Third Millennium Tech., Inc. v. Bentley Sys., Inc.*, No. 03-1145-JTM, 2003 WL 22003097, at \*1 – 2 (D. Kan. Aug. 21, 2003) (collecting cases related to magistrate judge authority to issue an order staying proceedings).

<sup>2</sup> The Court referred the motion.

2008. According to Plaintiff, he did not learn of the alleged malpractice until sometime in 2013, after a Department representative contacted him to discuss the care that he received from the physician. Plaintiff filed this civil action on June 9, 2015, following administrative proceedings before the Department.

The court's docket currently includes four other cases in which the plaintiffs assert claims of medical malpractice against the United States based on treatment provided by the same physician: *Mansir v. United States*, 1:14-cv-00503-JDL, *Myrick v. United States*, 1:15-cv-00045-JDL, *Prescott v. United States*, 1:14-cv-00551-JDL, and *Wood v. United States*, 1:14-cv-399-JDL. Although the cases have not been formally consolidated, because the cases present a common, potentially dispositive, legal issue (i.e., possible application of a statute of repose), the Court, with the agreement of the parties in each action, consolidated the briefing of Defendant's motion to dismiss through which motion Defendant raised the statute of repose defense. The briefing appears to be complete. A review of Plaintiff's complaint and the parties' submissions regarding the motion to stay reveals that the same issue is presented in this case.

### **Discussion**

"[F]ederal courts possess the inherent power to stay proceedings for prudential reasons," including the pendency of parallel proceedings. *Microfinancial, Inc. v. Premier Holidays Int'l, Inc.*, 385 F.3d 72, 77 (1st Cir. 2004).<sup>3</sup> Whether the existence of a parallel proceeding warrants the stay of a proceeding requires consideration of various interests and is a case-specific inquiry. *Id.* at 78. The primary considerations are: (1) the interests of the plaintiff in proceeding expeditiously with the case, including the avoidance of any prejudice arising from delay; (2) the

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<sup>3</sup> To demonstrate "entitlement" to a stay the moving party must present "a clear case of hardship." *Microfinancial, Inc.*, 385 F.3d at 77 (quoting *Austin v. Unarco Indus., Inc.*, 705 F.2d 1, 5 (1st Cir. 1983)). Defendant does not suggest that it is *entitled* to a stay.

hardship to the defendant, including the burden associated with defending multiple actions; and (3) judicial economy.<sup>4</sup> *Id.*

Defendant's motion has merit. While Plaintiff understandably prefers to proceed with his action without delay, a stay could result in a more expeditious resolution of this matter. First, without a stay, Defendant will likely file a motion to dismiss in this action based upon the statute of repose. The time necessary for Plaintiff's subsequent response, Defendant's reply, and the Court's consideration of the motion could unnecessarily protract the case. In addition, the Court's ruling on the issues common to all of the cases will undoubtedly provide guidance to the parties on an important threshold issue in this case. Moreover, insofar as the briefing in the related actions is complete, the length of the stay will likely be of relatively limited duration.

In sum, Plaintiff's desire to proceed expeditiously will not be compromised with a stay, and judicial economy would be served through a stay. Accordingly, a stay is warranted.

### **Conclusion**

Based on the foregoing analysis, the Court grants Defendant's Motion to Stay (ECF No. 8). The matter is stayed pending further order of the Court.

### **CERTIFICATE**

Any objections to this Order shall be filed in accordance with Fed.R.Civ.P. 72.

/s/ John C. Nivison  
U.S. Magistrate Judge

Dated this 9<sup>th</sup> day of October, 2015.

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<sup>4</sup> The parallel proceeding issue often arises where a party seeks to stay a civil action while a related criminal matter is pending. The interests of the public and specific third parties might be relevant, particularly when the parallel proceeding is a criminal case. *Microfinacial, Inc.*, 385 F.3d at 78. Neither party argues that the Court should consider other interests, and the Court does not discern any other interests that would materially alter the assessment of the motion.

KORSIAK v. UNITED STATES OF AMERICA  
Assigned to: JUDGE JON D. LEVY  
Referred to: MAGISTRATE JUDGE JOHN C.  
NIVISON  
Cause: 28:1346 Tort Claim

Date Filed: 06/09/2015  
Jury Demand: None  
Nature of Suit: 362 Personal Inj.  
Med. Malpractice  
Jurisdiction: U.S. Government  
Defendant

**Plaintiff**

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**Defendant**

**UNITED STATES OF AMERICA**

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