



E-FILED
CNMI SUPERIOR COURT
 E-filed: Sep 10 2021 09:29AM
 Clerk Review: Sep 10 2021 09:29AM
 Filing ID: 66919043
 Case Number: 21-0074-CV
 N/A

FOR PUBLICATION

**IN THE SUPERIOR COURT
 FOR THE
 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**KHORSHED ALAM, personal representative)
 of RAJU MIAH, Deceased, and ROMMEL)
 IRANG,)**

CIVIL ACTION NO. 21-0074-CV

Plaintiffs,

vs.

**ORDER GRANTING LIMITED STAY OF
 PROCEEDINGS**

**ART MAN ENVIRONMENT)
 CORPORATION d.b.a. ART)
 MAN TRASH & RECYCLING and)
 EDUARDO T. FABIA,)**

Defendants.

I. INTRODUCTION

This matter came before the Court on August 31, 2021 at 10:00 a.m. in Courtroom 217A, Guma-Hustisia, Susupe, Saipan, Commonwealth of the Northern Mariana Islands on Defendants’ Motion to Stay. Plaintiff Khorshed Alam (“Alam”), personal representative of the deceased Raju Miah (“Decedent Miah”), appeared through counsel, Attorney Ellsbeth Viola Alepuyo. Plaintiff Rommel Irang (“Irang”) appeared through counsel, Attorney Matthew Holley. Defendant Art Man Environment Corporation (“Art Man”) and Eduardo T. Fabia (“Fabia”), (collectively, “Defendants”), appeared through counsel, Attorney Thomas E. Clifford.

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By Order of the Court, Judge TERESA KIM-TENORIO

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1 Based on a review of the parties' filings, oral arguments and applicable law, the Court hereby
2 **GRANTS**, in part, Defendants' Motion to Stay and **ORDERS** a limited stay of proceedings, until
3 the resolution of the associated criminal case, *CNMI vs. Fabia*, No. 21-00315-TR (NMI Super. Ct.).
4 This stay shall act as a complete stay of proceedings, with the exception of discovery that is time-
5 sensitive, due to the unique geographical concerns of the Commonwealth of the Northern Mariana
6 Islands ("CNMI"). Such discovery includes, but is not limited to, circumstances where certain
7 medical professionals or contracted employees must be deposed before leaving the CNMI and
8 becoming unavailable. For all such discovery, the parties shall first submit a request to the Court,
9 explaining the circumstances that necessitate prompt discovery.
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11 **II. BACKGROUND**

12 This matter arises from a traffic accident that led to the wrongful death, negligence, and
13 vicarious liability claims at issue here, but also led to an associated criminal case against the driver,
14 Fabia.
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16 On February 1, 2021, at the traffic light intersection next to the MHI Building in Saipan,
17 CNMI, Quin Manglona ("Manglona") allegedly drove to the left turn lane and came to a complete
18 stop to wait for the light to turn green before he proceeded towards the Marina. Decedent Miah and
19 Irang were allegedly seated in the back truck bed of Manglona's vehicle. When the traffic light
20 turned green, Manglona allegedly proceeded to turn left towards the Marina. Fabia was driving Art
21 Man's garbage truck traveling south on Chalan Pale Arnold Road when he allegedly ran the red
22 light and struck Manglona's vehicle in the intersection. Decedent Miah was killed and Irang was
23 seriously injured in this wreck. At the time of the wreck, Fabia was working as Art Man's employee,
24 and Fabia was driving the truck with Art Man's permission and allegedly in the course and scope of
25 his employment. Fabia was allegedly arrested on February 5, 2021. Defs.' Mot. Stay and Mem. Law

1 at 3. On February 24, 2021, the AG’s Office filed charges against Fabia in the associated criminal
2 case. *CNMI vs. Fabia*, No. 21-00315-TR (NMI Super. Ct. Feb. 24, 2021) (Info.). Fabia is charged
3 with Homicide by Vehicle, Reckless Driving – Bodily Injury, Failure to Obey a Traffic Control
4 Signal, and Speeding. *Id.* (NMI Super. Ct. Feb. 25, 2021) (Am. Info.). This matter is set for jury
5 trial on December 6, 2021 at 9:00 a.m., before the Honorable Judge Wesley M. Bogdan. *Id.* (NMI
6 Super. Ct. July 12, 2021) (Pre-Trial Sched. Order).

7 On February 25, 2021, Alam, as personal representative of Decedent Miah, filed the
8 Complaint alleging Wrongful Death against Fabia and Vicarious Liability against Art Man, and
9 amended the Complaint on March 16, 2021. On March 3, 2021, Defendants allegedly sent an Open
10 Government Act letter to DPS to gather information about the wreck. Defs.’ Mot. Stay and Mem.
11 Law at 5. Defendants claim that the CNMI government refused to produce any information relating
12 to its ongoing investigation. *Id.* Defendants also claim to have sent a letter to CNMI Department of
13 Public Works to gain more information on the traffic lights at issue, but allegedly no formal response
14 has been received. *Id.* at 5–6.

16 On March 15, 2021, Irang filed a separate Complaint alleging Negligence against Fabia and
17 Vicarious Liability against Art Man. On March 18, 2021, Alam and Irang (collectively, “Plaintiffs”)
18 stipulated to amend the case title to reflect both plaintiffs. This stipulation was granted on March
19 25, 2021.

20 On March 22, 2021, Defendants filed Answers to both Complaints. On April 27, 2021, Irang
21 filed a Request for Initial Case Management Conference and Mediation Assessment Hearing. On
22 April 30, 2021, Defendants filed the Motion to Stay and Memorandum of Law, at issue here, along
23 with accompanying declarations by Defendants’ counsel. On May 7, 2021, Irang noticed the
24 deposition of Christopher C. Lucero, the alleged other passenger of the Art Man vehicle, at the time
25 of the accident.

1 The parties stipulated four times to extend the filing deadlines for the hearing on Defendants'
2 Motion to Stay.¹ On August 11, 2021, Irang filed Opposition to Defendants' Motion to Stay. On
3 August 20, 2021, Defendants filed Reply in Support of Defendants' Motion to Stay, along with
4 Declaration of Defendants' Counsel and Declaration of Vina Seelam, Fabia's Public Defender in
5 the associated criminal matter, *CNMI vs. Fabia*, No. 21-00315-TR (NMI Super. Ct.).

6 Fabia's counsel in the associated criminal case, Assistant Public Defender Vina Seelam, and
7 his counsel in this case, Attorney Thomas Clifford, allegedly plan to instruct Fabia to invoke his
8 Fifth Amendment rights and privilege in this civil case. Defs.' Mot. Stay and Mem. Law at 6; Seelam
9 Decl. ¶ 5; Clifford Decl. ¶ 10. As a result, Defendants ask for a complete stay of proceedings, until
10 the associated criminal case is resolved. Defs.' Mot. Stay and Mem. Law at 17. Plaintiffs agree that
11 a limited stay is warranted to protect Fabia's Fifth Amendment rights and privilege. Pls.' Opp'n
12 Defs.' Mot. Stay at 5. Therefore, the sole issue before the Court is whether it should grant a stay of
13 proceedings with respect to Defendant Art Man.
14

15 16 **III. LEGAL STANDARD**

17 The Court has the authority to stay any proceedings pending disposition of a judgment as a
18 matter of law. NMI R. CIV. P. 62(b)(1). The party seeking a stay bears the burden of establishing
19 that it is warranted. *Clinton v. Jones*, 520 U.S. 681, 708 (1997). The U.S. Constitution does not
20 ordinarily require a stay of civil proceedings pending the outcome of criminal proceedings, rather it
21 is within the discretion of the Court. *See Keating v. Off. of Thrift Supervision*, 45 F.3d 322, 324
22 (9th Cir. 1995).
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¹ These four stipulations were filed on May 13, May 28, July 27, and August 9, 2021 and granted on May 17, June 2, July 28, and August 11, 2021, respectively.

1 In *Keating*, the 9th Circuit identified a five-factor balancing test that courts should consider
2 before ordering a stay in a civil proceeding, pending the resolution of a parallel criminal
3 proceeding. *Id.* As the determination to stay proceedings is discretionary in nature, the Court shall
4 adopt the *Keating* considerations of the 9th Circuit to determine whether a stay is warranted in the
5 instant case. Under the *Keating* standard, the Court first considers "the extent to which the
6 defendant's fifth amendment rights are implicated." *Id.* Next, the Court considers the following five
7 factors:

- 8 1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any
9 particular aspect of it, and the potential prejudice to plaintiffs of a delay;
- 10 2) the burden which any particular aspect of the proceedings may impose on defendants;
- 11 3) the convenience of the court in the management of its cases, and the efficient use of
12 judicial resources;
- 13 4) the interests of persons not parties to the civil litigation; and
- 14 5) the interest of the public in the pending civil and criminal litigation. *Id.* at 324–25.

17 **IV. DISCUSSION**

18 Under *Keating*, before applying the five-factor test, the Court should first consider "the extent
19 to which the defendant's Fifth Amendment rights are implicated." *Id.* at 324. Here, Defendants claim
20 that Fabia will invoke his Fifth Amendment privilege, preventing significant discovery, until the
21 associated criminal case is complete. Defs.' Mot. Stay and Mem. Law at 6. As Defendant Fabia's
22 Fifth Amendment rights may be implicated to obstruct significant discovery for all parties, the Court
23 shall next consider the five-factors of *Keating* to determine whether it should order a stay of
24 proceedings.
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1 The first consideration of *Keating* is the interest of the plaintiffs in proceeding expeditiously
2 with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay.
3 *Keating*, 45 F.3d at 325. Here, Plaintiffs have a clear interest in proceeding with their case. Even
4 though the criminal matter is set to be heard within three months, there is always a possibility of
5 delay. However, Plaintiffs also benefit from the stay, as the criminal proceeding may reduce the costs
6 and scope of discovery necessary. Accordingly, this factor weighs against a stay, but only slightly.

7 The second consideration of *Keating* is the burden that any particular aspect of the
8 proceedings may impose on defendants. *Id.* If Fabia invokes his Fifth Amendment privilege, Art Man
9 cannot access the information known to Fabia. Art Man has no control over Fabia's Fifth Amendment
10 invocations, which burdens Art Man's ability to engage in discovery and defend itself. If Art Man
11 participates in other liability discovery during the stay, that discovery may well need to be re-spun
12 following the outcome of the Fabia's criminal trial to gather information inaccessible via Fifth
13 Amendment invocations and to explore anew previous discovery in light of the criminal case's
14 outcome. Furthermore, Defendants have allegedly been unable to obtain discovery from the CNMI
15 Government, as a result of the ongoing investigation. Defs.' Mot. Stay and Mem. Law at 5–6. For the
16 aforementioned reasons, not granting a stay as to Art Man would significantly burden Defendants.
17 Therefore, this factor weighs heavily in favor of a stay.

19 The third consideration of *Keating* is the convenience of the Court in the management of its
20 cases and the efficient use of judicial resources. *Keating*, 45 F.3d at 325. A stay here would conserve
21 scarce judicial resources. Given the substantial overlap between Fabia's prosecution and the civil
22 claims, the discovery produced in the criminal proceeding will likely be relevant to and discoverable
23 in this case. The outcome of the prosecution might also narrow the issues and simplify the parties'
24 positions in this matter. A stay would also avoid the possibility that discovery conducted during the
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1 stay would have to be redone after Fabia's criminal trial. For the aforementioned reasons, this factor
2 weighs in favor of a stay.

3 The fourth consideration of *Keating* is the interests of persons not parties to the civil litigation.
4 *Id.* As Plaintiffs argue, non-party family members of Decedent Miah and Irang have an interest in the
5 resolution of this case. Conversely, Fabia's family has an interest in seeing his criminal case proceed.
6 Accordingly, this factor is neutral.

7 The fifth consideration of *Keating* is the interest of the public in the pending civil and criminal
8 litigation. *Id.* The public has an interest in the conclusion of this case. If Plaintiffs are successful, this
9 case could deter similar, future behavior. However, the public has a stronger interest in the criminal
10 prosecution of individuals charged with Homicide by Vehicle and the other counts with which Fabia
11 is charged. Thus, the public has a stronger interest in the conclusion of the criminal case. Accordingly,
12 the Court finds that this factor weighs in favor of a stay.

13 The party seeking the stay bears the burden of establishing that it is warranted. *Clinton*, 520
14 U.S. at 708. The Court finds that Defendants have satisfied their burden through their analysis of the
15 circumstances under the 9th Circuit *Keating* considerations. Furthermore, the Court agrees with
16 Defendants that the facts of this case are substantially similar to those of *Edwards v. Thomas*, No.
17 4:19-CV-4018, 2020 U.S. Dist. LEXIS 31430 (W.D. Ark. Feb. 24, 2020) and acknowledges the
18 district court's *Keating* analysis, in that case.

19 Plaintiffs argue that a complete stay is an extraordinary measure and not necessary here. Pls.'
20 Opp'n Defs.' Mot. Stay at 2–3. The Court disagrees. After considering the aforementioned *Keating*
21 factors, in totality, the Court finds that the circumstances weigh in favor of a stay of proceedings.
22 However, the Court also recognizes the unique geographical concerns and limitations of the CNMI,
23 as professionals regularly travel off-island and may thereafter be unavailable for discovery purposes.
24 Accordingly, the Court shall limit its stay to accommodate any such circumstances.
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V. CONCLUSION

Based on the foregoing, the Court hereby **GRANTS**, in part, Defendants’ Motion to Stay and **ORDERS** a limited stay of proceedings, until the resolution of the associated criminal case, *CNMI vs. Fabia*, No. 21-00315-TR (NMI Super. Ct.). This stay shall act as a complete stay of proceedings, with the exception of discovery that is time-sensitive, due to the unique geographical concerns of the CNMI. Such discovery may include, but is not limited to, circumstances where certain medical professionals or contracted employees must be deposed before leaving the CNMI and becoming unavailable. For all such discovery, the parties shall first submit a request to the Court, explaining the circumstances that necessitate prompt discovery.

SO ORDERED this 10th day of September, 2021.



/s/
TERESA K. KIM-TENORIO
Associate Judge