

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
 v.)
)
 CYRIL H. WECHT)

Criminal No. 06-0026
Electronically Filed

**ORDER OF COURT DENYING DEFENDANT’S MOTION TO STAY
ONGOING JURY SELECTION PROCESS AND CRIMINAL TRIAL (DOC. NO. 935)
PENDING APPEAL OF APRIL 29, 2008 ORDER OF COURT (DOC. NO. 933)**

I.

**APRIL 29, 2008 ORDER OF COURT (DOC. NO. 933) DENYING
DEFENDANT’S DOUBLE JEOPARDY MOTION (DOC. NO. 868)**

On April 29, 2008, this Court entered an Order (doc. no. 933) Denying Defendant's Motion to Dismiss the Indictment and to Preclude the Government from Further Prosecution in Violation of the Prohibition Against Double Jeopardy (doc. no. 868). This Order held that, on the record before the Court, no reasonable person could dispute that the declaration of a mistrial was mandated by manifest necessity because, in defendant’s own words, “all jurors confirmed the existence of a hopeless deadlock and . . . further deliberation would not lead to a unanimous verdict.” See Defendant’s Objections to Government’s Proposed Jury Instructions Regarding Partial Verdict (Document No. 850) and Cross Motion to Discharge the Jury, (doc. no. 852) at 4, filed after the jury’s second note to the Court at Court Exhibit C-12.

The jury’s third written note, delivered to the Court through the bailiff on the morning of April 8, 2008,¹ only bolstered defendant’s zealous argument for mistrial which he advanced over

¹ The third jury note stated: "Pursuant to court instructions the jury contends we have exhausted all further deliberation efforts. We agree unanimously that we are unable to reach a unanimous verdict on all 41 counts and are essentially deadlocked in the case of United States of

the preceding five days, from April 3-7, 2008, because the third written note from the jury unambiguously *reconfirmed* “the existence of a hopeless deadlock and that further deliberation would not lead to a unanimous verdict.” See Defendant’s Objections to Government’s Proposed Jury Instructions Regarding Partial Verdict (Document No. 850) and Cross Motion to Discharge the Jury, (doc. no. 852) at 4.

II.

DEFENDANT’S LATEST ATTEMPT TO HALT THIS CRIMINAL PROCEEDING

There have been repeated attempts by defendant, in this Court and in the United States Court of Appeals for the Third Circuit, to delay these proceedings. The preceding attempt in the Court of Appeals was summarily rejected by that Court on January 2, 2008, in a terse, one paragraph Order.²

America vs. Cyril H. Wecht.” See Court Exhibit C-13; Minute Entry for April 8, 2008 (doc. no. 858), and Transcript for April 8, 2008 (doc. no. 874).

Defendant asserts that, in its Order of April 29, 2008 (doc. no. 933), the Court made “certain inaccurate factual references,” including the following: “Third, the Court suggests that it read the jurors’ final note in open court on April 8, 2008. *Id.* at 10. It did not. Instead, the Court marked it as Government Exhibit 13 and told the parties they could pick one up when the proceedings were over.” Brief in Support of Motion to Stay (doc. no. 936) at 4, n.5. Defendant’s assertion is misleading. While the Court may not have read the jury’s third note verbatim, it completely and accurately informed the parties and counsel of its contents, as follows: “The jury has informed the bailiff that they remain hopelessly deadlocked and are unable to reach an unanimous verdict on the defendant’s guilt on any of the 41 counts and are unable to reach a unanimous verdict on the defendant not being guilty of any of the 41 counts. The jurors’ note will be marked as Court Exhibit 13, and I have copies thereof, which you can pick up when we’re done with this proceeding” Transcript, April 8, 2008 (doc. no. 874), at 2-3.

² Said Order at (doc. no. 653) on the ECF docket states:

ORDER of USCA the motion for permission to file expanded mandamus petition is granted. The petition for writ of mandamus by Cyril H. Wecht is denied and District Judge Arthur J. Schwab shall continue to preside over this matter. The motion to expedite

Defendant now has filed a Notice of Appeal (doc. no. 934) from the April 29, 2008 Order (doc. no. 933), and a Motion to Stay (doc. no. 935) “the retrial of Dr. Wecht” pending his appeal of the Order denying his Double Jeopardy motion. See Brief in Support of Motion to Stay (doc. no. 936) at 2. The Court denied Defendant’s Motion to Dismiss the Indictment and to Preclude the Government from Further Prosecution in Violation of the Prohibition Against Double Jeopardy (Doc. No. 868) because defendant failed to demonstrate any credible grounds upon which reasonable persons might disagree with this Court’s holding that his Double Jeopardy motion was frivolous. See (doc. no. 933).

Having no factual support on the record and no legal authority that might plausibly justify dismissal of the indictment on Double Jeopardy grounds, the Court further ruled that defendant’s interlocutory appeal of this Order would not divest this Court of jurisdiction to continue with the pretrial and trial proceedings. United States v. Leppo, 634 F.2d 101 (3d Cir. 1980) (appeal from denial of double jeopardy motion to dismiss did not divest District Court of jurisdiction to proceed with trial, where district court found the motion to have been frivolous and supported its conclusions by written findings). See doc. no. 933 at 21, n.5.

III.

MOTION TO STAY - STANDARDS UNDER FED.R.APP. 8(a).

The Court will evaluate the motion to stay in light of the following criteria from Republic of Philippines v. Westinghouse Elec. Corp., 949 F.2d 653 (3d Cir. 1991), upon which defendant relies. In deciding whether to exercise its discretion to grant a stay of an Order or proceedings

consideration of the petition for writ of mandamus is dismissed as moot. The motion to stay district court proceedings pending disposition of the Petition for Writ of Mandamus is dismissed as moot.

pending appeal from the Order, the District Court must consider and weigh four factors:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits;
- (2) whether the applicant will be irreparably injured absent a stay;
- (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and
- (4) where the public interest lies.

Id. at 658, citing Hilton v. Braunskill, 481 U.S. 770 (1987) (setting forth standards applicable under Fed.R.App.P. 8(a) for granting a stay of a district court's order pending appeal). The Court will consider these factors seriatim.

A. Likelihood of Success on Appeal.

Defendant has no likelihood of success on the merits of this appeal, and reasonable minds cannot differ on this issue. To summarize, the reasons stated in this Court's prior Order (doc. no. 933) denying defendant's motion to dismiss the indictment and bar retrial on Double Jeopardy grounds are as follows. Initially, the Court found that, based on the well-established, black letter law of Double Jeopardy, retrial is permitted if *either* (i) defendant requests or explicitly or implicitly consents to a mistrial *or* (ii) the record reveals a manifest necessity for a mistrial. See United States v. Allick, 2008 WL 1745150 (3d Cir. 2008) (if there is manifest necessity for a mistrial, retrial is permitted even without defendant's consent; if defendant requests or explicitly or implicitly consents to a mistrial, retrial is generally permitted even in the absence of manifest

necessity).³ Based on the record of the jury deliberations, this Court held that *both* defendant's affirmative consent *and* manifest necessity were unequivocally demonstrated.

1. Defendant Requested and Consented to a Mistrial.

Defendant made two affirmative motions to declare a mistrial and discharge the jury: an oral motion on April 3, 2008, and a written motion filed on April 4, 2008, which remained pending until April 7, 2008 when this Court denied defendant's written motion for the reasons stated in prior Orders of Court at (doc. no. 855), April 7, 2008 Order of Court Denying Defendant's Motion for Reconsideration of Denial of Motion for Mistrial Embedded in Document No. [852], and (doc. no. 933), April 29, 2008 Order Denying Defendant's Motion to Dismiss the Indictment and to Preclude the Government from Further Prosecution in Violation of the Prohibition Against Double Jeopardy (Doc. No. 868).

Thus, on April 7, 2008, defendant's then-pending motion explicitly stated his position that, "for reasons stated yesterday [i.e., the day before the written motion was filed, April 3, 2007] and as set forth herein, the defense moves this Court for the discharge of the jury in light of the fact that all jurors confirmed the existence of a hopeless deadlock and that further deliberation would not lead to a unanimous verdict." See Defendant's Objections to Government's Proposed Jury Instructions Regarding Partial Verdict (Document No. 850) and

³ In Allick, the Court of Appeals remanded for further development of the record and an evidentiary hearing, because the record before it lacked sufficient information to determine whether the trial judge had consulted with counsel and canvassed alternatives to mistrial, as required by Federal Rule of Criminal Procedure 26.3, whether defendant had consented to the mistrial, and whether there was manifest necessity for mistrial. In stark contrast to the record in Allick, the record in this case amply demonstrates that this Court consulted with counsel and canvassed alternatives to mistrial, that defendant had affirmatively advocated for the mistrial, and that manifest necessity existed.

Cross Motion to Discharge the Jury, (doc. no. 852) at 6.

For all of the reasons previously stated in the Order (doc. no. 933) challenged on appeal, there is no doubt that defendant twice moved for the declaration of mistrial, and explicitly consented thereto, and, therefore, Double Jeopardy is simply not implicated.

2. Manifest Necessity for Mistrial.

The additional dispositive reason for denying defendant's Double Jeopardy motion was that manifest necessity demanded the declaration of a mistrial, beyond any shadow of a doubt.

When, after some 40 hours of deliberations, the jury sent the third note on April 8, 2008 stating "[p]ursuant to court instructions the jury contends we have exhausted all further deliberation efforts . . . [and] agree unanimously that we are unable to reach a unanimous verdict on all 41 counts and are essentially deadlocked . . .", see Court Exhibit C-13; Minute Entry for April 8, 2008 (doc. no. 858), this communication reconfirmed what the jury had been saying -- and what defendant had been saying -- for five days, namely, that the jury remained hopelessly deadlocked and that further deliberations would be useless.

On the record before the Court, therefore, no reasonable person could seriously dispute that the jury was hopelessly deadlocked, and that manifest necessity required declaration of a mistrial and discharge of the jury. Interestingly, *defendant does not, in fact, dispute the existence of manifest necessity*. Defendant's failure to even *mention* the manifest necessity analysis and this Court's holding in his Motion to Stay or Brief in Support speaks volumes about the frivolous nature of his Double Jeopardy motion and the unlikelihood of success on appeal.

Defendant's Brief in Support of Motion to Stay discusses *only* Item 1 (above) and Item 3 (below) in an attempt to persuade this Court (and the United States Court of Appeals for the

Third Circuit) that he did not request or consent to the mistrial, and that this Court failed to comply with Fed.R.Crim.P. 26.3 and the alleged failure requires dismissal of the indictment. Tellingly, defendant does not discuss, let alone attempt to distinguish or offer any legal authority to dispute, this Court's analysis of manifest necessity in light of the "classic" mistrial based on a hung jury. The conspicuous absence of *any* discussion of manifest necessity in defendant's brief in support of his motion to stay reflects defendant's apparent realization that his challenge to the Court's Order on the issue of manifest necessity cannot be plausibly advanced on appeal or in his motion to stay in this Court, and amounts to an admission by omission that he has no likelihood of success on the merits of his appeal to the Court of Appeals for the Third Circuit.

By not mounting *any* challenge to this additional dispositive portion of the Court's Order of April 29, 2008, defendant effectively concedes that his motion and his appeal are, indeed, legally and factually frivolous.

3. Federal Rule of Criminal Procedure 26.3.

The Court also rejected defendant's argument that it failed to comply with Fed.R.Crim.P. 26.3 before declaring a mistrial, and that the Court's alleged failure to comply with Fed.R.Crim.P. 26.3 is tantamount to a Double Jeopardy violation or somehow prohibits retrial where, as here, the record plainly shows that the defendant had moved for the mistrial and that manifest necessity existed for the retrial on the record.

Rule 26.3 states: "Before ordering a mistrial, the court must give each defendant and the government an opportunity to comment on the propriety of the order, to state whether that party consents or objects, and to suggest alternatives." Rule 26.3 does not dictate the timing of or the procedures for implementing its requirements, only that "[b]efore ordering a mistrial," the Court

must give the defendant and government an opportunity to comment on the propriety of the mistrial order, state whether that party consents or objects, and suggest alternatives.

In rejecting defendant's hyper-technical "violation of Fed.R.Crim.P. 26.3" argument, this Court painstakingly reviewed in its Order of April 29, 2008 (doc. no. 933) the actual record of jury deliberations and found that the record demonstrated, beyond any reasonable dispute, that this Court, "over a five day period . . . fully and faithfully complied with Fed.R.Crim.P. 26.3 in letter and in spirit, and gave the defendant and the government more than ample opportunity to comment on the propriety of a mistrial declaration, sought their advice as to alternatives, rejected the government's alternative, which was to give the jury a partial verdict instruction, and conducted that [Rule 26.3] dialogue, orally and in writing . . ." Order of April 29, 2008 (doc. no. 933), at 17-18.

The Court reaffirms that its declaration of a mistrial on April 8, 2008, came only after fully complying with Rule 26.3, and further, that the record adequately shows manifest necessity existed for the mistrial and defendant's consent thereto.

4. United States v. Leppo Certification.

Finally, the United States Court of Appeals for the Third Circuit in the Leppo case requires a District Court to certify that a Double Jeopardy motion is frivolous if it so finds and states in written findings, so that the Court of Appeals may properly assess whether the District Court has retained jurisdiction despite an interlocutory appeal. United States v. Leppo, 634 F.2d 101 (3d Cir. 1980) (appeal from denial of defendant's double jeopardy motion to dismiss did not divest District Court of jurisdiction to proceed with trial where district court found the motion to have been frivolous and supported its conclusions by written findings). Defendant himself

“recognizes that this Court does not have the authority to depart from precedential decisions of the [United States Court of Appeals for the] Third Circuit,” but indicates he is preserving a constitutional challenge to Leppo “for potential argument on appeal.” Brief in Support of Motion to Stay (doc. no. 936), at 3, n. 3. Pursuant to Leppo, therefore, the Court reiterates its finding that defendant’s Double Jeopardy motion is frivolous, (see doc. no. 933 at 21, n.5) as is any appeal from the denial of said motion.

B. Balancing Respective Harms to and Interests of the Parties and of the Public.

The Republic of Philippines case also requires the Court to consider (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. A district court might find little likelihood of success and yet, in its discretion, grant a stay if it found that the other three elements significantly favored such stay and outweighed the small chance of success on appeal. However, where as here there is *no likelihood of success*, it is difficult to conceive of a situation wherein the other three factors would be deemed to outweigh the first.

This Court may well be foreclosed by the law of the case from conducting such a balance of the parties’ and the public’s interests, in light of the decision of the United States Court of Appeals for the Third Circuit on January 2, 2008 (at the Court of Appeals’ docket 07-4794). That Order considered defendant’s argument for a stay of proceedings, and summarily rejected defendant’s motion for a stay in which he raised many of the same public and private interests as supporting defendant’s request that the Court of Appeals for the Third Circuit stay the scheduled trial. See Order of United States Court of Appeals for the Third Circuit, January 2, 2008 (doc.

no. 653).

For example, defendant argues that a stay is necessary because there are other appeals currently pending before the Court of Appeals, and a stay would allow the Court to consider all matters pending before it at one time. Specifically, defendant argues that the appeals of the media outlets “remain active and relevant, particularly since the Court has already entered a pretrial order and jury-selection order indicating that it will use the same procedures in the retrial it used in the first trial” (doc. no. 936 at p. 3).

This assertion is false and distorts the record. In fact, the Court, in issuing its November 26, 2007 Order of Court Re: Additional Jury Selection Procedures (doc. no. 595), had originally included the language that “[t]he jury will be anonymous.” However, in the April 9, 2008 Order of Court Re: Additional Jury Selection Procedures (doc. no. 864), to comply with the directives of the Court of Appeals for the Third Circuit, the Court deleted said language regarding an anonymous jury from the Jury Selection Procedure for the pending retrial. Defendant’s assertion that the Court entered a Pretrial Order for the retrial that uses “the same procedures in the retrial it used in the first trial” is misleading and displays a lack of candor with the Court.

Not only does defendant distort the record regarding the Court’s Pretrial Orders concerning jury selection procedures being “the same” as those already under consideration by the Court of Appeals, that Court was well aware of the pending appeals before it and did not consider those matters sufficient justification to stay defendant’s first trial when it denied his writ of mandamus and motion to stay on January 2, 2008 (at its docket 07-4794).

Because Defendant has no likelihood of success on the merits of his appeal, the Court finds that the appeal was noticed solely to delay the retrial or for other strategic reasons. This

Court's denial of defendant's frivolous Double Jeopardy motion does not alter the balance of interests equation as applied by the Court of Appeals in denying his preceding attempt to halt the first trial, nor does it give this Court any legitimate basis for departing from the guidance of the Court of Appeals.

IV.

BALANCING OF INTERESTS OF THE PARTIES AND THE PUBLIC

Assuming that the Order of the United States Court of Appeals for the Third Circuit dated January 2, 2008 (doc. no. 653), is not the law of the case, at a minimum, it offers compelling guidance, and this Court's evaluation of the competing public and private interests, along with the unlikelihood of success on appeal, leads inevitably to the conclusion that a stay of the retrial would be inappropriate.

On April 8, 2008, this Court after 27 days of trial and 10 days of jury deliberations, declared a mistrial and scheduled the retrial for May 27, 2008 at 9:00 AM. See Third Pretrial Order (doc. no. 863).

The next day, April 9, 2008, the Court (after consultation with the Jury Administrator) directed the issuance of 400 summons to potential jurors, and directed the "standard pre-screening by the Jury Administrator, including hardship issues, . . . be completed by early May, 2008. See doc. no. 864, entitled "Order of Court Re: Additional Jury Selection Procedures". The summons have been mailed; appropriate forms have been completed and returned by prospective jurors; and jury administration and her staff have been working hard reviewing the returned information to make the "hardship" and other appropriate determinations. Those determinations have been considered and approved, on an on-going basis, by the applicable

Miscellaneous Judge. This process is approximately 75% complete as of today.

Pursuant to the Order of Court Re: Additional Jury Selection Procedures (doc. no. 864) entered more than three weeks ago, the final juror selection process will begin within 10 days, on May 12, 2008, as follows:

The remaining pool of qualified prospective jurors will be instructed to appear in groups of 60 on May 12, 2008, May 14, 2008, and May 19, 2008 (and additional days if necessary). On each such day, a group of 60 will report to the Jury Assembly Area at 8:30 AM for the standard jury orientation and completion of the jury questionnaire. Hopefully, the questionnaire will be completed by noon.

. . . The Court will rule on any challenges for cause in the late afternoon and/or the morning of the next day (i.e., May 13, 2008, May 15, 2008, and May 20, 2008, etc., as necessary). Jurors will be available on May 13, 2008, etc., for follow-up questions (if any) by the Court that afternoon, and/or the next day (if necessary). The Court's rulings on challenges for cause will be provided to the Jury Administrator. This process will continue until a sufficient pool of qualified jurors is achieved. It is tentatively expected that the final selection process will occur on May 22, 2008 (40 qualified jurors before peremptory challenges with a post-peremptory challenge jury of 12 persons with 6 alternates), and trial shall commence on May 27, 2008.

Thus, the granting of requested relief would disrupt the on-going jury selection process, commenced more than three weeks ago; cause great uncertainty to the pool of 400 prospective jurors and potential trial witnesses; and delay the scheduled criminal trial, for the sole purpose of considering a Double Jeopardy motion which lacks any arguable merit. See Order of Court Denying Defendant's Motion to Dismiss the Indictment and to Preclude the Government from Further Prosecution in Violation of the Prohibition Against Double Jeopardy (doc. no. 933).

Under all of the circumstances, public policy significantly outweighs defendant's interests in further delaying this criminal proceeding, which commenced with filing of the indictment on January 20, 2006.

The Court of Appeals for the Third Circuit in the Leppo case addressed the issue, “does an appeal from the denial of a motion for dismissal on grounds of double jeopardy, deemed frivolous by the district court, divest that court of jurisdiction to proceed with trial?” 634 F.2d at 102. The Court of Appeals answered “no,” such an appeal does not divest the trial court of jurisdiction, and Judge Aldisert explained the Court’s reasoning:

The question presented here requires us to balance on one hand the principles underlying both Abney v. United States, 431 U.S. 651, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977), and the usual rule that a trial court is divested of jurisdiction over a case when a notice of appeal is filed, against the *public policy favoring the rapid disposition of criminal cases, recently expressed by Congress in the Speedy Trial Act*, 18 U.S.C. ss 3161-3174. *On a less abstract level, it requires us to decide whether a defendant in a criminal case can delay his trial for an extended period by means of a dilatory and frivolous appeal.*

In Abney, the Supreme Court held that the denial of a motion to dismiss on grounds of double jeopardy is an appealable final order for purposes of 28 U.S.C. s 1291(a), under the collateral order exception announced in Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949). The reason compelling the decision was that the right protected by the double jeopardy clause includes the right not to be twice put to trial for the same offense. Absent a provision for an immediate appeal, the right would be forever lost, regardless of the outcome of the trial. 431 U.S. at 660-61, 97 S.Ct. at 2040-41.

The Abney decision had the effect of providing criminal defendants with an effective new tool for delaying their trials for long periods of time. An Abney appeal delays trial because ordinarily the trial court loses its power to proceed once a party files a notice of appeal. . . . This rule is not based on statutory provisions or the rules of procedure. Rather, it is a judge-made rule designed to avoid confusion or waste of time that might flow from putting the same issues before two courts at the same time. As Professor Moore has observed, the rule “should not be employed to defeat its purpose or to induce needless paper shuffling.” 9 J. Moore, Federal Practice P 203.11 at 3-44 n.1 (1980); see C. Wright, A. Miller, E. Cooper, & E. Gressman, Federal Practice and Procedure s 3949, at 358-59 (1977).

A ritualistic application of the divestiture rule in the Abney context *conflicts with the public policy favoring rapid adjudication of criminal*

prosecutions. It is not uncommon for an appeal to take a full year before final resolution. In passing the Speedy Trial Act, Congress recognized that the public has a substantial interest in the resolution of prosecutions without needless delay. As the House Report noted at the outset: “The purpose of this bill is to assist in reducing crime and the danger of recidivism by requiring speedy trials and by strengthening the supervision over persons released pending trial.” H.R.Rep. No. 1508, 93d Cong., 2d Sess. 1, reprinted in (1974) U.S. Code, Cong. & Ad. News 7401, 7402; see also, H.R.Rep. No. 390, 96th Cong. 1st Sess. 3, reprinted in (1979) U.S. Code, Cong. & Ad. News 805, 807.

Leppo, 634 F.2d at 104 (emphasis added; certain citations omitted).

Although the Court of Appeals was concerned that failure to review a “colorable double jeopardy claim before trial begins creates a substantial risk that the accused's constitutional rights will be infringed,” it was equally concerned that the automatic divestiture of jurisdiction rule would leave “the court powerless to prevent intentional dilatory tactics, forecloses without remedy the nonappealing party's right to continuing trial court jurisdiction, and inhibits the smooth and efficient functioning of the judicial process.” Id. at 105, quoting United States v. Dunbar, 611 F.2d 985, 988 (5th Cir. 1980) (in banc). The Court of Appeals carefully weighed these concerns, and “held an appeal from the denial of a double jeopardy motion does not divest the district court of jurisdiction to proceed with trial, if the district court has found the motion to be frivolous and supported its conclusions by written findings.” Id. at 105.

V.

CONCLUSION

This criminal prosecution illustrates *precisely* the concern expressed by the Court of Appeals that “a defendant in a criminal case can delay his trial for an extended period by means of a dilatory and frivolous appeal.” Leppo, 634 F.2d at 104. Defendant has used his impressive resources repeatedly in the service of dilatory tactics in an ongoing effort to delay and disrupt the

criminal proceedings,⁴ and seeks to delay the retrial for many more months by filing a frivolous appeal from an Order denying his Double Jeopardy motion. This Court's Order (doc. no. 933) was based on well-established, black letter law and a well-developed factual record which, unequivocally, demonstrates that defendant twice requested a mistrial based on a deadlocked jury and that manifest necessity existed because of that deadlocked jury which required the declaration of a mistrial.

Defendant has no likelihood of success on the merits in his appeal of the Court's Order denying his Double Jeopardy motion, and the public's interests in the resolution of prosecutions without needless delay far outweigh any benefits to defendant, given the significant, indefinite delay that would accompany a stay pending resolution of this appeal.

For all of the foregoing reasons, defendant's motion to stay is **HEREBY DENIED**.

SO ORDERED this 2nd day of May, 2008.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All counsel of record

⁴ See, e.g. Order of April 16, 2008 (doc. no. 911) Denying Defendant's Motion to Continue, Motion for Adjournment of Trial Date and Motion for Scheduling Conference with the Court (865), which Order is attached hereto, electronically.