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Parallel Proceedings: The Pennsylvania Superior Court Adopts a Federal Court’s Framework for Analyzing Requests to Stay Civil Proceedings Pending Ongoing Criminal Prosecution

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A not uncommon tactic of defendants facing both civil lawsuits and criminal charges is to attempt to halt the civil case against them on the ground that the authorities are criminally prosecuting them. To the plaintiff, it feels like stalling, yet another obstacle preventing resolution of its case. To the defendant, it is a question of fundamental fairness because it allows him to preserve his constitutional rights and not have to face the burden of defending himself simultaneously on two fronts.

The Pennsylvania Superior Court recently clarified what factors a trial court must consider when ruling on a motion to stay a civil proceeding based on the existence of a parallel criminal case arising from the same facts. In *Keesee v. Dougherty*,¹ the Superior Court considered defendants’ appeal of the trial court’s denial of its motion to stay. The *Keesee* court ultimately concluded that the trial court wrongly failed fully to consider the merits of defendants’ request before denying the stay.

According to the Superior Court, when a defendant moves to stay civil proceedings on the basis of parallel criminal proceedings, the trial court must consider the fundamental rights of both parties – the civil plaintiff and the defendant facing criminal prosecution – and ultimately decide whether constitutional concerns are great enough to suspend the plaintiff’s right to pursue a civil suit. The *Keesee* court ruled that this inquiry

requires the trial court to consider various factors that may or may not show that the defendant is likely to have self-incrimination concerns. The federal district court in *In re Adelpia Communications Securities Litigation*² previously identified factors that are relevant when determining a stay. These include: (1) the extent to which the issues in the civil and criminal cases overlap; (2) the status of the criminal proceedings, including whether any defendants were under indictment; (3) the plaintiff’s interest in expeditious civil proceedings weighed against the prejudice to the plaintiff caused by the delay; (4) the burden on the defendants; (5) the interests of the court; and (6) the public interest. According to the *Keesee* court, Pennsylvania trial courts must balance all six of these factors in determining whether to grant or deny a stay.

The Pennsylvania Supreme Court’s decision in *Pennsylvania Public Utility Commission v. Process Gas Consumers*³ supports the adoption of the *Adelpia* factors. In *Process Gas*, the Supreme Court identified four factors for determining whether the grant of a motion to stay pending appeal is warranted. The *Process Gas* test “served as a template employed by the *Adelpia* court to assess the propriety of staying a

¹ *Keesee v. Dougherty*, 2020 PA Super 64, slip op. (Pa. Super. Ct. Mar. 16, 2020).

² *In re Adelpia Communications Sec. Litig.*, No. 02-1781, 2003 U.S. Dist. LEXIS 9736, 2003 WL 22358819 (E.D. Pa. May 13, 2003).

³ *Pa. Pub. Util. Comm’n v. Process Gas Consumers*, 467 A.2d 805, 809 (Pa. 1983).

civil proceeding pending the resolution of a related criminal case.” Therefore, “the factors identified in *Process Gas*, as augmented by the district court in *Adelphia*, are the appropriate factors for a court to consider, at a minimum, when deciding to grant or deny such a motion to stay.”

When a defendant is under criminal indictment, and also faces a civil lawsuit based on the same or related conduct, concerns regarding the fear of self-incrimination arise. This is true whenever answers may implicate the speaker in the future or in contemporaneous criminal proceedings. Additionally, a criminal defendant may choose not to testify truthfully, in depositions or otherwise, or may decide not vigorously to challenge allegations in a civil suit out of fear that his actions or statements in the civil suit could be utilized against him criminally. Thus, parallel proceedings, such as those in *Keesee*, may require the stay of the civil case pending resolution of the criminal prosecution.

The *Keesee* decision identifies a framework for assessing requests for a stay when parallel proceedings exist, or arguably even where there is a parallel investigation related to a civil case with a likelihood of future criminal charges. The *Adelphia* factors are appropriately tailored to allow a reviewing court to determine whether the overlap between the criminal and civil cases present constitutional concerns requiring a stay. Plaintiffs, relying on *Keesee*, may be able to better plan, schedule, counsel, and generally know what to expect when suing a party who is also facing criminal charges. ♦

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