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

N.B., ROBIN BAUMGARDT and
MARK BAUMGARDT,

Plaintiffs,

v.

WAUSAU SCHOOL DISTRICT BOARD OF
EDUCATION, PAUL BRUSKY, MITCHELL KING,
STATE FARM MUTUAL AUTOMOBILE
INS. CO., THE BOLLER GROUP, INC.,

Defendants,

and

COMMUNITY INS. CORP.,

Intervenor.

ORDER

06-C-487-C

On September 5, 2006, plaintiffs filed this lawsuit alleging various constitutional and state law claims against defendants arising out of defendant King's sexual assault of plaintiff N.B. while N.B. was an underclassman at Wausau West High School and King was a school employee. Before the court is a series of motions to stay and to bifurcate these proceedings. With one exception I am denying these motions.

On November 14, 2006, State Farm moved to bifurcate coverage and stay liability, or alternatively to decline supplemental jurisdiction over the state law claims.[1] *See* Dkt. 14.

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[1]Now that plaintiffs have amended their complaint to allege constitutional claims against State Farm, *see* dkt. 38, the request that this court decline supplemental jurisdiction over the state law tort claims seems to have fallen by the boards.

On November 17, 2006, intervenor Community Insurance filed a similar motion. *See* Dkt. 16.

On November 21, 2006, defendants Brusky and the school district moved to stay proceedings against them pending a ruling on their motion to dismiss, invoking a claim of privilege, among other things. *See* Dkt. 19.

On December 5, 2006, King moved to stay proceedings pending disposition of his state court motion to reconsider the criminal sentence imposed upon him following his conviction of sexually assaulting N.B. *See* Dkt. 25.

On December 6, 2006, the parties stipulated to stay this lawsuit to attempt mediation. *See* Dkt. 29.

On December 7, 2006 the court held the preliminary pretrial conference and granted the parties' request for a stay by building extra time into the briefing schedule on the pending motions. Apparently mediation failed. Now virtually every defendant wants a preliminary determination whether this lawsuit can proceed against it/him.

As the parties are aware, sometimes this court follows Wisconsin practice and grants insurers' motions to stay, more often it does not. This case is a "not." With full appreciation of the insurers' arguments, this is a case in which prompt, targeted discovery can adduce the facts necessary for the insurers to file their motions to dismiss and perhaps get out of the case promptly. In addition to granting the requested stay, this court set a relatively leisurely schedule (by its standards), with summary judgment motions allowed

until June and trial set for October 15, 2007, over thirteen months after this lawsuit was filed. From the court's perspective, this is more than sufficient time for the insurers to file and brief their motions and get rulings from this court. CIC predicts that all it needs is a "single deposition of defendant King." *See* Dkt. 40 at 2. That's fine: take the deposition then file the dispositive motion.[2] There is no bar to the insurers structuring discovery so that they can get a quick ruling on whether they belong in this lawsuit. The court, however, will not impose an actual stay, let alone allow the insurers to *appeal* any adverse ruling prior to proceeding with the merits of the underlying lawsuit.[3]

Next, the school defendants seek a stay of discovery while their motion to dismiss is pending. *See* Dkts. 19 and 20. A government employee claiming a defense of immunity is entitled to a stay of discovery that is not directed toward immunity issues. *See Delgado v. Jones*, 282 F.3d 511, 515-16 & 515 n.1. (7th Cir. 2002); *Gibson v. City of Chicago*, 910 F.2d 1510, 1520 & 1520 n.17 (7th Cir. 1990). The school defendants' dismissal motion went under advisal to the court on January 29, 2007, and the court will make resolving it a priority. Pending the court's ruling, these two defendants cannot be subjected to additional discovery.

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[2] Leave of court is required to depose King. *See* Rule 30(a)(2). In this order I am granting leave prospectively to the insurance companies for the purpose of adducing evidence relevant to coverage issues. All the parties may seek leave at a later date to conduct a more comprehensive deposition of King.

[3] The court waives it rule against second summary judgment motions in this case in the event it does not dismiss the insurers from this case and they would like to file a substantive Rule 56 motion.

Finally, defendant King asked to suspend discovery while he sought reconsideration of the state circuit court's sentence in his criminal case. On January 19, 2007, the circuit court denied relief and affirmed its sentence against King, re-explaining its reasoning. Even if initially there had been some foundation for King's invocation of the *Younger* abstention doctrine–and there was not, *see Younger v. Harris*, 401 U.S. 37, 43-44 (1971)–those concerns have abated. The fact that King now might appeal his sentence is of no consequence in the instant civil lawsuit and it certainly does not implicate the abstention doctrine.

ORDER

It is ORDERED that:

(1) The motion by defendant school board and defendant Brusky to stay discovery while their dismissal motion is pending (dkt. 19) is GRANTED.

(2) The motions of defendants State Farm, CIC and King to stay and/or to bifurcate (dkts. 14, 16 and 25) all are DENIED.

(3) All insurance company defendants are granted leave jointly to conduct one deposition of defendant King in prison to adduce evidence relevant to coverage issues.

Entered this 15th day of February, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge