

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

P R E S E N T : HON. JEFFREY S. BROWN
JUSTICE

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LIBERTY MUTUAL INSURANCE COMPANY,
LIBERTY MUTUAL FIRE INSURANCE COMPANY,
LIBERTY INSURANCE CORPORATION, THE FIRST
LIBERTY INSURANCE CORPORATION, LM
INSURANCE CORPORATION, LIBERTY MUTUAL
MID-ATLANTIC INSURANCE COMPANY, LIBERTY
COUNTY MUTUAL INSURANCE COMPANY and LM
PROPERTY AND CASUALTY INSURANCE COMPANY,

Plaintiffs,

-against-

INNOVATIVE MEDICAL, P.C.,
FIRST AID MEDICAL CARE, P.C.
ROSEDALE MEDICAL OF NEW YORK, P.C.,
LENOX WELLCARE MEDICAL, P.C.,
ST. JOHN MEDICAL CARE, P.C.
(The "P.C. Defendants")
DAVID LEE HSU, M.D.
GENE BRIGNONI, M.D.,
BENJAMIN YENTEL, M.D.
(THE "Nominal Owner Defendants")
LEONID KAPLAN
ILYA SLEPAK
BORIS GASILO,
ABRAHAM PINKHASOV
ALLA SMIRNOV and
MARINA BLUVSTEIN
(The "Management Defendants"),

Defendants.

TRIAL/IAS PART 17

INDEX # 1912/12

Motion Seq. 1
Motion Date 3.27.12
Submit Date 4.26.12

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The following papers were read on this motion:	Papers Numbered
Notice of Motion, Affidavits (Affirmations), Exhibits Annexed.....	1
Answering Affidavit	2
Memoranda of Law.....	3,4,5

The motion brought by the Defendant, David Lee Hsu, M.D., in the above-captioned action, for an order of this Court, pursuant to Rule (sic) 2201 of the New York Civil Practice Law and Rules, staying this action until resolution of *United States v Smirnov*, No. 11 Crim. 893 (S.D.N.Y. Oct. 19, 2011) is **denied** in its entirety in the exercise of this Court's inherent discretion (see *Matter of Kopf [Double Kay Contr. Corp.-United States of America]*, 169 AD2d 428 [1st Dept 1991]).

Initially, the Court takes note that the movant has failed to comply with Rule 2214(c) of the CPLR in that he has not furnished to this Court all papers served by him in the instant action.

Furthermore, the pendency of a criminal proceeding does not give rise to an absolute right under the United States or New York State Constitutions to a stay of a related civil proceeding (see generally *DeSiervi v Liverzani*, 136 AD2d 527 [2nd Dept 1988], citing to *United States v Kordel*, 397 US 1 and *Langemyr v Campbell*, 21 NY2d 796, *remittitur amended* 21 NY2d 969, *rearg denied* 21 NY2d 1040, *cert denied* 393 US 934).

Based upon all the papers submitted for this Court's consideration, the Court makes the following finding of facts:

On October 19, 2011, the moving defendant herein, David Lee Hsu, M.D., and several other individuals were indicted on federal charges of mail fraud and health care fraud.

The aforesaid indictment, *United States v Smirnov*, No. 11 Crim. 893 (S.D.N.Y. Oct. 19, 2011) alleges that David Lee Hsu, M.D., a licensed physician, was the nominal owner of several health care clinics, including Lenox Wellcare Medical, P.C., a defendant in the instant action, that were actually operated by non-physicians.

This indictment further alleges that David Lee Hsu, M.D., and his co-defendants conspired to fraudulently bill automobile insurance companies under New York's no-fault insurance law for medical treatments that the clinics did not actually provide or that were unnecessary.

Davie Lee Hsu, M.D., is currently scheduled for trial on the hereinabove described indictment on September 10, 2012.

On February 14, 2012, the plaintiffs herein commenced the instant action seeking, *inter alia*, a declaratory judgment and damages. In addition to its cause of action for a declaratory judgment, the plaintiffs allege causes of action for common law fraud, unjust enrichment and violation of the civil RICO statute (18 U.S.C. Section 1962[c] and [d]).

In their 303 paragraph complaint herein, setting forth 25 causes of action, the plaintiffs allege that the captioned management defendants master mined and implemented a complex fraudulent scheme whereby they fraudulently incorporated the captioned PC defendants, designating the captioned nominal owner defendants as owners of the professional corporations, used the captioned PC defendants to submit fraudulent no-fault bills to the plaintiffs and siphoned off the resulting no-fault profits to the captioned management defendants.

It is the determination of this Court that the public interest in protecting New York's insured citizens, as well as the entities providing insurance to this state's citizenry, mandates the resolution of the plaintiffs' claims in an expeditious manner and strongly outweighs the staying of the instant action pending the outcome of this moving defendant's criminal proceeding.

The foregoing constitutes the decision and order of this Court. All applications not specifically addressed herein are denied.

Dated: Mineola, New York
June 13, 2012

ENTER



HON. JEFFREY S. BROWN, JSC

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ENTERED

JUN 19 2012

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**