

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CUMBERLAND PHARMACEUTICALS INC.,)	
)	
Plaintiff,)	
)	No. 1:12-cv-03846
v.)	
)	Judge Rebecca Pallmeyer
MYLAN INSTITUTIONAL LLC, AND)	
MYLAN INC.,)	
)	
Defendants.)	

DEFENDANTS’ MOTION TO STAY RESOLUTION OF PLAINTIFF’S BILL OF COSTS OR, ALTERNATIVELY, TO STAY ENFORCEMENT OF ANY COSTS TAXED TO DEFENDANTS PENDING APPEAL

Defendants, Mylan Institutional LLC and Mylan Inc. (collectively “Mylan”), respectfully move this Court to stay Cumberland Pharmaceuticals, Inc.’s (“Cumberland”) Bill of Costs (Dkt. 326) pending resolution of Mylan’s appeal in this action or, alternatively, to stay enforcement of any costs taxed to Mylan pending appeal.

1. On September 30, 2015, this Court entered a Memorandum Opinion and Order (Dkt. 316) and, on October 30, 2015, Mylan filed its Notice of Appeal to the United States Court of Appeals for the Federal Circuit. (Dkt. 330.) If Mylan were to prevail in the Appeal, that outcome would moot any award of costs this Court might ultimately allow Cumberland to recover. Conversely, if Cumberland were to prevail on appeal, this Court could easily resolve the disputed issues concerning Cumberland’s Bill of Costs at that juncture.

2. This Court has discretion to either: (i) stay the resolution of a bill of costs pending resolution of the appeal; or (ii) stay the enforcement of any costs awarded to Cumberland pending appeal. *George v. Junior Achievement of Cent. Ind., Inc.*, 1:10-cv-0220, 2011 U.S. Dist. LEXIS 127953, *4 (S.D. Ind. Nov. 4, 2011) (granting a contested motion to stay in part because

the outcome of the “novel issue on appeal may eliminate any entitlement [the prevailing party] has to costs and fees and moot [the] pending motions.”); see *In re Dairy Farmers of Am., Inc., Cheese Antitrust Litig.*, 80 F. Supp. 3d 838, 854 (N.D. Ill. 2015) (granting motion stay the enforcement of the bill of costs pending the Seventh Circuit’s ruling on the appeal); see also *How v. City of Baxter Springs*, 04-cv-2256, 2006 U.S. Dist. LEXIS 23951, *2 (D. Kan. Apr. 26, 2006); citing *Estate of Pidcock v. Sunnyland Am., Inc.*, 726 F. Supp. 1322, 1341 (S.D. Ga. 1989) (stating “[i]n its discretion, however, the Court may postpone the awarding of costs until the resolution of the post-trial motions or even the resolution of any appeal.”)

3. Here, staying either consideration or enforcement of Cumberland’s Bill of Costs would advance judicial efficiency because the basis for those costs may be reversed on appeal and a significant number of disputed issues exist with respect to the costs Cumberland seeks to recover from Mylan.¹

4. On November 3, 2015, Mylan requested that Cumberland agree to file a joint motion to stay Cumberland’s Bill of Costs in order to streamline the issues in the case on appeal, address the Bill of Costs only once, and reduce expenses for both parties. On November 10, 2015, Cumberland responded that it will not consent to the joint motion.

WHEREFORE, in light of the pendency of Mylan’s appeal, Mylan moves the Court to alternatively: (i) stay the resolution of Cumberland’s Bill of Costs until such time as the Federal Circuit resolves Mylan’s appeal; or (ii) stay enforcement of any costs to which Cumberland gains entitlement through its Bill of Costs until resolution of the appeal.

¹ See the Objections to the Bill of Costs Mylan files contemporaneously with this Motion.

Dated: November 13, 2015

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