

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 04-cv-01224-PSF-CBS

UNITED STATES OF AMERICA ex rel.  
BOBBY L. MAXWELL,

Plaintiff,

v.

KERR McGEE CHEMICAL  
WORLDWIDE, LLC, ET AL.,

Defendants.

---

**UNITED STATES' MOTION TO STAY ENTRY OF JUDGMENT  
FOR THIRTY DAYS**

---

The United States of America respectfully moves for an order staying entry of judgment of dismissal for a period of thirty days, or until May 11, 2007. As reasons therefor, the United States advises as follows:

1. This is a *qui tam* action filed under the False Claims Act, 31 U.S.C. § 3730. The *qui tam* provisions of the False Claims Act allow the United States to recover damages suffered as a result of fraud or false claims, through the assistance of a private party known as the "relator." The relator files a civil suit "for the person and for the United States." 31 U.S.C. § 3730(b). The *qui tam* action is brought in the name of the

United States, which is the real party in interest. The United States receives at least 70% of any judgment recovered and retains substantial control over the lawsuit. 31 U.S.C. § 3730(d)(2); *United States ex rel. Milam v. Univ. of Texas M.D. Anderson Cancer Center*, 961 F.2d 46, 50 (4th Cir. 1992).

2. Under the False Claims Act, the relator files the complaint under seal, and serves it on the United States along with a statement of material evidence. 31 U.S.C. §§ 3730(b)(1) and (2). The United States has an opportunity to investigate the allegations and elect whether to intervene in the litigation. 31 U.S.C. §§ 3730(b)(2) and (3). When the United States intervenes, "the action shall be conducted by the Government." 31 U.S.C. § 3730(b)(4)(A). When the United States declines to intervene, the relator can pursue the action for the benefit of himself and the United States. 31 U.S.C. § 3730(c)(3).

3. When the United States declines to intervene, its declination is provisional. The False Claims Act expressly provides that "the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause." 31 U.S.C. § 3730(c)(3). *See United States ex rel. Ridenour v. Kaiser-Hill Co.*, 397 F.3d 925, 930 n.8 (10th Cir. 2005) (the relator's right to litigate a declined *qui tam* case is subject to "possible future intervention by the Government upon a showing of good cause.")<sup>1</sup>

---

<sup>1</sup> The right to intervene at a later date is only one of several mechanisms by which the False Claims Act ensures that the United States retains substantial control over *qui tam* actions even after they have been declined. For example, subject to conditions set

4. In this case, Relator Bobby Maxwell filed his complaint under seal on June 14, 2004. In his complaint, he alleged that defendants knowingly submitted false statements and claims to the Minerals Management Service, an agency of the U.S. Department of the Interior, and by that means underpaid the royalties they owed to the United States on oil they extracted from certain federal leases. Docket 1.

5. On January 7, 2005, the United States notified the Court that it was declining to intervene. Docket 15.

6. After the United States declined to intervene, Maxwell proceeded to litigate the case through a jury trial. On January 23, 2007, after a six-day trial, the jury rendered a verdict finding that defendant had indeed violated the False Claims Act and had underpaid its royalties in the amount of \$7,555,886.28. Docket 198.

7. On March 30, 2007, the Court entered an order that it lacked subject matter jurisdiction over Maxwell's allegations pursuant to 31 U.S.C. § 3730(e)(4)(A), on the ground that these allegations were based on publicly disclosed information and Maxwell is not an original source. Docket No. 231.

---

forth in the Act, the United States also retains the power to dismiss or settle the action despite the relator's objections, to reject settlements or dismissals proposed by the relator, and to seek to stay discovery in the action if it would interfere with the Government's investigation or prosecution of another matter. 31 U.S.C. §§ 3730(b)(1), 3730(c)(2)(A-B), and 3730(c)(4).

8. Even though the Court issued an order that it lacks jurisdiction over Maxwell's allegations, a judgment of dismissal has not yet entered under Fed. R. Civ. P. 58.

9. The Supreme Court has instructed that where a court dismisses a relator because he is not an original source, the court nonetheless retains subject matter jurisdiction if the United States intervenes. *See Rockwell International Corp v. United States*, \_\_\_ S.Ct. \_\_\_, 2007 WL 895257, \*11 (March 27, 2007) (where the United States has intervened in a qui tam case, the court has an independent basis for jurisdiction even if the relator is an improper relator). Thus, if the United States intervenes in this case, the Court will retain jurisdiction despite its March 30, 2007 order that it lacks jurisdiction over Maxwell's allegations.

10. The United States respectfully requests that the Court stay entry of any judgment of dismissal in this case for a period of at least 30 days, or until May 11, 2007, to give the United States time to consider whether it is in the public interest for it to seek leave to intervene in this case.

**LOCAL RULE 7.1 CERTIFICATION:**

Undersigned counsel certifies that she has consulted with counsel for both the relator and the defendant to ascertain their positions regarding the relief sought herein. Counsel for the relator stated that relator does not oppose the relief sought. Counsel for defendant stated that defendant does oppose the relief sought.

Respectfully submitted,

PETER D. KEISLER  
Assistant Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

TROY A. EID  
United States Attorney

By: s/ Lisa A. Christian  
LISA A. CHRISTIAN  
Assistant United States Attorney  
1225 17<sup>th</sup> Street, 7<sup>th</sup> Floor  
Denver, CO 80202  
(303) 454-0100  
Lisa.Christian@usdoj.gov

MICHAEL GRANSTON  
Michael.Granston@usdoj.gov  
WILLIAM C. EDGAR  
William.Edgar@usdoj.gov  
Attorneys, Civil Division  
Commercial Litigation Branch  
Post Office Box 261  
Ben Franklin Station  
Washington, D.C. 20044  
Telephone: (202) 353-7950

Dated: April 11, 2007

**CERTIFICATE OF MAILING**

I certify that on April 11, 2007, I electronically filed the foregoing **UNITED STATES' MOTION TO STAY ENTRY OF JUDGMENT FOR THIRTY DAYS** with the District Court for the District of Colorado, which will send electronic notification to:

[porterlaw@comcast.net](mailto:porterlaw@comcast.net)  
[info@lafond-sweeney.com](mailto:info@lafond-sweeney.com)  
[ggoldberg@hollandhart.com](mailto:ggoldberg@hollandhart.com)  
[sbarker@hollandhart.com](mailto:sbarker@hollandhart.com)  
[ctetrault@velaw.com](mailto:ctetrault@velaw.com)  
[dvoorhees@hollandhart.com](mailto:dvoorhees@hollandhart.com)  
[myeates@velaw.com](mailto:myeates@velaw.com)  
[skangerga@velaw.com](mailto:skangerga@velaw.com)  
[lisa.christian@usdoj.gov](mailto:lisa.christian@usdoj.gov)  
[william.edgar@usdoj.gov](mailto:william.edgar@usdoj.gov)

*S/ Lisa A. Christian*

Office of the United States Attorney