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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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CHARLES H. LEWIS and JANE W. LEWIS,

Plaintiffs,

v.

NO. CIV. 2:03-2646 WBS GGH

MEMORANDUM AND ORDER RE:  
MOTIONS TO STAY AND TO LIFT  
STAY

ROBERT D. RUSSELL; IRENE RUSSELL; BEN J. NEWITT; the Estate of PHILLIP NEWITT, Deceased; JUNG HANG SUH; SOO JUNG SUH; JUNG K. SEO; THE DAVIS CENTER, LLC; MELVIN R. STOVER, individually and as trustee of the Stover Family Trust; EMILY A. STOVER, individually and as trustee of the Stover Family Trust; STOVER FAMILY TRUST; RICHARD ALBERT STINCHFIELD, individually and as successor trustee of the Robert S. Stinchfield Separate Property Revocable Trust, and as trustee of the Barbara Ellen Stinchfield Testamentary Trust; ROBERT S. STINCHFIELD SEPARATE PROPERTY REVOCABLE TRUST; THE BARBARA ELLEN STINCHFIELD TESTAMENTARY TRUST; WORKROOM SUPPLY, INC., a California corporation; SAFETY-KLEEN CORPORATION,

1 California corporation; the  
CITY OF DAVIS; JENSEN  
2 MANUFACTURING COMPANY; VIC  
MANUFACTURING COMPANY; MARTIN  
3 FRANCHISES INC., aka/dba  
MARTINIZING DRY CLEANING,

4 Defendants,

5 \_\_\_\_\_/  
6 AND RELATED COUNTER, CROSS,  
AND THIRD-PARTY CLAIMS.  
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10 This multi-party litigation concerns the contamination  
11 of a piece of real property located in Davis, California, with  
12 tetrachloroethene, a solvent allegedly released through the  
13 operation of a dry cleaning facility on the property. (See  
14 Second Am. Compl. ("SAC") ¶¶ 29, 40 (Docket No. 197).) Charles  
15 H. Lewis and Jane W. Lewis brought this action pursuant to the  
16 Comprehensive Environmental Response, Compensation, and Liability  
17 Act ("CERCLA"), 42 U.S.C. §§ 9601-9675, and various state laws  
18 for recovery of response costs incurred in connection with the  
19 PCE contamination. Since the filing of the original Complaint in  
20 2003, the parties have filed numerous counterclaims, crossclaims,  
21 and third party claims for contribution pursuant to 42 U.S.C. §  
22 9613(f).

23 On April 14, 2005, the case was stayed to allow the  
24 parties to participate in a voluntary mediation process. (Docket  
25 No. 124.) The settlement stay was dissolved on September 16,  
26 2008. (Docket No. 253.) During the settlement stay, Jung Hang  
27 Suh and Soo Jung Suh, who allegedly operated the dry cleaning  
28 facility from 1996 through 2005 (SAC ¶ 36), filed for bankruptcy.

1 (See Dec. 14, 2005 Order (Docket No. 162) 1:25.) The case was  
2 thus automatically stayed as to them pursuant to 11 U.S.C. § 362,  
3 which prevents the "commencement or continuation . . . of a  
4 judicial, administrative, or other action or proceeding against  
5 the debtor that was or could have been commenced before the  
6 commencement" of the bankruptcy action. 11 U.S.C. § 362(a)(1).  
7 On May 7, 2009, the court stayed the entire action pursuant to 11  
8 U.S.C. § 362(a), reasoning that the claims by and against the  
9 Suhs were so integral that they could not be meaningfully excised  
10 from the litigation. Lewis v. Russell, No. CIV S-03-2646 WBS  
11 KJM, 2009 WL 1260290, at \*3 (E.D. Cal. May 7, 2009); (Docket No.  
12 301). The court noted that "if for any reason the Suh's  
13 bankruptcy is terminated, any party may so notify the court and  
14 the court will lift this stay." Lewis, 2009 WL 1260290, at \*5  
15 n.5.

16 Vic Manufacturing Company has now informed the court  
17 that on September 16, 2010, the United States Bankruptcy Court  
18 for the Eastern District of California entered its Discharge of  
19 Debtor after Completion of Chapter 13 Plan. (Notice of Mot. &  
20 Mot. for Order Lifting Automatic Stay at 2:9-12.) On September  
21 23, 2010, the court entered its Final Decree, closing the  
22 bankruptcy case. (Id. at 2:12-13.) Thus, the ground for the  
23 stay no longer exists. Pursuant to 11 U.S.C. § 362(c), the stay  
24 is now lifted.

25 In light of the lift of the automatic stay, many of the  
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1 parties<sup>1</sup> have moved for a stay in order to continue their ongoing  
2 settlement negotiations. They state that members of the  
3 Participating Party Group<sup>2</sup> from the original settlement  
4 discussions have been actively engaging in settlement  
5 negotiations with the California Regional Water Control Board,  
6 Central Valley Region, since the present stay began in 2009.  
7 (Notice of Mot. and Mot. to Maintain Litigation Stay ("Mot. to  
8 Maintain Stay") (Docket No. 319) at 3:19-4:3.)

9 Courts have the power to stay proceedings "incidental  
10 to the power inherent in every court to control the disposition  
11 of the causes on its docket with economy of time and effort for  
12 itself, for counsel, and for litigants." Landis v. N. Am. Co.,  
13 299 U.S. 248, 254 (1936). The court weighs several interests in

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15 <sup>1</sup> The motion is brought by plaintiffs Charles H. Lewis  
16 and Jane W. Lewis (Deceased), as well as defendants Potter Taylor  
17 & Company and its predecessors-in-interest: Potter, Long, Adams &  
18 Taylor, Ltd., Davis Center; Potter-Taylor, Inc. and Potter Taylor  
19 & Scurfield, Inc.; the City of Davis; Marie L. Whitcomebe  
20 (Deceased); and Ben J. Newitt. (Notice of Mot. and Mot. to  
21 Maintain Litigation Stay at 1:25-28 ("Mot. to Maintain Stay")  
22 (Docket No. 319).) Defendants and Cross-Defendants Safety-Kleen  
23 Systems, Inc., and Irene Russell joined in the motion. (Joinder  
24 in Notice of Mot. & Mot. to Maintain Litigation Stay (Docket No.  
25 321); Joinder in Mot. to Maintain Litigation Stay (Docket No.  
26 324).) Defendants/Cross-Complainants/Third Party Plaintiffs The  
27 Davis Center, LLC; Emily Stover, Individually and as Trustee of  
28 the Stover Family Trust and as Personal Representative for Melvin  
Stover (Deceased); and Richard Albert Stinchfield, Individually  
and as Trustee of the Robert S. Stinchfield Separate Real  
Property Trust and as Trustee of the Barbara Ellen Stinchfield  
Testamentary Trust also joined. (Joinder to Mot. to Maintain  
Litigation Stay (Docket No. 329).)

<sup>2</sup> The Participating Party Group includes all of the  
moving parties except Ben J. Newitt. (Mot. to Maintain Stay at  
3:19, n. 3.) It also includes The Davis Center, LLC; Emily A.  
Stover, individually, as Personal Representative for Melvin R.  
Stover, Deceased, and as Trustee of the Stover Family Trust; and  
Richard Albert Stinchfield, individually and as Successor Trustee  
of the Robert S. Stinchfield Separate Property Revocable Trust.  
(Id.)

1 making the determination, including (1) "possible damage which  
2 may result from the granting of a stay"; (2) "the hardship or  
3 inequity which a party may suffer in being required to go  
4 forward"; and (3) "the orderly course of justice measured in  
5 terms of the simplifying or complicating of issues, proof, and  
6 questions of law which could be expected to result from a stay."  
7 CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th Cir. 1962).

8           The moving parties have failed to show that the three  
9 factors weigh in favor of granting a stay. While it is possible  
10 that settlement will occur, the parties have not indicated any  
11 time frame in which they believe settlement of the entire case  
12 will result. The parties indicated at the hearing that they  
13 believed a settlement with the California Regional Water Quality  
14 Control Board was likely by mid-summer, which would be some six  
15 months off, but this would only be the first stage in settlement  
16 of the various claims at issue. The court understands that some  
17 of the delays were caused by the Board's proceedings, but the  
18 current round of negotiations have apparently been going on for  
19 more than a year and yet the parties have failed to settle. No  
20 scheduling order currently applies in this case, so the parties'  
21 concern regarding time for settlement is premature. The parties  
22 have not shown that they are unable to continue settlement  
23 negotiations during the ordinary timetable set for a case.

24           Furthermore, the moving and joining parties all seem to  
25 wish to avoid discovery. Nothing forces them to conduct  
26 discovery as they proceed with what they believe to be imminent  
27 settlement. The court will not order a further delay on a case  
28 that has been ongoing for eight years.

1           IT IS THEREFORE ORDERED that defendant Vic  
2 Manufacturing Company's motion to lift the automatic bankruptcy  
3 stay be, and the same hereby is, GRANTED. IT IS FURTHER ORDERED  
4 that plaintiffs Charles H. Lewis and Jane W. Lewis (Deceased) and  
5 certain defendants' motion to maintain the litigation stay be,  
6 and the same hereby is, DENIED.

7           A Status (Pretrial Scheduling) Conference shall be held  
8 on March 21, 2011, at 2:00 p.m. in Courtroom No. 5. The clerk's  
9 office shall issue this court's "Order Re: Status (Pretrial  
10 Scheduling) Conference" accordingly.

11 DATED: January 18, 2011

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14 WILLIAM B. SHUBB  
15 UNITED STATES DISTRICT JUDGE  
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