

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-02422-ZLW

JOSEPH BRADSHAW,
TIMOTHY TUTTAMORE, and
JAMIE MCMAHAN,

Plaintiffs,

v.

BOP DIRECTOR LAPPIN,
ADX WARDEN WILEY,
UNIT TEAM MEMBER COLLINS,
UNIT TEAM MEMBER MRS. SUDLOW,
UNIT TEAM MEMBER MADISON,
F.R.P. COORDINATOR [sic] JAVERNICK,
D.R. [sic] LEYBA,
D.R. [sic] NAFZIGER,
P.A. OSAGIE,
UNKNOWN MEDICAL STAFF,
UNKNOWN DENTIST,
UNKNOWN UTILIZATION COMMITTEE MEMBERS, and
UNKNOWN PROJECTED UNIT TEAM MEMBERS,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

MAY 15 2009

GREGORY C. LANGHAM
CLERK

ORDER DENYING PENDING MOTIONS WITHOUT PREJUDICE
FOR LACK OF JURISDICTION

This matter is before the Court on the motion titled "Motion to Sever Bradshaw's Individual Medical Claims 11 and 12 From the Common IFRP Claims in the April 2009 Amended Complaint" (document number 71) and "Plaintiffs Motion for Leave to Amend Suit" (document number 72) filed with the Court on April 16, 2009. Also on April 16 an amended complaint (document number 74) was tendered to the Court. On May 7, 2009, Plaintiff, Joseph Bradshaw, only filed a letter to the clerk of the Court asking for a

prompt hearing on these filings. For the reasons stated below, the motions will be denied without prejudice as premature.

On April 7, 2009, the United States Court of Appeals for the Tenth Circuit reversed this Court's dismissal with prejudice of the common restitution payment claim of Plaintiffs, Joseph Bradshaw and Timothy Tuttamore, and the Court's dismissal without prejudice of Mr. Bradshaw's medical claims, and remanded the action for further proceedings not inconsistent with the April 7 order and judgment. The mandate has not yet issued.

It is well established that jurisdiction does not return to a district court until issuance of the appellate mandate. *See, e.g., United States v. Rodgers*, 101 F.3d 247, 251 (2d Cir. 1996) ("A district court does not regain jurisdiction until the issuance of the mandate by the clerk of the court of appeals."); *United States v. Rivera*, 844 F.2d 916, 921 (2d Cir. 1988) ("Simply put, jurisdiction follows the mandate."). In *United States v. DeFries*, 129 F.3d 1293 (D. C. Cir. 1997), the district court proceeded to trial after the Court of Appeals reversed its dismissal of a criminal count, but before the mandate had issued and while a rehearing petition was unresolved. *Id.* at 1302. The Court of Appeals subsequently invalidated the district court's action, explaining that the "relationship between district court jurisdiction and the issuance of the mandate is clear and well-known" and that "[t]he district court thus lacked jurisdiction" to proceed until after the mandate had issued. *Id.* at 1302-03. Because this Court currently lacks jurisdiction to consider the pending motions filed in and the amended complaint tendered in this action, the motions and the amended complaint will not be addressed.

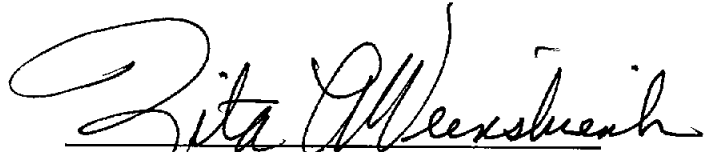
The motions will be denied without prejudice as premature. Plaintiffs will be directed to stop filing papers with the Court until after the mandate has entered. Accordingly, it is

ORDERED that pending motions titled "Motion to Sever Bradshaw's Individual Medical Claims 11 and 12 From the Common IFRP Claims in the April 2009 Amended Complaint" (document number 71) and "Plaintiffs Motion for Leave to Amend Suit" (document number 72) filed with the Court on April 16, 2009, are denied without prejudice as premature. It is

FURTHER ORDERED that Plaintiffs are directed to stop filing papers with the Court until after the mandate has entered..

DATED at Denver, Colorado, this 14 day of May, 2009.

BY THE COURT:



ZITA L. WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 07-cv-02422-BNB

Joseph Bradshaw
Reg. No. 20980-038
ADX - Florence
PO Box 8500
Florence, CO 81226

Timothy Tuttamore
Reg. No. 43018-060
ADX - Florence
PO Box 8500
Florence, CO 81226

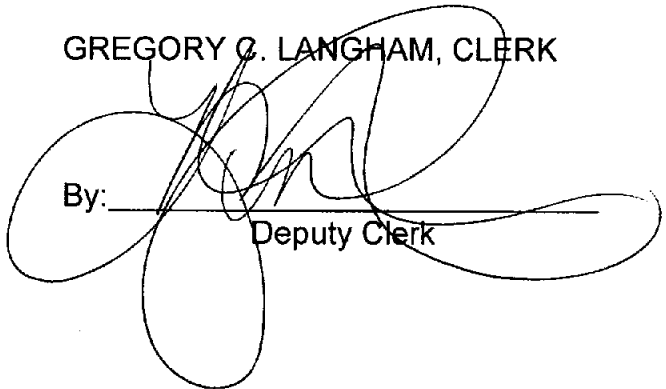
Jamie McMahan
Reg. No. 05327-030
ADX - Florence
PO Box 8500
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 5/15/09

GREGORY C. LANGHAM, CLERK

By: _____

Deputy Clerk

A large, stylized handwritten signature in black ink, appearing to read 'G. Langham', is written over a horizontal line. The signature is highly cursive and loops around the line.