

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

UNITED STATES OF AMERICA, *ex* *
rel. DAVID L. LEWIS, Ph.D., *et* *
al.,

Plaintiffs, *

CASE NO. 3:06-CV-16 (CDL)

vs. *

JOHN WALKER, PH.D., *et al.*, *

Defendants. *

O R D E R

The Court previously dismissed Relators' action for lack of subject matter jurisdiction. *United States ex rel. Lewis v. Walker*, No. 3:06-CV-16 (CDL), 2010 WL 3614144 (M.D. Ga. Sept. 10, 2010). Each set of Defendants—the EPA Defendants, the UGA Defendants, and the UGA Research Foundation—filed a bill of costs. Relators ask the Court to stay the taxation of costs pending the outcome of their appeal to the Eleventh Circuit Court of Appeals. Though the UGA Defendants do not object to the stay, the EPA Defendants and the UGA Foundation do object and ask that the Court permit the Clerk to tax costs immediately.

As the parties agree, the Court has discretion to postpone the taxation of costs pending the resolution of an appeal. *E.g., Estate of Pidcock v. Sunnyland Am., Inc.*, 726 F. Supp. 1322, 1341 (S.D. Ga. 1989) (staying taxation of costs pending appeal); *Am. Infra-Red*

Radiant Co. v. Lambert Indus., Inc., 41 F.R.D. 161, 163 (same); see also *Fed. Prescription Serv., Inc. v. Am. Pharm. Ass'n*, 636 F.2d 755, 756 & n.1 (D.C. Cir. 1980) (granting motion to defer ruling on costs pending outcome of appeal).

Under the circumstances of this case, including the United States Supreme Court's recent grant of certiorari to review *United States ex rel. Kirk v. Schindler Elevator Corp.*, 601 F.3d 94 (2d Cir. 2010), the Court in its discretion finds that it is appropriate to stay the taxation of costs pending the outcome of Relators' appeal to the Eleventh Circuit Court of Appeals. Relators' Motion for Stay of Payment of Costs (ECF No. 198) is therefore granted.

IT IS SO ORDERED, this 13th day of December, 2010.

S/Clay D. Land

CLAY D. LAND
UNITED STATES DISTRICT JUDGE