

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
KNOXVILLE DIVISION

United States of America for Use and  
Benefit of DAVIS/STRESSCON, a Joint  
Venture comprised of Davis Rebar, Inc., a  
Nebraska Corporation, and Stresscon, Inc.,  
an Arizona Corporation,

Use-Plaintiff,

v.

UNITED FORMING, INC., a Georgia  
Corporation; CADDELL/BLAINE, a Joint  
Venture comprised of Caddell Construction,  
Co., Inc. an Alabama Corporation, and Blaine  
Construction Corp., a Tennessee Corporation;  
ST. PAUL FIRE & MARINE INSURANCE  
COMPANY, a Minnesota Corporation;  
ZURICH AMERICAN INSURANCE  
COMPANY, a New York Corporation;  
FIDELITY & DEPOSIT COMPANY OF  
MARYLAND, a Maryland Corporation; and  
SEABOARD SURETY COMPANY, a New  
York Corporation,

Defendants

Case No.: 3:09-cv-00087

**JOINT MOTION FOR ORDER TO  
STAY JUDICIAL PROCEEDINGS**

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COME NOW the parties, by and through their respective counsel of record, and respectfully move this Court for an order staying all judicial proceedings in this action, including discovery, pending the completion or good faith attempted completion by the parties of the claims resolution process in their written agreements. In support of this joint motion, the parties offer the following:

1. This action arises out of the construction of a work of improvement on federal property known as the HEUMP Building at the Y-12 National Security Complex at Oak Ridge,

Tennessee (the “Project”). Use-Plaintiff Davis/Stresscon Joint Venture (“Use-Plaintiff”) commenced this action to preserve its claim under the Miller Act, 40 U.S.C. section 3131, et seq. Use-Plaintiff is a sub-subcontractor to Defendant United Forming, Inc. (“UFI”), and UFI in turn is a subcontractor to Defendant Caddell Blaine, a Joint Venture (“CBJV”), which has a contract with B&W Technical Services Y-12, LLC (B&W Y-12). The remaining four Defendants are sureties for CBJV on the Miller Act payment bond for the Project.

2. Without waiving their claims and defenses as to each other, the present parties hereby believe in good faith that the manager of the site and the Project, B&W Y-12, is or may be ultimately responsible for the claims asserted herein. The parties further acknowledge that the written agreement between CBJV and the B&W Y-12 requires CBJV to present all claims (including pass through claims of Use-Plaintiff and UFI) to B&W Y-12 for a Procurement Management Decision (“PMD”) and to make a good faith effort to resolve the claims first through discussion and negotiation, and then by alternative dispute resolution (ADR) proceedings (if agreed), including non-binding mediation or arbitration prior to resorting to litigation. Attached hereto as Exhibit “A” is a true and correct copy of the “Resolution of Disputes” contractual provision applicable to the claims and disputes at issue in the instant action.

3. The parties desire to preserve the status quo of this action by staying judicial proceedings in this action, including, without limitation, discovery, addition of other parties, and dispositive motions, to enable them to present their respective claims to B&W Y-12 and engage in good-faith efforts to resolve the claims through discussion, negotiation and the ADR processes in the written agreement, before proceeding with litigation in this court. During the pendency of the stay, the parties further desire to preserve the status quo of this action and toll any statutes of

limitation or contractual limitations that apply to their respective claims and defenses. The parties plan to submit the requests relating to Use - Plaintiff, and UFI for a PMD by July 1, 2009

4. This Court has the inherent power to stay proceedings “to control the disposition of the causes in its docket with economy of time and effort for itself, for counsel and for litigants.” See Ohio Environmental Council v. U.S. Dist. Court, Southern Dist. of Ohio, Eastern Div., 565 F.2d 393, 396 (6th Cir. 1977); AGFA Photo USA Corp. v. Parham, 2007 WL 1655891, 4 (E.D.Tenn., 2007).

5. This stay shall terminate without further notice or order if either of the following conditions occur: if the request for a PMD as to Use - Plaintiff and UFI’s claims is not submitted to B&W Y-12, by July 1, 2009, or if a PMD does not issue a decision within 60 days of submission of the request for a PMD. Thereafter, the stay may be terminated (a) by any party upon 30 days written notice to the Court and the other parties, or (b) immediately upon further order of the Court. Upon termination or removal of the stay by the Court, the action shall resume in the same status as existed on the date on which the Order to Stay was entered and Defendants Caddell/Blaine and their sureties will have ten (10) days to file their initial pleadings.

NOW, THEREFORE, the present parties, through their respective undersigned counsel, jointly move the Court to enter an order to stay judicial proceedings in this matter. A proposed order is filed with this joint motion.

This the 2<sup>nd</sup> day of June 2009.

SIGNATURES ON FOLLOWING PAGE

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**ORDER TO STAY JUDICIAL  
PROCEEDINGS**

**ORDER TO STAY JUDICIAL PROCEEDINGS**

The present parties to this action having filed a Joint Motion for Order to Stay Judicial Proceedings ("Joint Motion"), and the same having been considered and good cause having been shown therefor, IT IS HEREBY ORDERED AS FOLLOWS:

1. All further judicial proceedings in this matter, including without limitation, discovery, addition of parties and the filing any dispositive motions are hereby stayed until the earlier of the following:

(a) Either of the conditions described in Paragraph 5 of the Joint Motion occurs;

(b) Any present party hereto gives thirty (30) days prior written notice to the Court and to the other parties to terminate or remove the stay, or

(c) Upon further order of the Court.

2. At such time as this stay is terminated or removed, this action shall resume in the same status as existed on the date on which this Order is entered, and Defendants Caddell/Blaine and the sureties will have ten (10) days to file their initial pleadings.

3. This matter may be closed for administrative purposes but not dismissed.

SO ORDERED, this the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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Judge, United States District Court