

VIRGINIA:

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

GRAFTON WILLIAM PETERSON, :  
Administrator of the Estate of Erin Nicole :  
Peterson, Deceased :

Plaintiff, :

v. :

Case No. CL -09-005525

JOHN W. THYDEN, Administrator of the Estate :  
of Seung-Hui Cho, deceased, et al. :

Defendants. :

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO MOTION OF DEFENDANTS,  
CATHYE BETZEL, SHERRY LYNCH CONRAD, ROBERT C. MILLER,  
SANDARA WARD AND CHRISTOPHER FLYNN,  
FOR A PROTECTIVE ORDER STAYING DISCOVERY**

Comes now the Plaintiff and files this, his opposition to the Cook Counseling Center Defendants' Motion for a Protective Order, and in support thereof states as follows:

1. The Cook Counseling Center Defendants assert as grounds for a stay of discovery the pendency of their Special Plea of Sovereign Immunity and Demurrers.
2. The Motion for a Protective Order should be denied for the following reasons:
  - a. The Motion for a Protective Order assumes these Defendants will prevail on their special pleas and demurrers.
  - b. Plaintiff's response thereto strongly suggests their pleas and demurrers should be overruled, especially with respect to the claims against Defendant Miller.
  - c. Importantly, even if there were merit to the positions asserted by these Defendants, which Plaintiff strongly contests, these Defendants are and would remain witnesses in the Virginia Tort Claims Act counts, and subject to discovery in that capacity. For example, if they were ruled to have sovereign immunity for

acts of simple negligence, their acts of simple negligence would nevertheless establish the Commonwealth's liability under the Virginia Tort Claims Act. No grounds have been asserted for staying discovery of witnesses to the Commonwealth's liability under the Virginia Tort Claims Act.

d. Staying discovery pending hearings and arguments on pleas and demurrers is disfavored.

i. Many circuit courts have denied stays under these circumstances;

ii. The Advisory Committee on the Rules of Court has tentatively approved an amendment to the Rules of Discovery which incorporates the holdings of these circuit courts:

“Discovery shall continue after a demurrer, plea or dispositive motion addressing one or more claims or counter-claims in the action has been filed and while such application is pending decision unless the court orders that discovery on some or all issues in the action should be suspended.”

Wherefore, your Plaintiff prays that the Motion for a Protective Order be denied.

Respectfully submitted,

GRAFTON WILLIAM PETERSON,  
Administrator of the Estate of Erin Nicole  
Peterson, deceased  
By Counsel

HALL, SICKELS, FREI & MIMS, P.C.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of October, 2009, a copy of the foregoing Opposition to Motion to was served via facsimile and UPS Next-Day Air on the following:

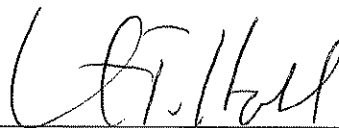
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