

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION,  
GENERAL EQUITY PART  
MONMOUTH COUNTY  
DOCKET NO. MON-C-000098-19  
APP. DIV. NO. \_\_\_\_\_

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PRISTEC REFINING :  
TECHNOLOGIES USA, LLC, :  
et al., : TRANSCRIPT  
 :  
Plaintiffs, : OF  
 :  
v. : DECISION OF THE COURT  
 :  
PRISTEC AG, et al., :  
 :  
Defendants. :  
 :

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Place: Hall of Records  
1 East Main Street  
Freehold, NJ 07728

Date: March 12, 2020

BEFORE:

HONORABLE KATIE A. GUMMER, P.J.Ch.

TRANSCRIPT ORDERED BY:

KEVIN J. O'CONNOR, ESQUIRE (Peckar & Abramson, P.C.)

APPEARANCES (Telephonically):

WILLIAM R. TELLADO, ESQUIRE (Sills, Cummis  
& Gross, P.C.)  
Attorney for the Plaintiffs

KEVIN J. O'CONNOR, ESQUIRE (Peckar & Abramson, P.C.)  
SHANNON D. AZZARO, ESQUIRE (Peckar & Abramson, P.C.)  
Attorneys for the Defendants

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I N D E X

<u>DEFENSE MOTION TO DISQUALIFY SILLS, CUMMIS &amp; GROSS, P.C. AS COUNSEL FOR THE PLAINTIFFS, FOR A STAY OF DISCOVERY PENDING DECISION, AND A PROTECTIVE ORDER:</u>	<u>PAGE</u>
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1 (Hearing commenced at 2:02 p.m.)

2 THE COURT: Counsel, we are on the record in  
3 the matter of Pristec Refining Technologies USA, LLC,  
4 et al. versus Pristec AG, et al., C-98-19.

5 Counsel for plaintiff, if I could ask you to  
6 place your appearance on the record, please?

7 MR. TELLADO: Good morning, Your Honor.  
8 William Tellado from Sills, Cummis and Gross on behalf  
9 of plaintiffs.

10 THE COURT: And counsel for defendants?

11 MR. O'CONNOR: Good afternoon, Your Honor.  
12 Kevin O'Connor and Shannon Azzaro of Peckar and  
13 Abramson for the PAI entities, ICT, Joseph Laura and  
14 Anthony Sichenzio.

15 THE COURT: All right, counsel, I'm going to  
16 ask you to mute your phones. I would appreciate it.

17 This matter comes before the Court by way of  
18 a motion filed on behalf of defendants, quote, "to  
19 disqualify Sills, Cummis and Gross as counsel for  
20 plaintiffs, for a stay of discovery pending decision,  
21 and protective order." Close quote.

22 The Court -- after the motion was fully  
23 briefed, the Court heard oral argument, reserved its  
24 decision and advised counsel that it would be placing  
25 its decision on the record today. The Court,

1 respectfully, is denying the motion and denying all  
2 requests for a stay.

3 In support of their motion, defendants argue  
4 that Sills, Cummis and Gross -- which the Court may  
5 refer to as Sills Cummis -- has breached a duty of  
6 loyalty to its clients, plaintiff Pristec Refining  
7 Technologies -- which the Court may refer to as PRT --  
8 and plaintiff Earle Refining, LLC. Defendants argue  
9 that Sills Cummis's concurrent representation of both  
10 PRT and Earle Refining, LLC, is prohibited by the  
11 Rules of Professional Conduct and applicable case law.

12 Defendants assert that Sills Cummis has a  
13 long history of representing PRT, had a central role  
14 in its formation, and played an essential part in  
15 allegations of fraud committed in connection with the  
16 issues alleged in this case.

17 Defendants assert that Sills Cummis  
18 represented PRT in May of 2017 when its client, Earle  
19 Refining, LLC -- which I may refer to as simply Earle  
20 Refining -- filed a lawsuit on PRT's behalf against  
21 defendants Pristec America, Inc. and Pristec AG.  
22 Defendants assert that it is undisputed that plaintiff  
23 PRT is owned and controlled by defendant Pristec  
24 America, Inc. Thus, defendants argue that Sills  
25 Cummis's representation of PRT is against its --

1 against its majority members is prohibited and asserts  
2 that the conflict here is unmistakable. Citing In re  
3 Palmieri, 76 N.J. 51, 62 (1978).

4 Second, defendants argue that Sills Cummis's  
5 representation of PRT, a closely-held legal entity,  
6 mandates duties to its constituent members, including  
7 defendant Pristec America, which holds a majority  
8 interest in PRT. Defendants assert that that  
9 relationship presents a concurrent conflict of  
10 interest and is clearly prohibited by the Rules of  
11 Professional Conduct. Citing Comando versus Nugiel,  
12 436 N.J.Super. 203, 215 (App.Div. 2014).

13 Third, defendants assert that while a person  
14 or entity has a right to retain counsel of his, her or  
15 its choice, the person selecting counsel, quote, "is  
16 limited in that there is no right to demand to be  
17 represented by an attorney disqualified because of an  
18 ethical requirement," close quote. Quoting  
19 Twenty-First Century Rail Corp. versus New Jersey  
20 Transit Corp., 210 N.J. 264, 274 (2012).

21 According to defendants, Sills Cummis's  
22 continued representation of plaintiff PRT is in  
23 violation of R.P.C. 1.7.

24 (Extended pause; reviewing papers.)

25 THE COURT: Plaintiff also referenced -- or,

1 I'm sorry. Defendants also referenced in their moving  
2 brief R.P.C. 1.9(a) and R.P.C. 3.7.

3 Defendants argue that if this Court should  
4 find any doubts about Sills Cummis's ability to  
5 represent plaintiffs then, quote, "doubts ought to be  
6 resolved in favor of disqualification," close quote.  
7 See Herbert versus Haytaian, 292 N.J.Super. 426, 438 to  
8 39 (App.Div. 1996).

9 Defendants ask the Court to disqualify Sills  
10 Cummis from this action and stay all discovery until  
11 such time that replacement counsel is secured. In the  
12 alternative, if the motion is denied, defendants ask  
13 for a 14-day stay of proceedings so that defendants  
14 can seek to file an appeal with the Appellate  
15 Division.

16 Plaintiffs oppose the motion, arguing that  
17 motions to disqualify are viewed with disfavor, citing  
18 State versus Davis, 366 N.J.Super. 30, 37 (App.Div.  
19 2004). Plaintiffs assert that a party seeking  
20 disqualification must meet a heavy burden of proof, a  
21 standard which, according to plaintiffs, defendants  
22 failed to meet here. Citing Rohm and Haas Company  
23 versus American Cyanamid Company, 187 F.Supp.2d 221,  
24 226-27 (D.N.J. 2001).

25 Plaintiffs also assert that disqualification

1 of counsel is a, quote, "harsh discretionary remedy  
2 which must be used sparingly," close quote. Quoting O  
3 Builders and Associates versus Yuna Corp. of New  
4 Jersey, 206 N.J. 109, 130 (2011). Plaintiffs argue  
5 that resolution of a motion to disqualify requires this  
6 Court to balance, quote, "the need to maintain the  
7 highest standards of the [legal] profession," close  
8 quote, against a party's right to freely choose its  
9 counsel. Quoting from Dewey versus R.J. Reynolds  
10 Tobacco Company, 109 N.J. 201, 205 (1988).

11 Second, plaintiffs argue that defendants'  
12 motion to disqualify should be denied under the law of  
13 the case doctrine. Plaintiffs argue that, quote,  
14 "where there is an unreversed decision of a question  
15 of law or fact made during the course of litigation,  
16 such decision settles that decision for all subsequent  
17 stages of the suit," close quote. Quoting from L.T.  
18 versus F.M., 483 [sic] N.J.Super. 76, 88-89 (App.Div.  
19 2014). Plaintiffs argue that the doctrine does not  
20 apply where there is a, quote, "new controlling  
21 authority," close quote, or, quote, "substantially  
22 different evidence," close quote, Id.

23 Plaintiffs assert that this is defendants'  
24 second attempt to disqualify Sills Cummis from this  
25 litigation and that defendants' first motion to

1 disqualify was denied by the Honorable Joseph P. Quinn  
2 on September 28, 2018.

3 Plaintiffs also assert that the -- also  
4 assert that there's no new controlling authority in  
5 this matter and no substantially new evidence  
6 warranting the disqualification of Sills Cummis.

7 Third, plaintiffs argue that Sills Cummis  
8 never represented Pristec America, Inc. Plaintiffs  
9 assert that defendants' contention that Sills Cummis  
10 should be disqualified because it represented PRT  
11 prior to the 2017 action between these parties is  
12 unfounded and plaintiffs assert that they have  
13 submitted evidence to the contrary. Citing the  
14 certification of Robert E. Schiappacasse.

15 Plaintiffs also assert that even if the  
16 Court finds that Sills Cummis represented PRT prior to  
17 this litigation, defendants' arguments of  
18 disqualification are meritless and fruitless.  
19 Plaintiffs argue that defendants' argument that Sills  
20 Cummis's representation of PRT also constituted  
21 representation of Pristec America, Inc., a 75 percent  
22 member of PRT, runs directly contrary to the R.P.C.  
23 and case law.

24 Plaintiffs assert that R.P.C. 1.13(a)  
25 expressly states that a lawyer representing an

1 organization is distinct from representing its  
2 members. Plaintiffs argue that defendants' contention  
3 that Sills Cummis should be disqualified because it  
4 has a concurrent conflict of interest is also  
5 meritless, because during the prior litigation between  
6 these parties Sills Cummis represented the interests  
7 of PRT and Earle Refining, both of which had aligned  
8 interests. Therefore, plaintiff asserts that Sills  
9 Cummis did not concurrently represent adverse parties,  
10 because it represented Earle Refining, a member of  
11 PRT, in a transaction that benefitted PRT.

12 Fourth, plaintiffs argue that no conflict of  
13 interest exists here, even if the Court finds that  
14 Sills Cummis represented PRT in the past. Plaintiffs  
15 assert that Sills Cummis has had a long history of  
16 representing only the Earle parties. Plaintiffs  
17 assert that Sills Cummis was not involved in the  
18 formation of PRT and that Sills Cummis represented  
19 only Earle Refining in the prior litigation.

20 Fifth, plaintiffs argue that PRT and the  
21 Earle parties would suffer great prejudice if Sills  
22 Cummis was disqualified. Plaintiffs assert that Sills  
23 Cummis has served as counsel for the Earle parties  
24 since June of 2015, prior to the formation of PRT, in  
25 previous litigation in this matter. Plaintiffs assert

1 that Sills Cummis has devoted substantial time to this  
2 litigation. It is familiar with the parties' claims  
3 and defenses, the operative agreements and the history  
4 of the parties' relationships and disputes.  
5 Plaintiffs argue that if they were to obtain new  
6 counsel that effort would unduly prolong this action  
7 and would cause plaintiffs to incur significant  
8 additional legal fees.

9 Sixth, plaintiffs argue that the advocate-  
10 witness rule outlined in R.P.C. 3.7 does not preclude  
11 Sills Cummis from continuing to represent plaintiffs.  
12 Plaintiffs assert that R.P.C. 3.7 applies only when a  
13 lawyer is acting as an advocate at a trial in which  
14 the lawyer is likely to be a necessary witness and  
15 does not apply to pretrial representation. Citing  
16 Escobar versus Mazie, 460 N.J.Super. 520, 527 to 28  
17 (App.Div. 2019). Further, plaintiffs argue that  
18 subsection (b) of R.P.C. 3.7 does not apply because  
19 another Sills Cummis attorney is designated as trial  
20 counsel in the event that Mr. Schiappacasse is deemed  
21 to be a necessary witness.

22 For these reasons, plaintiffs request that  
23 the Court deny defendants' application to disqualify  
24 Sills Cummis.

25 In reply and in further support of their

1 motion, defendants assert that plaintiffs' opposition  
 2 contains falsehoods and misstatements. Contrary to  
 3 plaintiffs' assertions, defendants assert that Sills  
 4 Cummis represented PRT prior to the 2017 action by  
 5 preparing legal documents on behalf of PRT. Thus,  
 6 defendants argue that Sills Cummis was in clear  
 7 violation of the R.P.C. by concurrently representing  
 8 the interests of PRT, which is controlled by defendant  
 9 Pristec America, Inc., and the interests of plaintiff  
 10 Earle Refining.

11 Second, defendants argue that there is no  
 12 way to discern on behalf of whose interests Sills  
 13 Cummis is acting. Defendants assert that Sills Cummis  
 14 is in direct violation of R.P.C. 1.13(e) by failing --  
 15 of R.P.C. 1.13(e) by failing to obtain a conflict  
 16 waiver from its represented parties. Defendants also  
 17 argue that Sills Cummis has violated R.P.C. 1.7  
 18 because Sills Cummis's representation of one client is  
 19 materially limited by its responsibilities to another  
 20 client.

21 Third, defendants argue that the law of the  
 22 case doctrine does not prevent this Court from  
 23 considering this motion. Defendants assert that the  
 24 law of the case doctrine applies only in the context  
 25 of a single action. Citing Pressler and Verniero Rules

1 Governing the Courts of the State of New Jersey, Rule  
 2 1:36-3, comment 4.

3 Defendants also argue that the, quote, "law  
 4 of the case is not implicated at all by a judge's  
 5 reconsideration of a prior interlocutory order."

6 Fourth, defendants argue that the conflicts  
 7 in question cannot be waived by any alleged delay by  
 8 defendants in filing this application.

9 When determining a motion to disqualify  
 10 counsel, the Court must balance the freedom of a party  
 11 to choose his or her own counsel with the goal of  
 12 maintaining the highest standards in the profession.  
 13 Van Horn versus Van Horn, 415 N.J.Super. 398, 415  
 14 (App.Div. 2010). Our Supreme Court has emphasized  
 15 that, quote, "only in extraordinary cases should a  
 16 client's right of counsel of his or choice outweigh  
 17 the need to maintain the highest standards of the  
 18 profession," close quote. Id. 415-16. However, the  
 19 ability --

20 (Extended pause; reviewing papers.)

21 THE COURT: The ability of a party to choose  
 22 his or her own counsel is limited, because of an  
 23 attorney's ethical requirements. Twenty-First Century  
 24 Rail Corp. versus New Jersey Transit Corp., 419  
 25 N.J.Super. 343, 357 to 58 (App.Div. 2011). Reversed

1 on other grounds, 210 N.J. 264 (2012).

2 Quote: "Although doubts are to be resolved  
3 in favor of disqualification, a party seeking  
4 disqualification must carry a heavy burden and must  
5 meet a high standard of proof before a lawyer is  
6 disqualified." Close quote. Alexander versus  
7 Primerica Holdings, Inc., 822 F.Supp. 1099, 1114  
8 (D.N.J. 1993). Though a party has no right to  
9 specific counsel, a party's choice of counsel is  
10 entitled to substantial deference. Id.

11 Further, quote, "because motions to  
12 disqualify can have such drastic consequences, courts  
13 disfavor such motions and grant them only when  
14 absolutely necessary." Rohm and Haas Company, 187  
15 F.Supp.2d at 226. See also Cavallaro versus Jamco  
16 Prop. Management, 334 N.J.Super. 557, 572 (App.Div.  
17 2000).

18 New Jersey courts have consistently held  
19 that disqualification is a, quote, "harsh  
20 discretionary remedy which must be used sparingly,"  
21 close quote. Van Horn, 415 N.J.Super. at 5 -- at 415.

22 (Extended pause; reviewing papers.)

23 THE COURT: R.P.C. 1.7 reflects, quote, "the  
24 fundamental understanding that an attorney will give  
25 complete and undivided loyalty to the client [and]

1 should be able to advise the client in such a way as  
2 to protect the client's interest utilizing his  
3 professional training, ability and judgment to the  
4 utmost," close quote. Comando, 436 N.J.Super. at 216,  
5 quoting J.G. Ries and Sons, Inc. versus Spectraserv,  
6 Inc., 384 N.J.Super. 216, 223, (App.Div. 2006).

7 R.P.C. 1.7 provides that, quote:

8 "(a) Except as provided in paragraph (b), a  
9 lawyer shall not represent a client if the  
10 representation involves a concurrent conflict of  
11 interest. A concurrent conflict of interest  
12 exists if:

13 (1) the representation of one client will be  
14 directly adverse to another client; or

15 (2) there is a significant risk that the  
16 representation of one or more clients will be  
17 materially limited by the lawyer's  
18 responsibilities to another client, a former  
19 client, or a third person or by a personal  
20 interest of the lawyer."

21 (Extended pause; reviewing papers.)

22 THE COURT: R.P.C. 1.13 provides, as  
23 follows, quote:

24 "(e) A lawyer representing an organization  
25 may also represent any of its directors,

1 officers, employees, members, shareholders or  
 2 other constituents, subject to the provisions of  
 3 R.P.C. 1.7. If the organization's consent to the  
 4 dual representation is required by R.P.C. 1.7,  
 5 the consent shall be given by an appropriate  
 6 official of the organization other than the  
 7 individual who is to be represented or by the  
 8 shareholders." Close quote.

9 (Extended pause; reviewing papers.)

10 THE COURT: The law of the case doctrine  
 11 provides that, quote, "a legal decision made in a  
 12 particular matter should be respected by all other  
 13 lower or equal courts during the pendency of that  
 14 case," close quote. Tully versus Mirz, 457 N.J.Super.  
 15 114, 128 (App.Div. 2018), quoting Lombardi versus  
 16 Masso, 207 N.J. 517, 548 (2011).

17 The doctrine is discretionary and is a non-  
 18 binding rule intended to prevent re-litigation of a  
 19 previously resolved issue. Id. The doctrine is  
 20 triggered only when one court is faced with a ruling  
 21 on the merits by a different and co-equal court on an  
 22 identical issue. Id. The doctrine does not require a  
 23 trial judge to follow a prior motion ruling by a  
 24 different judge if presented with, quote,  
 25 "substantially different evidence," close quote. See

1 Pressler and Verniero Current New Jersey Court Rules,  
 2 Rule 1:36-3, comment 4.

3 (Extended pause; reviewing papers.)

4 THE COURT: On September 28, 2018 the  
 5 Honorable Joseph P. Quinn denied a motion filed on  
 6 behalf of defendant Joseph Laura to disqualify the  
 7 Sills Cummis firm from representing plaintiffs in a  
 8 case entitled Pristec Refining Technologies USA, LLC,  
 9 Earle Refining, LLC, Earle Oil Investments, LLC and  
 10 Thomas J. Earle versus Pristec AG, Pristec America,  
 11 Inc. and Joseph Laura, under Docket C-175-17.  
 12 Defendant Laura argued that Sills Cummis should be  
 13 barred pursuant to Rules of Professional Conduct 1.7,  
 14 1.9 and 3.7. For the reasons set forth on the record  
 15 on that day, September 28, 2018, Judge Quinn denied  
 16 the application.

17 (Extended pause; reviewing papers.)

18 THE COURT: Judge Quinn opined, as follows,  
 19 quote: "I read the pleadings differently and I read  
 20 the causes of action differently. I don't see that  
 21 there is a disqualifying conflict of interest  
 22 associated with the prayers for relief set forth under  
 23 the causes of action." Close quote.

24 And that's from the transcript of September  
 25 28, 2018, 15:10-14. That decision was rendered not in

1 the case presently before the Court, but in a prior  
2 litigation between some of the parties currently  
3 before the Court in this matter, Docketed C-98-19.

4 There is no dispute, really, that the motion  
5 filed in C-175-17 is nearly identical to the motion  
6 currently before the Court in C-98-19. The only  
7 purported difference is defendant's reliance -- I  
8 should say the only apparent difference, primary  
9 difference, is defendants' apparent reliance on a  
10 final award rendered on June 10, 2019 in an  
11 arbitration entitled "In the Matter of an Arbitration  
12 Administered by the International Center for Dispute  
13 Resolution Pursuant to the Arbitration Rules of the  
14 International Center for Dispute Resolution Case  
15 Number 01-18-0001-9729 Between Joseph Laura and  
16 Anthony Sichenzio Suing Both Individually and  
17 Derivatively on Behalf of Pristec America, Inc.  
18 (Nevada), Pristec America, Inc. (New Jersey), and  
19 Innovative Crude Technologies, Inc., Claimants and  
20 Pristec AG, Respondent."

21 (Extended pause; reviewing papers.)

22 THE COURT: Much of defendants' argument is  
23 -- particularly at oral argument -- was based -- is  
24 based on defendants' characterization of that  
25 arbitration decision. Counsel for defendants at oral

1 argument repeatedly referenced the arbitration  
2 decision as confirming a fraud committed by Sills  
3 Cummis and the Earle entities. In fact, the  
4 arbitrator made no such finding as to Sills Cummis or  
5 the Earle entities. In fact, Sills Cummis was not a  
6 party to the arbitration and the Earle entities were  
7 not a party to the arbitration.

8 (Extended pause; reviewing papers.)

9 THE COURT: Counsel for defendants was not  
10 able to identify in the actual arbitration award any  
11 specific finding of fraud on behalf of Sills Cummis.

12 As to Earle, plaintiffs' counsel pointed out  
13 paragraphs 230 through 232 of the final award which  
14 provide, as follows, quote:

15 "Third, based on the evidence, including  
16 Earle's testimony at the hearing, I agree with  
17 respondent that Earle did not know about the  
18 negotiation of the SAA and was surprised, if not  
19 upset, when he learned about it. However, the  
20 fact that Earle was not a participant in the SAA  
21 negotiation also does not justify respondents'  
22 concealment of the PHE/Earle dealings from  
23 claimants. Indeed, respondents swiftly returned  
24 to further secret dealings with Earle after the  
25 SAA, dealings which would not have occurred but

1 for their secret dealings before the SAA. In  
2 particular, Nuerk on behalf of PHE, and Earle on  
3 behalf of the Earle companies, entered into the  
4 new co-letter of intent on March 23, 2017, under  
5 which they agreed to establish a joint venture,  
6 Newco, that would have 'exclusive rights to the  
7 Pristec technology for refineries in the U.S. and  
8 Canada and their affiliated terminals.' E-161.

9 As Nuerk conceded during his testimony, the  
10 license rights that the Newco letter of intent  
11 intended to grant to Newco 'were overlapping'  
12 with the rights granted to PAI-NV under the PAG-  
13 PAI-NV license. Transcript 484:9-485:8. Thus  
14 the Newco letter of intent consummated would have  
15 effectively overturned the SAA's revocation of  
16 the cease and desist letter." Close quote.

17 (Extended pause; reviewing papers.)

18 THE COURT: In paragraph 232, the arbitrator  
19 found, as follows, quote:

20 "Earle also testified that he had loose  
21 discussions with Nuerk about 'the possibility of  
22 the Newco deal' before the SAA was executed.  
23 Transcript 1542:18-1544:23. Respondents' failure  
24 to disclose these discussions to claimants during  
25 the negotiation of the SAA is, in my opinion,

1 another fraudulent omission of material fact.  
2 Had claimants known about these discussions at  
3 the time the SAA was executed they would have had  
4 the opportunity to refuse to sign the SAA absent  
5 terms prohibiting or circumscribing the Newco  
6 deal." Close quote.

7 So while the arbitrator may have found  
8 fraudulent actions with respect to respondent Pristec  
9 AG, he made no such finding as to Sills Cummis and  
10 specifically found that Earle did not know about the  
11 negotiation of the SAA. Thus, the final award in the  
12 arbitration simply does not say what defendants argue  
13 it says. And even if it did, respectfully, the  
14 decision of an arbitrator is not binding on this  
15 Court.

16 Given that Judge Quinn's decision was  
17 rendered in a different case, it would appear to the  
18 Court that the law of the case doctrine does not  
19 apply, but the Court sees no reason to render a  
20 different decision on the same issue based on an  
21 arbitration decision that does not bind this Court and  
22 did not include as parties any of the plaintiffs or  
23 Sills Cummis. And did not contain the findings as to  
24 those plaintiffs and Sills Cummis as represented to  
25 the Court by defendants.

1                   During oral argument defense counsel  
2 asserted -- I'm sorry -- plaintiffs' counsel asserted  
3 that defendants were conflating what was good or bad  
4 for PRT with what is -- was good or bad for Pristec  
5 America, Inc.

6                   (Extended pause; reviewing papers.)

7                   THE COURT: Plaintiff characterized  
8 defendants' argument essentially as being an affront  
9 of Pristec America, Inc. at being sued by an entity,  
10 PRT, of which it owned 75 percent. And that, in  
11 bringing this motion to disqualify PRT's counsel,  
12 defendants were engaging in strategic gamesmanship.  
13 Aside from defense counsel's arguments about the  
14 meaning of the arbitration award, the Court at oral  
15 argument attempted to drill down to glean what  
16 defendants believed to be the adverse actions  
17 allegedly taken by Sills Cummis as to PRT.

18                   Defense counsel appeared to focus on two  
19 issues: one focus was on the license performance  
20 guarantee dated January 1, 2017 between Pristec AG and  
21 PRT.

22                   (Extended pause; reviewing papers.)

23                   THE COURT: As set forth in that document,  
24 pursuant to the terms of a license between PRT and  
25 Pristec America, Inc., Pristec America, Inc. had

1 licensed rights to use certain of the intellectual  
2 property it controlled. Certain of the intellectual  
3 property -- and I should say -- for which it had a  
4 license from Pristec AG to PRT. As set forth in that  
5 agreement, quote:

6                   "PRT wants assurances from AG that if PAI  
7 does not or cannot perform its obligations under  
8 the PRT license, that AG shall or shall cause  
9 such obligations to be performed." Close quote.

10                   The license performance guarantee went on to  
11 provide that, quote:

12                   "If PAI does not or cannot perform its  
13 obligations under the PRT license for any reasons  
14 or no reason including, without limitation,  
15 because the underlying license agreement has been  
16 terminated by either party, then AG agrees to  
17 perform all of PAI's obligations under the PRT  
18 license immediately upon demand by PRT." Close  
19 quote.

20                   The Court does not see how a document that  
21 provides additional guarantees to PRT in the event of  
22 Pristec America, Inc.'s failure to perform could be  
23 deemed to be contrary to the interests of PRT or could  
24 form the basis of direct adversity.

25                   (Extended pause; reviewing papers.)

1 THE COURT: Defense counsel also pointed to  
2 documents relating to an entity referred to as Newco.  
3 (Extended pause; reviewing papers.)

4 THE COURT: In the arbitration agreement --  
5 or I should say in the arbitration final decision on  
6 which defendants rely, as to the Newco letter of  
7 intent and the Newco purported deal possibility, the  
8 arbitrator did not find fault on behalf of Sills  
9 Cummis or the Earle defendants. The Newco documents  
10 were issued after the January 1, 2017 guarantee  
11 between Pristec AG and PRT and, ultimately, never had  
12 the effect that defendants assert they would have of  
13 stripping PRT of its license rights.

14 (Extended pause; reviewing papers.)

15 THE COURT: Even assuming that Sills Cummis  
16 had the role that defendants assert it had with  
17 respect to Newco, the Court finds that those events of  
18 2017 do not rise to the level of a concurrent conflict  
19 with direct adversity, such that Sills Cummis should  
20 be disqualified from representing plaintiffs in this  
21 2019 action.

22 R.P.C. 3.7 similarly does not provide for  
23 the disqualification of Sills Cummis, given that  
24 R.P.C. 3.7(b) allows for a different lawyer to  
25 advocate in a trial in which another lawyer from the

1 firm may be called as a witness. Noting also the  
2 great prejudice PRT and the Earle plaintiffs would  
3 suffer if Sills Cummis were disqualified.

4 At this juncture, in this lawsuit, one of a  
5 series of lawsuits between these various entities, the  
6 Court respectfully is denying the application.

7 With respect to the request to stay the case  
8 pending a possible appeal, the Court also is  
9 respectfully denying that aspect of the application.

10 The filing of an appeal does not  
11 automatically relieve the appellant from some duty to  
12 perform. D'Arc versus D'Arc, 175 N.J. 598, 601  
13 (App.Div. 1980). A party seeking relief from an order  
14 until an appeal is heard must first seek a stay under  
15 Rule 2:9-5(a) which permits a court to stay a judgment  
16 under certain circumstances. See State of Maine  
17 versus SeKap, S.A. Greek Coop. Cigarette Manufacturer  
18 [sic], S.A., 392 N.J.Super. 227, 240 (App.Div. 2007).

19 Applications for a stay pending appeal are  
20 governed by the standards set forth in Crowe versus  
21 DeGioia, 90 N.J. 126 (1982). See Garden State Equality  
22 versus Dow, 216 N.J. 314, 320 (2013).

23 "A party seeking a stay must demonstrate  
24 that (1) relief is needed to prevent irreparable  
25 harm; (2) the applicant's claim rests on settled

1 law and has a reasonable probability of  
2 succeeding on the merits; and (3) balancing the  
3 'relative hardships to the party reveals that  
4 greater harm would occur if the stay is not  
5 granted than if it were.'" Close quote.

6 Id., quoting McNeil versus Legis.  
7 Apportionment Commission, 176 N.J. 484, 486 (2003)  
8 (LaVecchia dissenting).

9 Plaintiff has not expressed irreparable harm  
10 here. The claim -- the request for a stay is not  
11 based on settled law that favors defendants.  
12 Defendants also have not established a reasonable  
13 probability of succeeding on the merits.

14 And with respect to balancing the relative  
15 hardships, the Court cannot find that the hardships  
16 favor the defendant here, given the history of  
17 litigation between the parties and given that this  
18 case has been litigated between these parties and with  
19 these law firms.

20 (Extended pause; reviewing papers.)

21 THE COURT: For several months and even  
22 years, going back to the 2017 litigation.

23 So, for all these reasons, the Court is  
24 respectfully denying the application.

25 Counsel, we also had scheduled for today a

1 case management conference. I usually do that off the  
2 record. We could do that off the record or on the  
3 record, however you prefer.

4 (Extended pause)

5 THE COURT: Counsel??

6 MR. TELLADO: Oh, sorry, Your Honor. Off  
7 the record is fine. I defer to Your Honor, however  
8 you want to proceed. Your normal practice is fine  
9 with me, though. This is Bill Tellado.

10 MR. O'CONNOR: Your Honor, this is Kevin  
11 O'Connor, and whatever Your Honor prefers to do,  
12 that's fine.

13 THE COURT: All right. We'll go ahead.  
14 We'll go off the record.

15 (Hearing concluded at 3:19 p.m.)  
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CERTIFICATION

I, TERRY L. DeMARCO, the assigned transcriber, do hereby certify the foregoing transcript of proceedings recorded on CourtSmart, Index Nos. from 2:02:01 to 3:19:34, is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings, as recorded.

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/s/ Terry L. DeMarco  
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