UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF LOUISIANA

IN RE:	*	CASE NO. 06-10179 (B)
OCA, INC., et al	*	CHAPTER 11

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OPPOSITION TO MOTION FOR CASE MANAGEMENT CONFERENCE AND SUPPLEMENTAL SCHEDULING ORDER

Pending before the Court, under Adversary Number 06-01126, is an action by Gary D. Sexson and Sexson Orthodontics Ltd. ("Sexson") against the Debtors that involves some of the same issues that will arise in the context of any effort to assume or reject a BSA document which was executed by Dr. Sexson in 2000. Pending in that adversary is written discovery originally propounded on Dr. Sexson's behalf in August, 2006. To date there has been no response from the Debtors to that discovery. Moreover, until the recent pleadings seeking a case management conference were filed, there was no coordination with respect to dates or notice from the Debtors that they, apparently, intended for Dr. Sexson to pursue discovery under a schedule dictated by the Debtors and with respect to which Dr. Sexson has had no input.

It is not appropriate for depositions to proceed until the Debtors have responded to pending interrogatories and requests for documentation. While the Debtors now seek to impose some uniform approach to written discovery, their counsel have stated that they probably know, after their extensive experience in similar litigation prior to the bankruptcy, what the individual practices will request and that they propose to provide same. If that is correct, the Debtors should be directed to make an initial disclosure sufficiently in advance of any scheduled depositions so

that there is time to review what promises to be a voluminous response. Had the Debtors made such a disclosure and if their counsel know, as has been represented, the issues that will arise, their difficulties with respect to discovery coming from individual parties would likely have disappeared. But until the Debtors make such a disclosure it is not appropriate to seek to limit the filing of discovery necessary to pursue each doctor's individual interests.

Neither is it appropriate to arbitrarily impose time limits on depositions without some experience on how the deposition process is going. The Debtors could expedite the deposition process by promptly disclosing their witnesses and the subject areas for which they will be produced to testify. They could expedite the process by assuring that the witnesses produced are prepared and knowledgeable on the subjects for which they are to give testimony. But until one learns whether the deposition process is to be a cooperative endeavor or, instead, the beginning of litigated discovery disputes, it is not appropriate to arbitrarily limit time for questioning the witnesses to be produced.

If, in fact, the Debtor's business will suffer from the protracted absence of their designated witnesses, the solution is to spread discovery over a longer period rather than to seek to accomplish all discovery in week long blocks. The Debtors proposal to instead seek to limit access to the witnesses they intend to produce seeks to use the process of litigation to decide the merits.

Additionally, the limitations proposed by the Debtors have no assurance that all parties will have the opportunity to conduct discovery. A limitation on general corporate discovery without assuring that all parties will be able to participate within such a limit prejudices those who are at the end of the line. Despite the presence of some common issues of fact among the pending

litigation, it is not reasonable to impose one set of issues where, for example, different state laws apply and the fact situations within each state's law will be different. There is no assurance that a Louisiana or Colorado or other state's lawyer will cover issues that are unique to states in which that attorney does not practice. And it is not a sufficient cure to that potential prejudice to offer two hours of time for depositions tailored to individual practices. Such a time limit is barely sufficient to get into accounting issues, let alone fact situations unique to a particular state's applicable statutes.

If the Debtors were suffering under duplicative discovery requests, there may be a basis to seek court intervention. But where any duplication is due to the Debtors failure to make promised disclosure and where the deposition process has not yet started, it is premature for the Court to impose artificial limits that will, unless the Court imposes an hour by hour schedule, prejudice those who are at the end of the line.

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Opposition to Motion for Case Management Conference and Scheduling Order was duly served on the parties listed in the matrix annexed hereto by placing a copy with the United States Postal Service this 16th day of October, 2006.

/s/Daniel A. Smith
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