

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA**

In re:)	Case No. 06-10179 (B)
)	Chapter 11
OCA, INC., et al.,)	
)	Jointly Administered with
Debtors.)	Case Nos. 06-10180 - 06-10223
)	

**GROUP I DOCTORS' OPPOSITION TO DEBTORS' MOTION TO QUASH
CONSOLIDATED NOTICE OF TAKING DEPOSITION OF OCA, INC.
ON ISSUES GENERAL TO ALL AFFILIATED PRACTICES OR, IN THE
ALTERNATIVE, MOTION FOR PROTECTIVE ORDER**

The Group I Doctors¹, through undersigned counsel, herein file their response in opposition to the Debtors' (hereinafter collectively "OCA") Motion to Quash Consolidated Notice of Taking Deposition of OCA, Inc. on Issues General to All Affiliated Practices or, in the Alternative, Motion for Protective Order, and state as follows:

1. This Court's August 1, 2006 Scheduling Order pursuant to Case Management Order [Docket #1300] ("Scheduling Order") was the result of an agreement between OCA and the stipulating orthodontists to proceed with the more than seventy adversary cases on an expedited schedule. The agreement included general discovery cutoff dates but did not set forth a specific procedure for handling the extensive depositions necessitated by the adversary lawsuits. Counsel for

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the stipulating orthodontists and OCA agreed to work together to complete all discovery per the agreed to schedule.

2. The undersigned counsel, and other counsel representing stipulating orthodontists, have been committed to making the Scheduling Order work while recognizing that the schedule is tight and that the stipulating orthodontists are entitled to fair discovery.

3. Throughout the Motion to Quash, OCA states that there was an agreement that the depositions of OCA on issues general to all doctors would be limited to one week, and that depositions specific to each adversary would be completed over a two week period commencing November 13, 2006. However, OCA does not identify with whom OCA “agreed” with regard to the proposed deposition schedule and procedures.

4. At no time was there ever any agreement by the stipulating orthodontists to arbitrarily severely limit their opportunity to conduct discovery depositions. OCA’s counsel were advised immediately that OCA’s proposed time limitations were unrealistic and that, although the stipulating orthodontists agreed to conduct expedited discovery, they did not agree to limit their right to sufficient time to conduct discovery.

5. On September 22, 2006, counsel for the Group I Doctors, in coordination with counsel for Certain Dentists, delivered a letter outlining a reasonable procedure to complete all depositions of OCA by early to mid-December without limiting any party’s right to full and fair

discovery.² A copy of the September 22, 2006 letter with a proposed Consolidated Notice of Taking Deposition of OCA, Inc. on Issues General to All Affiliated Practices is attached hereto Exhibit “A”.

6. OCA previously identified three witnesses it intends to produce for the Rule 30(b)(6) depositions: Cathy Green, Tony Paternostro, and Terry Zerengue. The Group I Doctors have listed 31 areas of inquiry in the Consolidated Notice of Deposition, which, if evenly distributed, means each witness will testify on 10-11 different areas.

7. In order to complete the depositions in a timely fashion and in the most efficient manner, in the September 22, 2006 letter, the Group I Doctors and Certain Dentists proposed to double or triple track the depositions of OCA’s corporate representatives. By way of example, while Richard Goldstein, on behalf of the Group I Doctors, is deposing Tony Paternostro on issues 1-10, David Forsyth will be simultaneously deposing Cathy Green on issues 11-21 on behalf of Certain Dentists, and Ault Hootsell, Bill Gambel or one of the other attorney’s representing stipulating orthodontists will be deposing Terry Zerengue on issues 22-31. At the end of each day, counsel will compare notes and review the transcript to avoid unnecessary repetition and switch witnesses for the next day.

8. OCA rejected the proposal to double or triple track the Rule 30(b)(6) depositions without suggesting or proposing an alternative procedure to complete the deposition expeditiously while ensuring full and fair discovery. Instead, OCA seeks to arbitrarily limit the stipulating

² The Consolidated Notice of Deposition was, in part, the result of several meetings and conversations to coordinate discovery amongst a number of counsel representing stipulating orthodontists.

orthodontists' ability to discover information relevant to their defense of OCA's claims regarding OCA's performance under their respective BSAs.

9. OCA fails to present any good cause for the requested limitation on discovery other than to say that discovery in the lawsuits (mostly) initiated by OCA is inconvenient to OCA.

10. Double or triple tracking the depositions will ensure that the depositions are completed timely and efficiently and remains the best procedural option to allow the parties to meet the agreed time frames set forth in the Scheduling Order, while providing fair discovery to the stipulating orthodontists.

11. If OCA produces one witness at a time, which is what OCA is proposing, it is highly unlikely that the Rule 30(b)(6) depositions on general issues will be completed in five, 7 hour days. Under this procedure proposed by OCA, counsel for the Group I Doctors will depose Tony Paternostro on day one, after which counsel for the other stipulating orthodontists will complete their follow-up questions with Mr. Paternostro. This process will certainly entail 2-3 days of questioning. Once everyone has concluded with Mr. Paternostro, the process will repeat itself with the next two witnesses. As a result, the Group I Doctors will not have the opportunity to depose OCA's last witness within the arbitrary 5-day period proposed by OCA.

12. With regard to depositions of OCA on issues specific to each adversary case, OCA's proposed schedule (the 2 weeks of November 13 and November 27, 2006) is hopelessly inadequate. Under OCA's proposal, OCA's representatives will sit for ten days (70 hours) for detailed depositions in over seventy (70) adversary proceedings.

13. In other words, OCA proposes that each orthodontist be allowed less than one (1) hour to make detailed inquiries concerning a relationship which, in some cases, dates back ten years, and which involves complicated financial calculations, poorly documented loan transactions and individual lack-of-service issues involving years of correspondence and communications between the parties.

14. Ironically, OCA previously proposed producing Rule 30(b)(6) witnesses on specific issues for two hours per case; even that arbitrarily restrictive proposal cannot be completed within the time frame now sought by OCA. At two hours per case, it would take the parties more than four full weeks at seven hours per day to complete the depositions.

15. To shine a light on how unrealistic OCA's proposal is, the Court only need to look at two depositions of OCA representatives taken earlier this year in pre-petition litigation concerning Dr. Christine Michaels and Dr. James Kendrick. In the *Michaels* case, Anthony Paternostro was produced to testify concerning one narrow issue: what sums remain due and owing under five promissory notes held by OCA. The Paternostro deposition took 2 ½ to 3 hours. Similarly, OCA representative, Paul Spansel, was produced for deposition in the *Kendrick* case to testify concerning lease-related issues in preparation for an evidentiary hearing on Kendrick's motion for temporary injunctive relief seeking to prevent OCA from proceeding with an eviction case. The deposition of Mr. Spansel lasted 3 hours.

16. It is important for the Court to understand that the recent Paternostro and Spansel depositions concerned limited issues and did not delve into the full spectrum of issues pending in

those cases and did not even touch upon OCA's calculation of service fees, allocation of its corporate overhead expenses, or other accounting issues.

**Group I Doctors' Consolidated Notice of Taking Deposition of OCA, Inc.
on Issues General to All Affiliated Practices**

17. On October 3, 2006, Group I Doctors served a Consolidated Notice of Taking Deposition, substantively identical to the proposed notice provided to OCA along with the September 22, 2006 letter. The notice sets the start date for the deposition as October 30, 2006, the date proposed by OCA.

18. The Group I Doctors do not intend to take an "indefinite" deposition, nor has that ever been suggested. The language quoted in OCA's Motion to Quash is standard language and indicates that the Rule 30(b)(6) deposition will continue until completed. If the Group I Doctors were the only parties involved, it is likely that the depositions on these general issues could be completed within 3-4 days.

19. The Group I Doctors' adversary cases involve twenty (20) different jurisdictions and three (3) different contracting entities: OrthAlliance, PedoAlliance, and OCA (including numerous permutations on the OCA form contracts). Although it is the Group I Doctors' intention to proceed expeditiously through these depositions and not bog down, the Group I Doctors cannot control the manner and pace of a witness's testimony.

20. Nobody is suggesting that OCA be subjected to the same questions over and over again. However thorough counsel for the Group I Doctors is during questioning, counsel for the other stipulating orthodontists are entitled to make follow-up inquiries. It appears from OCA's Motion to Quash that OCA wants to appoint Richard Goldstein as counsel for all stipulating

orthodontists with respect to discovery depositions. Such an appointment would be inappropriate and violate the stipulating doctors' (who are not represented by the Goldstein law firm) right to their choice of counsel.

21. Accordingly, the Group I Doctors request that the Court deny OCA's Motion to Quash and compel OCA to produce witnesses on October 30, 2006 prepared to testify on the issues set forth in the Consolidated Notice of Deposition.

Other Discovery Issues

22. OCA also complains that it is concerned about receiving multiple notices of deposition from the stipulating orthodontists. Again, although the Group I Doctors' Consolidated Notice of Deposition is fairly comprehensive, we have certainly not cornered the market on all possible issues which may be raised. If counsel for the other stipulating orthodontists determine that there are areas of inquiry within the permissible scope of discovery not covered by the Group I Doctors' Consolidated Notice of Deposition, it would be unfair and prejudicial to preclude those parties from conducting discovery on those additional issues.

23. OCA also complains about receiving written discovery in the individual cases. Is OCA suggesting that the stipulating parties be precluded from conducting any written discovery on individual cases (as opposed to discovery on issues general to affiliated orthodontists)? OCA voluntarily filed, with only a few exceptions, all of the pending adversary cases, and it was OCA which sought to proceed with all of the cases simultaneously on a compact schedule. Any disruption to the business of OCA caused by its litigation was of its own choosing.

24. Having invited 60-70 orthodontists to participate in litigation, OCA cannot now complain in good faith that the litigation is disrupting its ongoing business operations. It is hard to believe that a company of OCA's size and means cannot run its business without the three Rule 30(b)(6) witnesses, while they sit for depositions in lawsuits that OCA deemed to be sound business decisions to initiate.

25. As a result of OCA's financial accounting and business practices, these cases are complex and the orthodontists and pediatric dentists are, in large part, in the dark with respect to OCA's financial management of their revenues and expenses. Although the general practices and operations of OCA are somewhat similar in all cases, the specific application of those practices to each orthodontist is individual and different in each case. Each orthodontist is entitled to full and fair discovery on the issues raised in the pleadings of their respective cases.

Conclusion

26. Accordingly, the Group I Doctors request that OCA's Motion to Quash be denied and that the Court not limit the Stipulating Parties' right to obtain discovery from OCA. The Stipulating Parties have already agreed to the discovery schedule as reflected in this Court's Scheduling Order. It is OCA's obligation to work with counsel for the stipulating orthodontists to complete full and fair discovery. Neither the Scheduling Order nor the rules of procedure permit OCA to dictate the terms and scope of discovery.

Dated this 16th day of October, 2006.

/s/ Robert J. Burvant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served this 16th day of October, 2006, by placing a copy of same in the United States mail, postage prepaid and properly addressed to: All parties on the attached Service List.

/s/ Robert J. Burvant
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