

**UNIT¹ED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA**

In re: OCA, Inc., et al

*** Case No. 06-10179**

Debtors.

*** Chapter 11**

*** Judge Jerry A. Brown**

**OPPOSITION TO THE PROPOSALS
CONTAINED IN DEBTORS' MOTION FOR CASE
MANAGEMENT CONFERENCE AND SCHEDULING ORDER**

Now into Court comes Doug Crosby, Glenwood Jordan, Donald Doan, T.C. Scotese and Elgin Wells, Plaintiffs in Adversary Proceedings, and Robert E. Cater, Angela Goodman, William R. Izzard, Lance R. Kiss, and Grace Machi, defendants in Adversary Proceedings, joined by and Kenneth Brehnan, Richard F. Herrscher, Michael Kim, Craig Kishiyama, Stephen E. Ludwig, Jefferson L. Newbern, Jeanne Newbern, Don A. Woodworth, Parties of Interest, in each case, inclusive of their respective business corporation and professional association, together Crosby Objectors, to file this Opposition to the proposals contained in the Debtors' Motion for Case Management Conference and Scheduling Order;

1. Crosby Objectors are Stipulating Debtors who agreed not to oppose the Debtors' Plan of Reorganization heard September 4 and 5, 2006, in exchange for the agreement that when the dust had cleared, the parties would proceed to address the state law issues of legality, enforceability and breach, and the related dependent Code Section 363(c) assumption issues;

¹ Cater, A.P. 06-01192, Crosby, A.P. 06-03330, Doan, A.P. 06-01144, Goodman, A.P. 06-01220, Izzard, A.P. 06-01201, Jordan, A.P. 06-01145, Kiss, A.P. 06-01172, Scotese, A.P. 06-01146, Wells, A.P. 06-01147

2. Mindful of the Court admonition at the time, the Crosby Objectors refrained from commencing discovery to allow the Debtors to endeavor to confirm its Plan, free of the distraction;

3. Furthermore, the Debtors were themselves delayed in filing Motions to Transfer Cases pending in other jurisdictions, twice seeking extensions of time to move to transfer, and many of those cases are not yet before this Court, the transfer process not yet being complete;

4. The Plan has not yet been confirmed, delayed for reasons better known to the Court, but certainly not of the making of the Crosby Objectors, nor anticipated by the Crosby Objectors or the Debtors;

5. The Debtors whine that they have been barraged by a myriad of discovery requests; yet appears oblivious to the fact that it was party to 45 or so suits pending in numerous jurisdictions, instituted some 100 or so new suits against defendants located throughout the country, and sought to assume virtually every contract it ever had;

6. Crosby Objectors propounded Discovery to the Debtors on October 13, 2006, responses to that Discovery is required before any Depositions can be scheduled;

7. The Motion ignores the fact that Debtors have made no effort to Move to Consolidate all the pending cases for Discovery or for Trial, and no effort to communicate with the Counsel of record for the parties in all the pending cases;

8. In ¶5 of its Motion for Supplemental Scheduling Order, Debtors indicate that its “intention and aim in seeking the Case Management Order and Scheduling Order was to consolidate discovery . . . to efficiently and expeditiously bring these cases to trial and to prevent exactly the discovery ‘free-for-all’ that is on the verge of happening.” The Federal and Bankruptcy Rules have procedures in place to ensure the efficient and expeditious trial of this

matter. For instance, Federal Rule 26(f), made applicable to this proceeding by Bankruptcy Rule 7026, requires that plaintiff initiate contact with defendant to “make or arrange for the disclosures required by Rule 26(a)(1), and to develop and proposed discovery plan” The discovery plan should include the parties views on (1) Rule 26(a)(1) disclosures, (2) what discovery is necessary, when it should be completed, and whether it should be conducted in stages or limited to certain issues, (3) changes to the default limitations, and (4) any other discovery order that should be entered by the Court.

9. Further, and perhaps most importantly, Federal Rule 26(a)(1) requires that the parties – without awaiting a discovery request – exchange certain information regarding witnesses, documents and data, and damages that the disclosing party may use to support its claims or defenses. The timing of this exchange is tied to step one in the federal rules discovery process, the Rule 26(f) conference, which has not occurred in this proceeding.

10. The lack of initial disclosures from the parties is no doubt contributing to the volume of discovery being propounded by the litigating doctors in anticipation of a discovery deadline some three (3) months away. Certainly a deposition schedule could be more efficiently prepared if the litigating doctors had Debtors’ Rule 26(a)(1)(A) witness disclosures. Further, the litigating doctors should not have to seek information regarding Debtors’ calculation of damages and documents germane to issues of fact for each doctor and the doctors as a whole. The fact that the litigating doctors do not already have this information – some four (4) months post-complaint is certainly more of a driving force behind the ensuing discovery free-for-all than the need for a supplemental litigation schedule.

11. Rule 26 submissions should include all Sworn Statement and Depositions given and taken in prior cases, and the Court should lift all Confidentiality Restrictions and Protective Orders in place that would otherwise delay or impede production;

12. It is essential that document discovery be completed proceed before any depositions are taken;

13. Finally, on September 19, the Western District of Texas joined the Northern and Eastern Districts in holding OCA contractual arrangements with a Texas dentist to be in violation of the Texas Dentistry Statute. The District Court has indicated that it will publish its opinion within a month. At that time a number of the Crosby Objectors will move for Partial Summary Judgment. In addition, some cases involve the Doctors who have been out of the system for years, Crosby Objector Brahnan since October 2001, as an example. In fact, the Northern District of California refused to transfer Brahnan, and remanded him back to California State Court. They should have a opportunity to extricate themselves before discovery commences in earnest, lest they be put to the expense of several tracts of discovery contemplated, as against the risk that they might not prevail on the Motion.

Dated: October 16, 2006.

Respectfully submitted,

/s/ William C. Gambel
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served this 16th day of October, 2006, via United States mail, or electronically..

/s/ William C. Gambel

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