

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS

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IN THE MATTER OF: * NO. 06-10179
OCA, INC. *
DEBTOR. *

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Transcript of the proceedings taken in the above captioned matter on **Wednesday, October 18, 2006**, the Honorable Jerry A. Brown, United States Bankruptcy Judge, presiding.

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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ALSO PRESENT:

Gibson Pratt
Michael Gries

P R O C E E D I N G S

(Wednesday, October 18, 2006)

THE CLERK: Case Number 06-10179, OCA, Inc.

MR. HORN: Good afternoon, Your Honor; Warren Horn,
Drew Ballina, Jan Hayden, and William Patrick for OCA.

THE COURT: All right.

MR. HORN: Your Honor, we have a few things on the
docket for OCA. There are some other matters on some of the
other cases on the docket you may want to dispose of. I think
there's something in B&W. We might take up some time, so.

THE COURT: No.

THE CLERK: We did B&W already.

MR. HORN: Oh, you did? I'm sorry.

THE COURT: No, we've taken care of all of it. We're
down now to only OCA, aren't we?

THE CLERK: Yes.

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FIRST APPLICATION FOR COMPENSATION**FOR JAN MARIE HAYDEN, DEBTOR'S ATTORNEY**

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THE COURT: Okay. All right, the first two things on
the docket in OCA are the First Application for Compensation
for Jan Marie Hayden and the firm of Heller Draper, et cetera.
I --

MS. HAYDEN: Oh, I'm sorry, Your Honor. We had

1 worked out an arrangement with Mr. Gravolet. Would you like
2 to hear it?

3 THE COURT: Yes, I'd like to hear it.

4 MS. HAYDEN: We visited on our fee application and we
5 agreed with the U.S. Trustee for the various and the sundry
6 items except for one, to take \$5,500 off the bill, which will
7 show up on the order as "Fee" just because it's simpler for me
8 to do it that way, take \$5,500 off of "Fee," but it's for
9 issues that he raised vis-à-vis both fee and costs.

10 The one issue we are reserving until the next fee
11 application is the discussion regarding the hourly rates
12 charged for paralegals. We thought it would be useful to
13 provide the U.S. Trustee's Office with some information about
14 our increased costs and also to provide information about the
15 market, and we both agreed we'd just defer that to the next fee
16 app. and give the Court and the U.S. Trustee's Office as much
17 data as we can so that you all can look at that issue.

18 THE COURT: All right.

19 MS. HAYDEN: So, if that's acceptable I'd ask that we
20 have an order along those lines.

21 THE COURT: In addition to the paralegals you had
22 another category --

23 MS. HAYDEN: The law clerk.

24 THE COURT: The law clerks.

25 MS. HAYDEN: The law clerk. And so I was going to

1 get that information for Mr. Gravolet. And really what I was
2 thinking was kind of preparing a report of kind of what we find
3 in the market. I'll just call and see what people will tell me
4 and what we find out. So, you and Mr. Gravolet would both have
5 that available to deal with it and we'll do it for the next set
6 of fee apps. in OCA and I'm sure it will be useful for other
7 cases as well.

8 THE COURT: Well, have you carved out of the fee --

9 MS. HAYDEN: No, we did not do a carve out.

10 THE COURT: You did not do a carve out for the
11 paralegals and the --

12 MS. HAYDEN: No. I think our hold back on the next
13 one will be more than enough.

14 THE COURT: Okay.

15 MS. HAYDEN: That was a pretty intensive work period
16 there.

17 THE COURT: All right, let me --

18 MR. GRAVOLET: Judge, let me start out with the
19 latter that Ms. Hayden has addressed and if there's going to be
20 a move to increase the overall rate for the law clerks and
21 paralegals, I'm not so much worried about Ms. Hayden's office
22 as I am about a community rate. So, we need to make sure that
23 that's an issue that the community addresses and that
24 information for the Court.

25 THE COURT: Well, have we had any kind of -- I know

1 we haven't had a full-blown hearing on it, but is there any
2 kind of informal understanding as to what law clerks will be
3 paid? I don't recall ever specifically addressing that.

4 MS. HAYDEN: I don't know that we've ever had -- I
5 don't recall such an agreement.

6 THE COURT: I don't think so.

7 MR. GRAVOLET: Well, we saw the issue, Judge. We
8 were trying, I guess, to talk about both issues at once and
9 that there had been a ceiling rate of \$85 for paralegals.

10 THE COURT: Yeah.

11 MR. GRAVOLET: And if the paralegals are doing the
12 same work as law clerks or vis-à-vis, then it ought to be
13 included I think in setting a rate. What we had done in the
14 past and I think this goes back to Jazzland and a couple of
15 other cases, I think there was testimony that was put on. I
16 know Mr. Vance had testified before this Court before saying,
17 you know, this normal type of industry, this size of firm,
18 these are the type of rates that the community is having to pay
19 out to employ these people and keep them involved in bankruptcy
20 cases. And we would envision that the Heller Draper Group may
21 try to come back in and put on the same type of evidentiary
22 testimony or however the Court would like to proceed with
23 affidavits, et cetera, et cetera. So, we thought that would be
24 the easiest way to proceed right now.

25 THE COURT: Okay, but in all these big Chapter 11s

1 that we've had where we've had involvement of New York,
2 Chicago, Texas law firms, I still don't remember any --

3 MS. HAYDEN: Well, they made as much as I did, Judge.
4 I know you think I'm joking, but I'm not. I mean for the
5 New York rates the paralegals were \$200, \$250.

6 THE COURT: Well, I know that and we've allowed
7 whatever the going rate was in the market to which they're
8 primarily involved. But did we have the issue of law clerks in
9 any of those?

10 MR. GRAVOLET: I don't recall specifically, Judge,
11 and it may be because the rate was the rate is the rate for the
12 paralegals and legal clerks that we just call it to the Court's
13 attention in this particular application at this point in time.

14 THE COURT: All right.

15 MS. HAYDEN: I don't think we've ever -- I really
16 don't remember in any of my cases, Your Honor, any of the ones
17 from Heller Draper, and that would be a lot of them.

18 THE COURT: Yeah.

19 MR. GRAVOLET: I think they were treated *pari passu*.

20 THE COURT: All right, well we'll deal with that
21 issue when y'all get through gathering your information and if
22 you have some sort of agreement on it, fine; if you don't,
23 well, present it to the Court and whatever you've got we'll
24 decide it.

25 MS. HAYDEN: Right, okay.

1 MR. GRAVOLET: Two other points for the Court,
2 Your Honor. It's my understanding that Heller Draper was
3 retaining an evergreen retainer in this matter and I don't know
4 if the Court wants to go ahead and allow that to proceed now,
5 since we have gone through the first fee application process.
6 I think it's in the neighborhood of \$200,000. We just wanted
7 to make sure that's still before the Court. If the Court wants
8 to revisit that issue or allow the retainer to stay in place
9 right now, we'll leave that up to the Court. I told Ms. Hayden
10 I'd just mention that.

11 MS. HAYDEN: Well, you know, the retention was
12 authorized with the type of retainer that we have and --

13 THE COURT: Well, I already authorized that.

14 MS. HAYDEN: Yes.

15 THE COURT: When I signed the order providing for the
16 20 percent holdback on fees -- 80 percent payment of fees
17 monthly --

18 MS. HAYDEN: Right.

19 THE COURT: -- and 100 percent payment of expenses.

20 MS. HAYDEN: Yes, sir.

21 THE COURT: Right. And I don't have the figure right
22 before me, but of this \$1,231,374 in fees, you've been paid --

23 MS. HAYDEN: Eighty times --

24 THE COURT: -- you've been paid I guess around a
25 million dollars. All right.

1 MS. HAYDEN: Close.

2 THE COURT: Well, I'm not going to revisit at that
3 time the retainer, the evergreen retainer. I'll leave it as
4 is.

5 MS. HAYDEN: Okay.

6 THE COURT: Do you want to be heard further from
7 that?

8 MR. GRAVOLET: No, Your Honor, we're just making sure
9 we have everything before the Court that the Court needs to
10 have to make an informed decision.

11 And then the only thing that we would still point out
12 is we believe we're still on Silver Point's nickel in this
13 thing, so in reductions right now for the fee applications, if
14 the monies go back, they go back to Silver Point. It's not
15 really affecting the unsecured creditors in this matter.

16 MS. HAYDEN: That will be argued too.

17 THE COURT: All right. All right, I'm approving the
18 fee of a \$1,231,374.30 less \$5,500 and that does not deal with
19 either paralegal or law clerk time even though paralegal and
20 law clerk time may be in there.

21 MS. HAYDEN: Right. We're going to reserve that
22 issue until the next fee app.

23 THE COURT: All right, submit an order.

24 MS. HAYDEN: I will, Your Honor.

25 MR. GRAVOLET: Thank you, Your Honor.

1 MS. HAYDEN: Thank you very much.

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3 **FIRST APPLICATION FOR COMPENSATION**

4 **FOR KRAMER WEISMAN AND ASSOCIATES, LLP**

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6 THE COURT: All right, now as to the application of
7 the CPAs, Kramer Weisman and Associates, who filed that?

8 MR. GRAVOLET: Your Honor, that's filed -- I think
9 Mr. Brad Hacker had filed it for Kramer Weisman, and we have
10 been in discussions with Mr. Hacker. I've received a
11 resolution last night from Mr. Hacker with a spreadsheet
12 supplementing the information requested. We will have an
13 agreed reduction and an order will be submitted to the Court.

14 THE COURT: Okay. Do you have before you what the
15 agreed reduction is?

16 MR. GRAVOLET: I believe it's in the neighborhood of
17 -- I think it's \$1,358, Your Honor.

18 THE COURT: Okay.

19 MR. GRAVOLET: Mostly dealing with just expense items
20 for that firm.

21 THE COURT: All right. All right, I will approve the
22 first application for fees in the amount of \$436,466.75 and
23 expenses of \$14,697.78. Ask them to submit it.

24 MR. GRAVOLET: I'll convey that to him, Your Honor.
25 Thank you.

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MOTION TO QUASH

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4 THE COURT: All right, we have next on the docket the
5 Debtor's Motion to Quash. Was it your intention that that
6 motion be heard in open court, of course, but was it to be
7 combined with the case management scheduling conference --

8 MR. HORN: Yes, sir.

9 THE COURT: -- or was that to be a conference not in
10 open court?

11 MR. HORN: No, I agree with Your Honor, I think
12 they're really --

13 THE COURT: It seems to me they're so intertwined --

14 MR. HORN: They're really combined, I agree.

15 THE COURT: All right.

16 MR. HORN: We have no intention to seek first to
17 quash and then to get protective relief in the form of the case
18 management. I think it's all intertwined. I think we just
19 need to have an open discussion and that will answer the
20 question on all the matters before the Court on the two
21 motions.

22 THE COURT: All right.

23 MR. HORN: I'll start off by saying we have -- the
24 Debtors have no intention of inhibiting discovery.

25 THE COURT: My deputy makes the point that the

1 conference was scheduled for 3:00, but is it fair to say that
2 everybody that was going to participate is here right now for
3 the --

4 MR. HORN: I believe so.

5 THE COURT: Do you anticipate anybody coming in at
6 3:00 and saying --

7 MR. HORN: No, Mr. Gambel may come. I don't think
8 Mr. Hootsell is going to be here, but I don't know about him.

9 THE COURT: Well, I don't think he's going to be here
10 anyhow.

11 MR. PATRICK: Judge, Mr. Gries from OCA and I think
12 maybe one of his associates is on the way and would like to
13 participate. They're on the way now and ought to be here in
14 the next ten minutes or so. I called when I thought that
15 perhaps you would end up consolidating the Motion to Quash with
16 the status conference.

17 THE COURT: All right. Well, what I'm asking you, do
18 you think it's necessary that we wait until 3:00?

19 MR. PATRICK: No, but if Your Honor might consider
20 waiting ten minutes, but again if you want to start it's -- I
21 alerted to them to the possibility that you would start.

22 MR. HORN: I'm told that there are some responses
23 that may be directed toward the status conference more than the
24 two discovery motions, so I'm --

25 THE COURT: All right, well, to the motion -- I'm

1 trying to see -- there were a great number of oppositions
2 that came in at the last minute -- I don't say a great number,
3 five or six --

4 MR. HORN: Right.

5 THE COURT: -- that came in that were oppositions to
6 the case management scheduling conference filed by attorneys
7 that did not file an opposition to the Motion to Quash.

8 MR. HORN: And of course the --

9 THE COURT: They I guess would not have had any
10 specific reason to be here right now.

11 MR. HORN: Well, the only --

12 THE COURT: Well, let me -- there was an opposition
13 filed by Mr. Sexon --

14 MR. HORN: And his Counsel is here, Mr. Smith is
15 here.

16 THE COURT: All right, there was an opposition by
17 Drs. Bandeen and -- the Bandeen Group and the Powell Group.
18 That Counsel is here, okay.

19 There was an opposition by Drs. Crosby and a bunch of
20 other doctors.

21 MR. HORN: Right, that's Mr. Gambel and he is not
22 here.

23 THE COURT: He is not here.

24 All right, there was an opposition by
25 Dr. Halliburton.

1 MR. HORN: That's Mr. Hootsell and he's waived his
2 appearance. He's not coming --

3 THE COURT: No, somebody from his office is here.

4 MR. HORN: He has someone here, all right.

5 THE COURT: All right. There was a response by
6 Drs. Packard and Skibell.

7 MR. HORN: That's also Mr. Hootsell.

8 THE COURT: All right. All right, there was a
9 memorandum by Dr. Hook.

10 MR. LEBRETON: Here, Your Honor.

11 THE COURT: All right, there's a representative here.
12 And there's the objection by Dr. Hodgkins.

13 MR. MERCER: Here, Your Honor.

14 MR. HORN: And Mr. Mercer is here.

15 THE COURT: All right, with the exception of
16 Mr. Gambel --

17 MR. FORSYTH: Your Honor, although you didn't mention
18 it, I assume you have the one that we had filed and I think
19 Mr. Goldstein --

20 THE COURT: Yeah, I have it. I didn't mention it
21 because I saw you out here. You filed an objection to both I
22 think.

23 All right, let's do it this way. We'll take a ten-
24 minute break. Somebody volunteer to call Mr. Gambel and tell
25 him we're going to start in ten minutes, if he'd like to be

1 here we'd be happy to have him. If he doesn't make it in ten
2 minutes, we'll be happy to go ahead without him. All right.

3 (Recess from 2:32 p.m., until 2:45 p.m.)

4 THE COURT: Be seated.

5 MR. HORN: Are you ready to proceed, Your Honor?

6 THE COURT: Yes.

7 MR. HORN: All right. Before the Court are a couple
8 of motions. They're companion motions. The Motion to Quash
9 dovetails into the motion that we filed for a supplemental case
10 management schedule.

11 As Your Honor will recall, we consolidated by an
12 order in July. You had ordered that all the litigation was
13 consolidated involving all the BSAs for discovery purposes.
14 That was the July 17th order. And we have a trial date in
15 March of '07 for the trial of all the parties that are members
16 of the -- or parties to the stipulation that was filed later in
17 the summer. We attempted to reach agreement back in the summer
18 when we were arguing a little bit back and forth between
19 Debtors and the affiliated practices on a schedule for the
20 trial of the issues. We were trying to have a trial in
21 November and we had worked on some scheduling issues and we
22 worked on some limitations on discovery and trying to get it to
23 a manageable process. And that was abandoned somewhat, I think
24 everyone kind of relaxed their efforts when we reached
25 agreement and entered into the stipulation. And then we later

1 got into the August 1 scheduling order where you set certain
2 deadlines, not the least of which is the January 15, 2007
3 deadline for all fact discovery to be completed.

4 What we found ourselves faced with as the Debtor and
5 attempted to do faced with the problem of the discovery that
6 all the affiliated practices wanted to begin just a few weeks
7 ago was trying to manage that discovery and we found that we
8 were back kind of where we were in July where we couldn't
9 really get a handle on an agreement limiting the scope of some
10 of the discovery either by time or by parties themselves
11 participating. And by that I mean we have 92 adversary actions
12 involving BSAs. We have I guess 20 or so assumption pieces of
13 litigation that are also part of this consolidated discovery.

14 And the concern the Debtors had was when we received
15 the first notice of deposition by the Group 1 Doctors
16 represented by Mr. Goldstein was twofold. First, we had
17 received that notice and it was limited in who was served with
18 that notice, meaning there was not service and notice to all
19 the parties in the consolidated action. That raised a concern
20 on our part because we think individual notices of deposition
21 and having to have multiple parties or defend multiple parties
22 corporate depositions on common issues is somewhat antithetical
23 to what Your Honor ordered in the consolidation of the
24 discovery.

25 Mr. Goldstein, for a perfect example because that's

1 the discovery notice that's at issue in the Motion to Quash
2 and gave rise to the other motion, Mr. Goldstein files a notice
3 asking for a corporate deposition for his I guess 48 or so
4 clients that he represents, 48 affiliated practices. And there
5 are no other parties noticed other than the Debtor and a few of
6 the other affiliated practices, but the concern we had was we
7 would be faced with then another notice for example by
8 Mr. Forsyth and his 20 or so clients, and then another 30(b)(6)
9 notice by other parties in this case. Mr. Gambel has 15 or 20
10 clients, affiliated practices. And as the Debtor we were very
11 concerned when we were starting to see individual notices of
12 deposition come in seeking many areas of discovery which we
13 believe are common areas to all the BSAs.

14 One of the things that we were trying to accomplish
15 that we couldn't accomplish in early September, mid-September,
16 and earlier this month was to get a handle on a limitation on
17 the scope of the deposition and by that we mean the following.
18 We know that we have about four or five people that are going
19 to be presented on behalf of OCA to answer all the corporate
20 common issues. And by common issues I mean issues common to
21 all the affiliated practices.

22 THE COURT: How many do you have?

23 MR. HORN: About three or four, four or five.

24 THE COURT: I thought it boiled down to three.

25 MR. HORN: The notices are a little bit more

1 expansive than we anticipated, so we may have to have an
2 extra person.

3 This first notice that was sent out has no limitation
4 on time and in theory I guess each individual practice might
5 take the position that they have seven hours under the Federal
6 Rules to take a deposition. What we want from the Court and
7 what we are trying to establish is some kind of time
8 limitation.

9 THE COURT: All right, let me back up and get a
10 little bit more information. I hate to interrupt your
11 argument.

12 MR. HORN: No, that's fine, that's fine.

13 THE COURT: But you told me that Mr. Goldstein
14 represents 48 affiliated practices.

15 MR. HORN: Yes, sir, I think that's correct.

16 THE COURT: How many does Mr. Forsyth represent?

17 MR. FORSYTH: I'm local for 30, Your Honor, but there
18 are about seven or eight lawyers who will likely be taking the
19 depositions for their respective clients, different ones. But
20 I'm here today for about 30. Well, actually, let me take that
21 back, because this goes to the scope of the whole thing.

22 There are about 30 --

23 THE COURT: I think you'd better notify those people
24 that you're local counsel for, their lawyers, each of their
25 lawyers is not going to be able to take this deposition.

1 They'd better all agree on you or somebody.

2 MR. FORSYTH: Well, they have different -- there are
3 all different issues.

4 THE COURT: I know.

5 MR. FORSYTH: That's the --

6 THE COURT: We're talking about common issues right
7 now.

8 All right, go ahead and --

9 MR. FORSYTH: But, no, here's the other -- and that's
10 what I'm kind of asking. Mr. Horn I think has said there are
11 92 adversary proceedings pending here.

12 MR. HORN: Yes.

13 MR. FORSYTH: Now, I don't know, he mentioned
14 something about 20 other pieces of "assumption litigation." I
15 don't even have any idea what that means, because there are
16 about 30 pieces of litigation that were pending elsewhere.
17 Some of those may well get transferred here and they'll be in
18 this as part of this one. But there are a lot of cases out
19 there where the transfers either have been denied or may be
20 denied. And I think, at least our position, Your Honor, is
21 those are not really before this because those are not -- in
22 already ruling that the assumption is simply an exercise of
23 business judgment and we must await the outcome of the
24 litigations, those pieces of litigation are somewhere else.

25 So, I guess for right now I'm trying to get the

1 overall scope. I agree there are 92 adversaries, but I think
2 that the others are not involved in this process.

3 MR. HORN: I can answer that, it's real simple. All
4 we want from this Court, all we're asking for is relief
5 relating to those parties that are subject to the consolidation
6 order. You entered an order July 17th consolidating for
7 discovery purposes a string of litigation as defined in that
8 order. And we think all those parties in interest who are
9 subject to that order should be subject to what we
10 ultimately --

11 THE COURT: For right now let's deal with the 92 that
12 have been filed and if there's another six or eight comes in
13 100, they're in the same category.

14 MR. HORN: That's fine. That's fine.

15 THE COURT: All right, now, Mr. Gambel --

16 MR. HORN: And just so the Court understands, my
17 reference to the other is the assumption litigation where
18 people have opposed assumption. They may not be in an
19 adversary action, but they opposed assumption and that's part
20 of your consolidation order as well for discovery.

21 MR. FORSYTH: As long as it's not --

22 THE COURT: How many affiliated practices do you
23 represent, Mr. Gambel?

24 MR. GAMBEL: Sixteen.

25 THE COURT: All right.

1 MR. GAMBEL: But some of my 16 are people that are
2 not yet here that --

3 THE COURT: Okay.

4 MR. GAMBEL: -- objected to assumption but then
5 didn't get transferred.

6 THE COURT: Okay. But is it reasonable to think that
7 they will be here before the --

8 MR. GAMBEL: Well, no, you know, Brandon for instance
9 the Court remanded it back to state court.

10 THE COURT: All right.

11 MR. GAMBEL: So, I have some of those that
12 Mr. Forsyth is speaking of.

13 THE COURT: All right. Well, now is there any other
14 lawyer that represents a group of more than three or four? I
15 don't think so. Okay, good.

16 So, basically of the 92 adversaries, 84 are
17 represented in one form or the other there's local counsel by
18 three lawyers.

19 MR. FORSYTH: Right, because a third of the ones that
20 I'm here for are in litigation -- no, about 12 are in
21 litigation elsewhere, in fact in most of those Your Honor has
22 already lifted to the stay to proceed the legality. So, I have
23 maybe for example 20 that are in adversary proceedings.

24 MR. HORN: Right.

25 THE COURT: Oh, okay.

1 MR. HORN: Twenty, 16 and 48 is my count.

2 THE COURT: All right.

3 MR. GAMBEL: The 16 might be 12.

4 MR. HORN: All right.

5 THE COURT: All right, but --

6 MR. HORN: And Mr. Goldstein has got 45, because
7 three are Michaels, Calendar, and Kendrick, right? Am I
8 correct? So, he's got 45, there's 20 for Mr. Forsyth --

9 THE COURT: Okay.

10 MR. HORN: -- and maybe 12. So, 65 and 12 is 77 at
11 least who are represented by three lawyers.

12 THE COURT: Okay.

13 MR. HORN: And what we're trying to establish is this
14 -- and I don't want to speak for Mr. Burvant and I don't want
15 to speak for Mr. Goldstein, but I will anyway. In
16 conversations with them I think they have suggested that just
17 for their doctors alone and common issues, they could probably
18 get over the 30(b)(6) within a week's time, probably less than
19 a week's time and I'll let them address and say whether that's
20 wrong or right.

21 What we want to have and what we are trying to
22 establish is a scope in time that everyone comes in. If we're
23 going to present our four witnesses or so, we would like and
24 that the Debtor has presented was we will give -- we will
25 present everyone that we're presenting and we will identify

1 those witnesses that we're presenting and the areas of
2 inquiry on the specific notice that we got, which is going to
3 respond to which, and which area or which area of questioning,
4 and we wanted to present them for a week's time.

5 We got a lot of grousing back. We got a lot of
6 people who said, "That's not enough time. We can't do it.
7 There's not enough to ask all of our questions. We may have
8 different questions on the common areas then Messrs. Goldstein,
9 Forsyth, or Hootsell, or Gambel, and we want extra time."

10 So, we said, "Look, let's try to get a limitation on
11 time." We'll do one week of -- and we went back and again
12 suggested one week on a 30(b)(6) common area, common issues,
13 and then we'll give two weeks period of time the same people on
14 specific questions for individual lawyers -- or individual
15 affiliated practices. So, we suggested a three-week scope,
16 which we thought was more than enough.

17 Let me tell you why we came up with three weeks. One
18 of the reasons we suggested three weeks -- and, obviously, as I
19 said last July and August when we were fighting about when we
20 could go to trial. Obviously, if there's a few days extra here
21 or a few less days here, you know, three weeks, if three weeks
22 because three and a half weeks, it's three or four extra days,
23 obviously that's fine.

24 But what we have between now and January 15,
25 Your Honor, are about 52 business days and if we don't have --

1 THE COURT: Well, y'all are going to have to work
2 on non-business days.

3 MR. HORN: I work on Christmas. I work on Christmas;
4 some others in this courtroom may, too.

5 THE COURT: Look, I just approved your fee
6 application. According to that you're working about 18 hours a
7 day if you limit it to business days --

8 MR. HORN: No, Your Honor, I'm billing 18 hours; I'm
9 working 12. I'm only billing 18.

10 THE COURT: I gave you credit for seven days a week.
11 That's the only way I got it down to 4.03 hours a day, assuming
12 you work seven days a week.

13 MR. HORN: Yeah. Well, I've never been shy of
14 hitting the timesheet.

15 THE COURT: Well, I was exaggerating a little bit.

16 MR. HORN: Yeah, it's 17 hours.

17 THE COURT: It actually worked out about six hours a
18 day if you counted just business days, but if you counted seven
19 days a week it worked out four point something.

20 MR. HORN: You must be confusing me with Mr. Patrick.

21 THE COURT: Well, I look at these fee applications, I
22 look at them.

23 MR. HORN: All right.

24 THE COURT: I look at them and then I just shut my
25 eyes and approve the damn thing.

1 MR. HORN: I do the same thing.

2 Anyway, what we have is a limitation in time that we
3 have available to conduct all of the discovery. In addition to
4 the oral discovery, the depositions that are going to take
5 place, we've gotten already from seven parties written
6 discovery. And I understand we have to answer written
7 discovery, but we've got three of them sending us 60, 60, and
8 64 requests for production. I mean at some point in time some
9 of the stuff that we're going to respond to on one or two of
10 these is going to be duplicative and it's going to answer all
11 of the other questions. We've never gotten into the master
12 discovery. We've never gotten an agreement on a master set of
13 interrogatories or a master set of request for production.

14 What I've done in other cases, for instance in class
15 action cases I'm involved with, once a party has sent written
16 discovery that's as exhaustive as what we've already been
17 served, we'd have the party force the other parties to adopt
18 those and given them limitations on what else they can ask for.

19 Look, I'm not saying that these are the best or worse
20 lawyers in the world, but if they've asked 64 document requests
21 and somebody else has asked for 60, I've got to believe that
22 that's going to satisfy everybody else in the case and maybe we
23 can at least get a limitation on how many other discovery
24 vehicles and requests somebody can sent out.

25 The same people that are going to be presented as

1 corporate representatives for the 30(b)(6) depositions are
2 going to have to answer this discovery. So, when we were faced
3 with all of this we called timeout. We filed the motions that
4 are before the Court and because we can't all agree despite our
5 best efforts, we decided it was best to come to the Court, air
6 it all out, and see where we can go with a limitation on scope,
7 a limitation on time, set some parameters. I know every lawyer
8 thinks they've got the best question. I'm the same way. I do
9 litigation and I sit at the end of a table and at the end of
10 four or five great lawyers asking questions I think I'm the
11 smartest guy in the world and I've got to ask my two hours or
12 three hours. And at the end of the day when I read the
13 transcript, I have to admit to myself, although I'm going to
14 bill for the two or three, believe me, I have to admit to
15 myself that I probably could have gone and listened and just
16 accepted the answers the way they were. And that's what we're
17 confronted with.

18 We have a lot of good lawyers in this case. We have
19 a lot of lawyers who have a lot of experience litigating with
20 OCA around the country and we have a lot of other lawyers who
21 are involved and have one, or two, or three doctors, or just
22 one doctor. And we don't want to be faced with multiple
23 30(b)(6)s and multiple individual depositions because there's
24 just not enough time and it's really unnecessary in this case.

25 THE COURT: Let me ask you a couple of questions.

1 I'm sorry, had you almost finished?

2 MR. HORN: Yeah, I'm almost finished.

3 THE COURT: All right. Who are the four designate
4 reps in response to the Rule 30(b)(6)?

5 MR. HORN: Right. We know for a fact we're going to
6 present Tony Paternostro.

7 THE COURT: And what is his role at OCA?

8 MR. HORN: Senior VP.

9 THE COURT: Senior VP. Okay, how long has he been
10 there?

11 MR. HORN: He's been for ten years.

12 THE COURT: All right.

13 MR. HORN: We know for a fact we're going to have
14 Terry Zeringue. She's been with the company more than ten and
15 she's Controller.

16 THE COURT: All right.

17 MR. HORN: We know we will probably present Cathy
18 Green, who is the accountant, CFO.

19 THE COURT: Is she CFO?

20 MR. HORN: Yes.

21 MR. GRIES: Interim CFO and Chief Accounting Officer.

22 THE COURT: All right. How long has she been there?

23 MR. GRIES: Probably about two years -- about a year
24 and a half, about a year and a half to two years.

25 THE COURT: All right. Now, you mentioned a fourth,

1 a possibility of a fourth.

2 MR. HORN: Yeah, who's the other?

3 MR. PRATT: Possibly, Your Honor, Angela Evola.

4 THE COURT: And what is her role?

5 MR. GRIES: She's the head of Patient Accounting.

6 MR. HORN: Patient Accounting.

7 THE COURT: Patient Accounting, all right.

8 MR. GRIES: Vice President of Patient Accounting.

9 THE COURT: And how long has she been with the
10 company?

11 MR. PRATT: Ten years or so.

12 MR. GRIES: She's be ten years.

13 THE COURT: All right.

14 MR. PRATT: And maybe one other, it just depends.

15 MR. HORN: Okay.

16 THE COURT: All right, now who formulated -- did you
17 have something more --

18 MR. HORN: No.

19 THE COURT: Who formulated the 31 areas of inquiry in
20 the 30(b)(6) depositions?

21 MR. GOLDSTEIN: Richard Goldstein; I did, Your Honor.

22 THE COURT: Okay, I have a couple of questions about
23 it.

24 MR. GOLDSTEIN: Yes, sir.

25 THE COURT: I have read those. I have to admit I

1 haven't review them carefully, but my initial reading of
2 those convinces me pretty much that many of those areas of
3 inquiry can only be answered by Bart Palmisano and not any of
4 these four people. I may be wrong, but tell me if I'm wrong.

5 MR. GOLDSTEIN: Well, Your Honor, in part yes and in
6 part no; you're right in part. The issue is we've issued a
7 30(b)(6) notice. The obligation of the company or the deponent
8 at that point is to educate somebody on those issues if that
9 person is no longer with them. For example if the CEO has
10 passed away, they have to get somebody else. It may only be
11 Bart Palmisano, but what I intended to do by this was to take
12 the deposition of OCA. And if they say they don't know, then
13 that area is done and it might be that their answer is, "We
14 don't know it, go ask Mr. Bart Palmisano, Sr., or Junior."
15 Some of those may only be Junior. And if that's the case
16 that's fine by me, because then I have from a discovery and
17 trial purpose prevented OCA from offering a witness on that
18 other than Mr. Palmisano, Sr., or Junior, and that's fine.

19 With regard to the 31 areas, and I did it for my 48
20 doctors, I don't want to take 48 seven-hour depositions. I
21 want to take those depositions and move through them as quickly
22 as I can. I've taken a number of depositions in the past of
23 OCA and Orth Alliance personnel and I'm confident that if
24 they're only going to present one person at a time, I'm
25 relatively confident I can do it in five to six days as

1 Mr. Horn has suggested.

2 What we suggested to make it more efficient was to
3 double track. So, if they produce --

4 THE COURT: Double or triple track --

5 MR. GOLDSTEIN: Whatever they want to do.

6 THE COURT: -- or maybe quadruple if they're going to
7 have four.

8 MR. GOLDSTEIN: We have more than enough lawyers on
9 both sides, Your Honor, to do that. Just on my side I can use
10 Mr. Burvant's office. I have Mr. Gaudio and my partner,
11 Ms. Trench. We can come out and take these depositions, meet
12 at the end of the day to see what's occurred in the other
13 deposition to see if there's any areas that we need to go over,
14 or switch as the case if Mr. Forsyth is doing the other.

15 THE COURT: I've been studying that proposition. I
16 can't find anything on it in the case management manual and
17 some other judges who have directed massive depositions in
18 class actions I have not been able to talk to.

19 Have you used this in the past or where did you get
20 this idea? Has it worked in the past?

21 MR. GOLDSTEIN: Yes, sir.

22 THE COURT: All right.

23 MR. GOLDSTEIN: And more --

24 THE COURT: What type of suit? You don't have to
25 tell me where it was, but --

1 MR. GOLDSTEIN: Well, all I do is complex business
2 litigation. And sometimes what it works in really when you
3 have multiple deponents in multiple cities that need to be done
4 where you have a time frame to cut it off. So, I may take a
5 deposition of a witness in Austin --

6 THE COURT: But, fortunately, they're all in the city
7 here.

8 MR. GOLDSTEIN: But my point was we've done the
9 multi-track in various cities at the same time. Right here,
10 yes, Your Honor, they're right here. And what we've proposed
11 to do was to do them all at one time in that period of time and
12 that would certainly allow us to finish the OCA depositions
13 well within the time frame.

14 And if I can just segue for a second, Judge, because
15 what we're talking about right now is what I call the corporate
16 issues, that's the first notice we issued. The second issue
17 that Mr. Horn addressed was the individual ones for the
18 individual doctors. Again, I have no intention, I don't want
19 to take 47, or 48, or 45 seven-hour depositions. They are
20 individual questions on individual doctors. They've got in
21 most of the claims that they've brought it's an eight-count
22 complaint. I can go through most of them fairly quickly. Most
23 of the service issues are going to be answered by one person
24 and it's going to be uniform across the board I believe. Some
25 of the issues vis-à-vis accounting for monies that OCA claims

1 the individual doctor owes is going to take a little bit
2 longer and it's going to be a doctor specific inquiry. And
3 that's why -- originally when Mr. Horn and I met --

4 THE COURT: Can I put off that question for a little
5 while?

6 MR. GOLDSTEIN: Yes, sir. I apologize. Yes, sir.

7 THE COURT: Because it seems to me -- I probably
8 should have said this before, but my initial reaction to this,
9 it seems to me we have three discovery issues here. The first
10 is the written discovery, the interrogatories, document
11 production. The second is the common corporate depositions.

12 MR. GOLDSTEIN: Yes, sir.

13 THE COURT: And the third is not individuals in the
14 sense of 96 -- 92 individuals, but the individual -- the
15 questions that are peculiar to each doctor, at lease the ones
16 he thinks are peculiar to him.

17 MR. GOLDSTEIN: Yes, sir.

18 THE COURT: And I think I have to resolve today the
19 question of the written discovery and I think I have to resolve
20 today, if we're going to keep this on track, the common. But I
21 think I can without any damage to the timetable put off the
22 third question, because I think we'll be able to put that in a
23 better perspective after we deal with the first two. I'm not
24 talking about putting off the date, the proposed dates of that
25 individual -- I wish I could think of a better word than the

1 individual, because that connotes the 92, but I don't mean
2 individual --

3 UNIDENTIFIED SPEAKER: Doctor specific.

4 THE COURT: -- but the non-general corporate
5 questions.

6 Does any disagree violently with that and is there a
7 real need for me to decide today that third issue?

8 MR. GOLDSTEIN: The answer is I don't think so,
9 Judge, only that in order to meet the January 15th deadline,
10 it's got to be addressed sooner than later.

11 THE COURT: Well, I'm going to have to decide it
12 soon.

13 MR. GOLDSTEIN: Sooner than later.

14 Let me address the production issue, if I might.

15 THE COURT: Well, let me add one more.

16 MR. GOLDSTEIN: Yes, sir.

17 THE COURT: If you start on October 30 the
18 depositions on the common questions and if you can finish those
19 in a week to ten days, then I think we'll have another
20 conference to discuss how we handle that third issue --

21 MR. GOLDSTEIN: That's fine.

22 THE COURT: -- I'm hoping and I think that that will
23 be an easier issue after you've got the common stuff already,
24 because I think a lot of those individual lawyer -- individual
25 doctors that think, "Well, I've got to have an answer to this,"

1 they're already going to have the answer to that.

2 MR. GOLDSTEIN: They may very well.

3 THE COURT: Okay.

4 MR. GOLDSTEIN: Can I address the production?

5 Because I tend to agree in part with what I think Mr. Horn
6 wants to --

7 THE COURT: Well --

8 MR. GOLDSTEIN: He's already produced --

9 THE COURT: -- I know I keep interrupting you, but
10 let me make sure I understand this procedure that you're
11 suggesting.

12 Let's assume for our analysis right now that there
13 are going to be four witnesses and let's assume that there are
14 32 areas of inquiry --

15 MR. GOLDSTEIN: Yes, sir.

16 THE COURT: -- because the division is easier.

17 MR. GOLDSTEIN: Yes, sir.

18 THE COURT: All right, I think you're proposing that
19 one lawyer or maybe one set of lawyers would take one witness
20 on eight areas of inquiry and another lawyer or set of lawyers
21 would take another witness on another eight areas of inquiry
22 and then after that's finished they would rotate or switch
23 around so that the first set of lawyers would take the second
24 deponent on --

25 MR. GOLDSTEIN: Yes, sir.

1 THE COURT: -- I guess the second, yeah.

2 MR. GOLDSTEIN: In essence let's put some names to
3 it. Let's assume that I take Mr. Paternostro on day one on the
4 eight areas that he's assigned and Mr. Forsyth takes Ms. Terry
5 Zeringue on the eight areas she's assigned on day one. Let's
6 keep it simple, we'll just do those two. At the end of the day
7 -- I'm sorry, on day two I would take Ms. Zeringue on her eight
8 areas as they might pertain to my doctors different from his,
9 and Mr. Forsyth on his and that way we would finish it. And
10 clearly by the end of the day we would be able to confer notes
11 and maybe not have to take anymore.

12 THE COURT: And if you eliminate the questions that I
13 think can only be answered by -- certainly can only be answered
14 in any detail by Mr. Palmisano, I don't see this as a big a
15 problem as everybody is making it.

16 MR. GOLDSTEIN: And it may very well be cut short in
17 that area, Judge.

18 What I was about to say --

19 THE COURT: Now, go ahead with what you were about to
20 say.

21 MR. GOLDSTEIN: -- on the production issue, between
22 -- in the last day or so and I think concluding today, we have
23 received discs from OCA, one general disc which has some 6,500
24 or 6,800 pages on it, and then we have received individual
25 discs for all of our doctors save two, which are not relevant

1 which we don't need discs on for the moment, that's
2 Drs. Michaels and Calendar, but we received discs on all of the
3 others. And we've done a very brief look today and it appears
4 to have general ledgers, financial statements, some
5 correspondence, the BSA, and some other items.

6 What I would propose -- and we issued requests for
7 production I think for about 40 areas. What I would propose at
8 this point is we'll take a look at that. If there's something
9 specific that we don't have that we want, then we then ask for
10 that, and though I can't speak for any other lawyer, in the
11 complex litigation that makes more sense. Everybody takes a
12 look at what's been given and then asks, "I didn't get these
13 six or seven things; please give me those." And that would
14 avoid I think Mr. Horn's concern of getting inundated with 60,
15 70, 80 requests for production from every doctor. They've gone
16 and loaded this information and given it to us and now it's up
17 to us to take a look at it.

18 THE COURT: Okay, you just got that?

19 MR. GOLDSTEIN: Yes, sir. And it's already -- one of
20 our people is -- our accounting people are looking at it and
21 we're loading it in our summation packages. We'll have all of
22 that analyzed. I'm a little bit ahead of the curve because
23 I've seen some of this before. I'll be prepared to use it on
24 the 30th if we go forward on that day.

25 THE COURT: And you have an individual disc for 70

1 doctors or how ever many?

2 MR. GOLDSTEIN: Of the doctors I have, I have
3 individual discs all but for two and the two that I don't have
4 I don't need.

5 THE COURT: Okay.

6 MR. GOLDSTEIN: And if I do, I'll get them, but I
7 don't believe I'll need them. Because one is Dr. Michaels,
8 who's already basically been adjudicated with the illegality,
9 the summary judgment on the note is pending, and Dr. Calendar
10 is a California doctor. We've had preliminary production in
11 that case before the bankruptcy.

12 THE COURT: All right.

13 MR. GOLDSTEIN: We have not -- I stand corrected, I
14 don't think we sent out interrogatories --

15 MR. HORN: No, I don't think you have.

16 MR. GOLDSTEIN: I typically don't, Judge, because the
17 only thing I really want to know is who your witnesses are,
18 because lawyers have a tendency to answer the interrogatories
19 as opposed to clients and so you don't get -- I feel you don't
20 get as much information as you need. I think the key thing for
21 us though is to know in advance, and it's what we had agreed to
22 before, as to which areas those witnesses will testify to.

23 One final point, Mr. Horn, myself, Mr. Forsyth, and
24 Mr. Burvant met a number of times to try and come up with a
25 schedule and what we ultimately agreed to which led to your

1 scheduling order was that let's complete the discovery by
2 January 15th, and we as professionals will deal appropriately
3 to get all the discovery done in time and that's what we should
4 do. And that's why we had other meetings and we agreed to the
5 October 30th date to start the general depositions, and that's
6 why I sent the notice. And I sent the notice in my cases, not
7 in anybody else's. And if it needs to go to other lawyers,
8 then so be it.

9 THE COURT: Thank you.

10 MR. HORN: I just want to make a couple of comments,
11 Your Honor.

12 We have done a universal production and one of the
13 things I was going to ask for later today but I might bring it
14 up now is we would like possibly a stay on the answering of the
15 written discovery pending everyone's review of what we've done
16 in a universal production. We've given, as Mr. Goldstein has
17 suggested, we've given an individual doctor related disc of all
18 the doctor material relating to the individual practice to
19 everyone, and we've given a global common issue general ledger,
20 common OCA production to everyone. And I'd like everyone to --
21 and as Mr. Goldstein said, there's 6,500 some odd pages in the
22 common disc.

23 THE COURT: How many?

24 MR. HORN: Sixty-five hundred. I think it's a pretty
25 extensive production.

1 THE COURT: Sixty-five hundred?

2 MR. HORN: Yes. We went back and we did copies of --

3 THE COURT: I missed that.

4 MR. HORN: -- we did copies of expert reports. We
5 did copies of transcripts of depositions that we knew they
6 would want. We did general ledger sheets. We gave them a ton.
7 We gave every affiliated practice a ton of material that if
8 they would read and digest, it may solve the problem that we
9 have -- that we think we will have on other written discovery.

10 Mr. Forsyth wants to make a comment.

11 MR. FORSYTH: No, I'm in the same position for the
12 individual ones. I'm still waiting for a few, but we've gotten
13 a lot of them. There's maybe one, or two, or 3,000 pages for
14 each doctor.

15 MR. HORN: Right.

16 MR. FORSYTH: At least for the ones I've looked at.
17 So that -- I mean there have been a lot of documents produced.
18 We have not yet gone through to see if they answered everything
19 as far as documents, but they have produced a lot.

20 THE COURT: All right, October 30 is the scheduled
21 beginning date of the general corporate --

22 MR. HORN: Right.

23 THE COURT: -- deposition.

24 MR. HORN: Right.

25 THE COURT: What's the date for the individual?

1 MR. HORN: The individual, there are no dates yet
2 for that.

3 THE COURT: There are no dates for that.

4 MR. HORN: And I think your suggestion is a very good
5 suggestion on finishing the corporate and then setting a status
6 conference, coming back and airing out and reaching an
7 agreement.

8 THE COURT: What I'm looking for right now is what is
9 a realistic date for you to finish the corporate, get the
10 transcripts back, review them, and we'll have another
11 conference?

12 MR. HORN: Well, if we start October --

13 THE COURT: Is 30 days --

14 MR. GOLDSTEIN: If I could -- let me say something --

15 MR. HORN: Go ahead.

16 MR. GOLDSTEIN: Your Honor, let me answer your
17 question. I would like if we're going to do that, let's have
18 the status conference the following week. We've set it up so
19 that the deposition transcripts will come back in 48 hours.

20 THE COURT: Oh, okay.

21 MR. GOLDSTEIN: Because my concern is that we wait
22 for a normal turnaround time on transcripts, review, et cetera,
23 we're going to be at the end of November before we can start
24 the --

25 THE COURT: I agree.

1 MR. GOLDSTEIN: -- and we're going to lose the
2 January 15th date.

3 THE COURT: Well, that's wonderful. I was looking
4 for the shortest date possible.

5 MR. GOLDSTEIN: And what I'd like --
6 And I apologize.

7 MR. HORN: Go ahead --

8 MR. GOLDSTEIN: It's either -- by Friday of that week
9 we're going to be close -- I would hope that I'll be close to
10 finishing those corporate depositions, maybe sooner, so either
11 to come back at the end of that Friday, or the following
12 Tuesday or Wednesday of that following week, whichever is
13 convenient for everybody else.

14 MR. HORN: The second week of November?

15 MR. GOLDSTEIN: Yes.

16 MR. HORN: Is that what we're looking at?

17 MR. GOLDSTEIN: If we do it then --

18 THE COURT: Yeah, that's what you're talking about.

19 MR. HORN: I think the Judge is out for two weeks.

20 MR. GOLDSTEIN: Well, sorry.

21 THE COURT: It will be over in the third week. Well,
22 no, --

23 MR. HORN: The Monday of the --

24 THE COURT: -- it would be the week of the 13th.

25 MR. HORN: -- the week before Thanksgiving.

1 THE COURT: No, the week of the 13th is available.

2 MR. GOLDSTEIN: Would be for the status conference.

3 THE COURT: Yeah.

4 MR. HORN: Yeah, that would be fine.

5 MR. GOLDSTEIN: My concern, Judge, is what we had
6 originally scheduled was to -- their schedule was to start the
7 individual depositions that week, take the week of Thanksgiving off,
8 and then finish them the following week. If possible I'd like
9 to work through it if it's at all possible. I gather the Court
10 is unavailable the week of the 6th.

11 THE CLERK: Correct.

12 THE COURT: Right.

13 MR. GOLDSTEIN: Could we come in on Friday, the 3rd
14 for the status conference even if we're not -- no? Sorry.
15 Okay.

16 THE COURT: Now, look, that's going to be the week --
17 that's going to be the Friday of the week you're starting
18 right.

19 MR. HORN: Right.

20 MR. GOLDSTEIN: That's right.

21 THE COURT: Well, I think that's overly optimistic in
22 the first place.

23 MR. GOLDSTEIN: Sure.

24 THE COURT: In the second place, am I available?

25 THE CLERK: You're not here.

1 THE COURT: I'm not here. No, that's right, I'm
2 gone.

3 MR. GOLDSTEIN: Friday the 10th? Oh, that's
4 Veterans' Day.

5 THE COURT: It's going to be the week of the 13th.

6 MR. GOLDSTEIN: Okay, all right.

7 MR. HORN: I just want to comment if we're done with
8 that issue, I want to comment on this dual tracking issue,
9 because I have a little bit of experience in dual tracking as
10 well and I want to suggest to the Court that if we dual track
11 we would like to finish, we would like to complete what we have
12 done -- complete the deposition of each person that's presented
13 at that sitting. And by that I mean what we've done in the
14 past is we do have a lot of lawyers in this case, as we have
15 had in other cases where we've dual tracked. And what
16 Mr. Goldstein is suggesting is kind of a carousel approach
17 where he finishes asking questions with this witness and then
18 the next day somebody comes in -- they meet that night and they
19 compare notes. What we've done in the past when we've dual
20 tracked is we've set up three or four depositions on the same
21 start time on the same date and whoever you want to go take
22 Zeringue takes Zeringue. And they -- that group finishes
23 Zeringue while at the same time in another room another group
24 is going to finish Paternostro, and in another room --

25 THE COURT: So you're saying that they take Zeringue

1 on the whole --

2 MR. HORN: From start to finish.

3 THE COURT: -- 31 areas or --

4 MR. HORN: No, no, no, no, on the whole five or
5 six -- we're going to identify who's being presented.

6 THE COURT: Okay.

7 MR. HORN: What I suggest is a shotgun start where
8 you have Zeringue, Paternostro, Green, and whoever else, Evola,
9 or whoever else we have presented. You start them all on the
10 30th and we identify the three or four for Zeringue, the three
11 of four areas, the ten or 12 for Paternostro, and whoever is
12 going to start those depositions, whoever wants to appear they
13 divvy it up, they figure out -- that's how you dual track it.
14 What you do is you say, "Okay, you guys go take Zeringue's
15 deposition. I'm going to take Paternostro's deposition," and
16 whoever else in the team, and that's how you do a dual track.
17 You don't do a carousel, because then we're back to the same
18 problem. We're going to have everybody moving around and we're
19 going to have the same -- we're going to be back in front of
20 this Court. That's not how I dual track.

21 What I've done on dual track is, "Okay, you guys
22 decide who on your team you want that you can rely upon that's
23 going to go and depose Zeringue on these four or five issues,
24 and who's going to depose Paternostro, and let's get these all
25 started and completed whenever they're completed. Some may

1 finish earlier. Some depositions some people may be done in
2 a day because they only have certain issues. Some may be --
3 Mr. Paternostro, I assume, is going to be a couple or three
4 days. That way we're all done --

5 THE COURT: Well, the trouble with your approach
6 though is that's making them depend entirely on your
7 designation of Ms. Evola knowing these particular things and
8 Ms. Zeringue knowing these particular things, and it doesn't
9 give them an across the board survey of what they may know
10 about other areas other than the ones that you designate
11 they're going to ask questions about.

12 MR. HORN: Well, as a 30(b)(6), Your Honor, I'm
13 entitled to designate who has the most knowledge and who's the
14 person that's going to speak knowledgeably on behalf of the
15 company, who's going to speak on behalf of the company on those
16 issues.

17 THE COURT: As to the whole deposition. I'm not sure
18 you're entitled to split it up and say that this is designated
19 representative as to this set of issues, but this is the other
20 representative for this other set of issues.

21 MR. HORN: That is how we do the 30(b)(6) response.
22 We say that on Items 1, 7, 9, Mr. Paternostro is the person
23 most knowledgeable, and then -- and that's where we get into
24 the individual questions. If they want to explore similar
25 questions individually for their individual doctors they're

1 going to do that at a later date.

2 THE COURT: We're not talking about individuals.

3 MR. HORN: I know that, I know that, but on the
4 common issues for a 30(b)(6) deponent, the debtor and a
5 30(b)(6) deponent has a right to designate who on behalf of the
6 company will speak knowledgeably about the certain issues in
7 the notice. And that's the person that's going to be presented
8 that has the most knowledge that gets presented.

9 And if they were to ask that person about an item
10 that I didn't designate that person, I would instruct that
11 person not to answer. You have Mr. Paternostro who is
12 answering that question for this company. This is not the
13 person most knowledgeable. And I have the right to do that
14 under the Federal Rules.

15 MR. GOLDSTEIN: And in fact, Your Honor, I'll agree
16 for the moment with Mr. Horn; not only does he have the right,
17 he has the obligation to do it and he has the obligation to
18 have that person educated. The reason I'm going to object to
19 his suggestion of double tracking is then I become the lawyer
20 for every other case and I'm not; I'm the lawyer for my
21 clients. Mr. Forsyth is the lawyer for his and Mr. Mercer for
22 his client or clients as the case might be.

23 THE COURT: All right, how do you prevent repetition
24 in your suggestion?

25 MR. GOLDSTEIN: Well, my suggestion is that the

1 lawyers at the end of the day -- for example, if I'm taking
2 Mr. Paternostro on day one and Mr. Forsyth is taking
3 Ms. Zeringue on day one, it's our obligation at the end of the
4 day to get together and go over everything, and maybe get the
5 transcripts even earlier and read them at that point and so
6 that we don't do repetition. And it's also part of the
7 obligation of OCA, and I'm sure they will, to keep us honest.
8 And I don't want to repeat any question that we've already got
9 an answer to.

10 And so we've all been at this a long time, some of us
11 longer than others, and I don't want to take unending
12 depositions. I want to start them, get them done, and go to
13 trial so that my clients can have certainty one way or the
14 other, hopefully, starting in March. And so that's really the
15 issue there. And I think even if we do the double tracking
16 that I've suggested we'll get the --

17 THE COURT: Well, when you say "double tracking,"
18 does that really mean only two at a time or does mean --

19 MR. GOLDSTEIN: No, no, no, I just --

20 THE COURT: -- four, four in this case?

21 MR. GOLDSTEIN: That's --

22 THE COURT: Quadruple tracking, or whatever you want
23 to call it.

24 MR. GOLDSTEIN: -- quadruple tracking.

25 THE COURT: Okay.

1 MR. GOLDSTEIN: Whatever that happens to be.

2 THE COURT: But you're talking about all four of
3 them --

4 MR. GOLDSTEIN: As many as they want to.

5 THE COURT: -- proceeding, however many they
6 designate.

7 MR. GOLDSTEIN: And if they want to do all four at
8 one time, if they want to do two at one time, whatever the --
9 the more we can do, the faster we get it done, and that's the
10 whole purpose here.

11 THE COURT: Okay.

12 MR. GOLDSTEIN: And I'll commit to order the
13 transcripts, change reporters at lunchtime, and get transcripts
14 the same day.

15 THE COURT: All right, and you plan to start at what,
16 you want a seven-hour day? You want to run a seven-hour day?

17 MR. GOLDSTEIN: That's fine by me, Judge.

18 THE COURT: All right.

19 MR. GOLDSTEIN: You know, I realize that people need
20 breaks and stuff like that and I don't think it -- I don't
21 think we need to work late into the evening.

22 THE COURT: Well, the seven hours doesn't include the
23 breaks, it doesn't include lunch or anything.

24 MR. GOLDSTEIN: Right.

25 MR. HORN: Here's the problem with this approach.

1 Assume we go with Mr. Goldstein's suggestion. Then we're
2 going to have one person who is going to depose, let's say
3 Ms. Zeringue. You would have then the next day and the next
4 day you're going to subject Ms. Zeringue to another lawyer who
5 has not been present and not listened to the first day of
6 testimony and they're going to be starting from scratch and
7 they're going to duplicate.

8 THE COURT: But you're going to -- you or somebody is
9 going to -- one of you all is going to stay with Ms. Zeringue
10 all the time. One of you all is going to stay with
11 Mr. Paternosto. And so you object, that's already been
12 answered.

13 MR. HORN: That's fine if --

14 THE COURT: And if it doesn't work, you pick up the
15 phone and call me and you will refer me --

16 MR. HORN: The better way -- really the better way to
17 do it, I would suggest, Your Honor, is there are multiple
18 lawyers on all sides this case. There's no question but that
19 the affiliated practices, all these doctors, all the lawyers
20 have been concerting their efforts and they're all working
21 together in some respect. There's no question but that they
22 have common issues that are common to all of the affiliated
23 practices. There's no question but that they could work from
24 one notice and we should get one notice out, and there's no
25 question but that they could ask -- I'm not asking

1 Mr. Goldstein to ask all the questions for everyone. What
2 I'm asking is that everyone presents someone to appear at each
3 deposition on their interests. If they have an interest in
4 these seven areas that Ms. Zeringue, then they should be at
5 Ms. Zeringue's deposition start to finish, rather than
6 finishing her one day, bringing in another lawyer who hasn't
7 sat there and then we have to go through the effort. And in
8 essence we're going to duplicate effort and we're going to end
9 up arguing over what's been asked and what's been answered
10 because someone hasn't sat there.

11 THE COURT: No, but I can see why they have a
12 legitimate concern of having a lawyer not a lawyer of the
13 choice of all 92, but a lawyer of their choice of one group ask
14 questions of particular witness even though another lawyer of
15 another group has already asked that question and provided
16 there's no duplication, I think I ought to let them have that
17 right. And I can see why they want different lawyers asking
18 questions, common questions to different witnesses, whereas I
19 see the necessity for your side to have the same lawyer with
20 the same witness all the time to prevent duplication.

21 MR. HORN: And that's what we'll do. That's what
22 we'll do.

23 MR. MERCER: Your Honor, Kell Mercer on behalf of
24 Dr. Hodgkins and Hodgkins PC.

25 This is exactly the issue that concerns me the most

1 is Mr. Goldstein is an excellent lawyer and he's familiar
2 with all of this, but my biggest concern is how exactly is this
3 going to work for a lawyer who's got one doctor. It's fine; I
4 expert that I will not ask a single question that's already
5 been asked, but I just don't want to be left out of the process
6 and have someone say, "Well, the seven hours are up."

7 THE COURT: Well, to the extent that you're left out
8 on a common question and I can't believe that if four different
9 lawyers are questioning that witness that you're going to be
10 left out. I can't imagine a common question that won't be
11 reached by one of those four lawyers. But in the unlikely,
12 miniscule chance of that happening, when you take a deposition,
13 individual in the third round, then you can ask that question,
14 even though it's a common question.

15 MR. MERCER: So, Your Honor, it --

16 THE COURT: But it ain't going to happen, believe me.

17 MR. MERCER: I just -- I want to make sure I
18 understand what you're saying. Are you telling me that when
19 Mr. Goldstein finishes asking his questions of the witness on
20 Areas 1 through 8 that it's done on those common issues?

21 THE COURT: No, because the next day Mr. Forsyth is
22 going to ask some, and the next day Mr. Gambel probably, and
23 then fourth day somebody else, whoever y'all designate.

24 MR. MERCER: Me.

25 MR. HORN: But not the same question.

1 THE COURT: Well, if they all agree it's you --
2 you've got one client, if they all agree it's you, that's fine
3 with me. I don't care.

4 MR. MERCER: But what I'm asking is am I going to be
5 able to show up for each one of those or have someone else from
6 my law firm show up for each one of those and at the end of the
7 questions if we feel like there's one that hasn't been asked,
8 or 20 that haven't been asked --

9 THE COURT: Yes, you can do that.

10 MR. MERCER: Okay.

11 THE COURT: At the risk -- if it's a duplicate
12 question I want them to pick up the phone and call me and I'm
13 either not going to let you ask it or I'm going to let you ask
14 it and if it turns out to be duplicative, I'm going to tax you
15 with costs.

16 MR. MERCER: Understood.

17 THE COURT: Okay. All right, who else wishes to be
18 heard? All right.

19 MR. GAMBEL: Your Honor, Mr. Goldstein's plan is
20 ambitious and he's done this many times before; the rest of us
21 haven't. He's got 48 clients. I only have 16, maybe 12. I
22 have --

23 THE COURT: So, you should only have one-third as
24 many questions as he has.

25 MR. GAMBEL: Well, that could -- but I'm spread out

1 all over the country. I've got two from Connecticut and one
2 from Wisconsin, and one from Pennsylvania, and four from
3 California, and eight from Texas. And these are people and
4 they need to see what's been produced. The discs that I got
5 I've got to burn and send to them. Some of them have lawyers
6 who have represented them locally and who engaged me and that
7 I'm working for and I've got to communicate --

8 THE COURT: Well, you just go back and tell them that
9 each one of them is not going to ask questions on this -- in
10 this general session.

11 MR. GAMBEL: I'm not troubled by that so much, Judge.
12 What I'm troubled about is I got eight today and I think I'm
13 promised another four or five discs that will be sent to me.
14 When I opened it, it is 6,500 random pages un-indexed.

15 THE COURT: You don't have to read all that, just
16 read the part that concerns your clients.

17 MR. GAMBEL: Well, this is generic stuff, the 6,500
18 is about everything.

19 THE COURT: All of which goes to show my general
20 opinion that somewhere between 85 and 90 percent of discovery
21 is totally useless; it's not used in trial. It may not be
22 totally useless, but less than three percent of it is used in
23 trial. So, y'all are all doing a lot of work, I mean that's
24 what good lawyers do.

25 MR. GAMBEL: Well, but --

1 THE COURT: But you don't need to read all that
2 stuff.

3 MR. GAMBEL: Well, and the problem is a lot of it is
4 financial statements and the Court knows this is a financial
5 case and I need to index all of that --

6 THE COURT: All right.

7 MR. GAMBEL: -- for 16 of them and I need to get them
8 in the hands of my clients. And we're talking now about
9 starting these depositions October 31st. I'm going to have a
10 hell of a time making that. Now, I don't --

11 THE COURT: October --

12 MR. GAMBEL: -- think that's my fault.

13 THE COURT: October 30, I think.

14 MR. GAMBEL: Well, as a matter of fact I remember
15 that -- I was here when the Court said, "Gambel, I don't want
16 you starting your discovery until 15 October. We want the
17 Debtor to be able to get his clear Plan, get that done."

18 THE COURT: Okay.

19 MR. GAMBEL: We didn't think that would be as delayed
20 as it is, but this places a tremendous burden, you know, on the
21 doctor group to be able to manage this litigation. Now, I
22 don't mind this fast track and what the Court has in mind, but
23 I think we ought to get some sort of second chance, opportunity
24 to read the transcripts of the depositions taken by these --

25 THE COURT: Well, I suspect you're going to have far

1 more than a second chance, probably a third, a fourth, a
2 fifth, and a sixth. Y'all are going to depose this case to
3 death, believe me, and you're going to cover every conceivable
4 situation concerning everything and again, about 90 percent of
5 it is going to be useless. As far as the court reaching a
6 decision it's going to be useless.

7 MR. GAMBEL: We know that, but that's what we have to
8 do.

9 THE COURT: I know. You'll have to work at it,
10 Mr. Gambel. All right.

11 MR. LeBRETON: Your Honor, I'm Edward LeBreton. I
12 represent one doctor, Dr. Hook, from out in Hawaii.

13 The issue that concerned me was the length of the
14 stay on written discovery. I mean I recognize the
15 complications of the depositions.

16 THE COURT: Yeah, and I haven't dealt with that yet.

17 MR. LeBRETON: My doctor feels that there are some
18 issues that might get him out of this case and we're supposed
19 to get a disc tomorrow and, yes, we'll take some time, but I
20 don't want it to be forever before I can send the supplemental
21 specific discovery and forever before they answer it.

22 THE COURT: Well --

23 MR. LeBRETON: So, I'd like to -- I hadn't heard any
24 dates on what that might be.

25 MR. HORN: Let me comment on that, Your Honor. We --

1 THE COURT: How many sets of written discovery do
2 you have right now to you, Mr. Horn?

3 MR. HORN: Six.

4 THE COURT: Six, okay.

5 MR. HORN: Six written discovery.

6 THE COURT: All right, are those six pretty much
7 duplicates or are they all -- well, no, let me ask a different
8 question.

9 MR. HORN: Yeah.

10 THE COURT: That's the wrong question.

11 How much of these six involves common areas of
12 inquiry and how much of them involve individual to that
13 particular doctor?

14 MR. HORN: A good portion of this is common --

15 THE COURT: Okay.

16 MR. HORN: -- and is similar to what everybody wants
17 and a good portion of this that we have in the office to date
18 that we've been served with to date has been covered by the
19 universal production that we've made. So, a lot of it -- and
20 for doctor specific questions or as Mr. LeBreton wants to call
21 it, you know, individual questions, if we could get a couple
22 weeks for them to digest what we've given and then -- and what
23 I'm asking for a stay of is what's been served already, because
24 we think we've answered a good deal of it. And for instance
25 for Dr. Hook, Mr. LeBreton represents Dr. Hook. He asked for

1 eight -- he sent a request for production of eight items.
2 So, he's one of the ones who is focused in on what he really
3 wants. If he could take a look at what we've sent, those eight
4 items may get down to one or two that he doesn't think has been
5 answered and he could figure that out in a couple of weeks and
6 we could probably answer that pretty quickly.

7 For Dr. Burnheimer and Dr. Kishiyama, 60 and 60
8 respectively request for production. I would like some relief
9 from that. I would like a stay for a couple of weeks that we
10 have to respond so that the attorney representing those
11 doctors, Mr. Bradford, can digest what we've given and then
12 decide which of the 60 we haven't answered and we could narrow
13 it down and do that.

14 THE COURT: Well, what I was going to suggest and
15 maybe this is not feasible, I was going to suggest that you get
16 a stay from answering those discovery requests that go to the
17 individual case and as to the ones that go to the general areas
18 that you get a stay, but only for a short period of time until
19 they can analyze what you've already furnished and then you
20 have to answer those general ones. Your answer may be that's
21 in what I already furnished you.

22 MR. HORN: That's fine. That would be acceptable to
23 us. That would be acceptable. I think that would work.

24 MR. FORSYTH: What about, and I don't know how many
25 people have done it, but some of those us, Your Honor, have not

1 done things yet because you did tell us don't do anything, or
2 put on interrogatories or requests for admissions. I don't
3 know, there may have been some of those out there. There may
4 be people that would want to have some of those answered prior
5 to a deposition and I'm not sure how that fits into this. I'm
6 not even proposing how it should, but I think it's a factor
7 that needs to enter into it.

8 THE COURT: Well, I think the general fits into it
9 pretty soon.

10 MR. FORSYTH: Yeah.

11 THE COURT: That's really all I'm trying to resolve
12 today is the written requests and the depositions of matters of
13 general interest.

14 MR. HORN: We've been served with --

15 THE COURT: As far as the other individual
16 interrogatories, I think that they're going to need those
17 before we do that next round of depositions, but that's a
18 problem I'm going to deal with --

19 MR. FORSYTH: Agreed.

20 THE COURT: -- in a couple of weeks --

21 MR. HORN: We agree.

22 THE COURT: -- I hope. I'm going to try to deal
23 with. All right.

24 MR. GAMBEL: Your Honor, if I may, the idea of just
25 staying -- stay any new ones. The only have six, answer the

1 six. Those may be -- those answers to the six may be good
2 enough for the rest of us and give them deferral on any new
3 interrogatories.

4 THE COURT: Well, I'm going to give them a deferral
5 on any new interrogatories. I'm going to give them a deferral
6 for now on any interrogatories or document request production
7 that go to the individual claims of the doctors. I'm going to
8 give them -- I'm going to give them two weeks to answer the
9 interrogatories or requests for document production that
10 concern the overall areas. I'm going to request that you --
11 you can make one set of answers to all six of those if you can
12 incorporate it --

13 MR. HORN: We'll try.

14 THE COURT: -- you can put them all six, because a
15 lot of them are going to be --

16 MR. HORN: We'll try. We also have requests for
17 admission --

18 THE COURT: -- and serve them on --

19 MR. HORN: Right.

20 THE COURT: Now, you've still got to repeat the
21 interrogatory and the answer.

22 MR. HORN: We're going to do that.

23 THE COURT: Why don't you serve them on everybody?

24 MR. HORN: That's what we're going to do. We're
25 going to do it on everybody.

1 THE COURT: Serve them on everybody, all 92.

2 MR. HORN: That's what we'll do. We also have
3 requests for admissions.

4 THE COURT: And then if somebody comes in with
5 another interrogatory that is very close --

6 MR. HORN: We can say, "See" --

7 THE COURT: -- to one that you've already answered,
8 I'm going to strike it on your motion.

9 MR. HORN: I agree. We understand. On the
10 admissions we can do the same, the same applies on the
11 admissions?

12 THE COURT: Yes.

13 MR. HORN: We'll get two weeks that we won't respond
14 and then we'll try to -- we'll answer the general.

15 THE COURT: Now, let me hear from you on that though.
16 Is that --

17 MR. GOLDSTEIN: That's fine, Judge. All I was going
18 to suggest was, and Mr. Burvant whispered in my ear, one of the
19 things we had tried to get before was a service list of who
20 they want us and who they are going to serve it all on, so
21 we're all on the same page.

22 THE COURT: Yeah.

23 MR. GOLDSTEIN: Because I only served the notice, as
24 I indicated before, for my case. I didn't include anybody
25 else. If we have a service list --

1 THE COURT: They must have a master service list,
2 just like the master list we have --

3 MR. FORSYTH: The other piece of this and it goes
4 with this, Your Honor, is that they were going to come up with
5 some sort of a -- we need a caption on one of the adversaries,
6 some sort of jointly administered caption so that anything gets
7 filed in one place. And that also limits the service, so the
8 service is not the whole world, but just parties to the
9 adversary.

10 THE COURT: Thank you. I meant to cover that. I
11 appreciate that.

12 What's the first filed adversary?

13 MR. GOLDSTEIN: I think it's Dr. Hector Bush. It's
14 their adversary against my client, Dr. Bush.

15 THE COURT: Why don't we use that for everything?

16 MR. HORN: That's fine.

17 MR. GOLDSTEIN: Do you have a preference for
18 something else?

19 MR. HORN: That's fine. Dr. Bush will appreciate
20 that.

21 THE COURT: At least you got the one that represents
22 48 -- 47 other clients.

23 MR. GOLDSTEIN: Right.

24 THE COURT: All right. That's Number 06-1113.

25 MR. FORSYTH: And just so I understand on the

1 discovery, if anyone wants to propound, let's say a few on
2 general issues, a few additional, a few interrogatories or
3 requests for admissions, we're not stayed from doing that right
4 now?

5 MR. HORN: I thought he said you were stayed on
6 general matters right now until we answer what's already been
7 propounded and then after we see what we've got --

8 MR. FORSYTH: Well, the only thing is we've seen what
9 they've been asking -- I'm not saying that we haven't, but
10 there may be a few general questions. And, again, the reason
11 we haven't done that yet is because you admonished us not to do
12 anything. And I certainly understand deferring all the
13 individual stuff now, but I'm just trying to --

14 THE COURT: Well, I'm deferring all the individual
15 stuff, that's easy -- well, it's not easy, it's putting it off
16 until the next conference. But is it fair to the people who
17 are going to take the depositions for you to delay answering
18 those interrogatories that go to the general area?

19 MR. HORN: If they sent them out today, if they
20 hadn't sent them already, if they sent them out today they're
21 not going to get the responses before October 30 anyway. So,
22 unless they shorten the time --

23 THE COURT: Well, I'm staying all new, I'm staying
24 all new.

25 MR. HORN: Right. Right. So, I'm sorry. I'm not

1 following --

2 THE COURT: What about the ones you already have?
3 You have six.

4 MR. HORN: We can answer the general --

5 THE COURT: The general nature.

6 MR. HORN: -- the general nature we'll answer before
7 the October 30 start date, is that what you're saying?

8 THE COURT: October 30 depositions start. All right,
9 and you will send those --

10 MR. HORN: Yeah, we'll do that.

11 THE COURT: -- to everybody.

12 MR. HORN: We can do that. We can do that. We can
13 answer all the general stuff in the ones we have before the
14 October 30 date.

15 THE COURT: And the form we require here, I don't
16 know whether they do it everywhere, I think it's required by
17 the Federal Rules, you have to repeat the question and the
18 answer right in the same document.

19 MR. HORN: Yes, sir.

20 THE COURT: So all these people that are going to get
21 this --

22 MR. HORN: That's fine.

23 THE COURT: -- it will make some sense to them.

24 MR. GOLDSTEIN: And I think that's excellent.

25 MR. FORSYTH: So, we can't send out any new general

1 questions?

2 THE COURT: No.

3 MR. SMITH: How far in advance of the October 30th
4 date is it going to come?

5 THE COURT: Well, let me get an answer.

6 Really, for that to be useful to them they need it --

7 MR. HORN: Is October 30 a Monday?

8 MR. SMITH: Yes.

9 THE COURT: Yeah, they need it in advance.

10 MR. HORN: Friday? I mean today is the 18th.

11 UNIDENTIFIED SPEAKER: You really like us to work on
12 weekends.

13 MR. HORN: Well, some of this isn't even due.

14 THE COURT: I think you've got to get it to them
15 before that. Well, if I say Wednesday, that gives you a week
16 to do it. Is that enough?

17 MR. HORN: Yeah. If we have a problem, you know, but
18 we'll shoot for Wednesday.

19 THE COURT: You've got all these people billing for
20 ten-hour days.

21 MR. HORN: I'll just add another -- I'll just bill 19
22 hours the next week.

23 MR. GOLDSTEIN: And in conjunction with that, Judge,
24 the next most important thing is as soon as possible if they
25 can tell us which witness is going to be responsive to which

1 areas. The 30(b)(6) notice is out there.

2 THE COURT: Okay, yes.

3 MR. GOLDSTEIN: That would be the most important --

4 THE COURT: I'm going to require them to do that, but
5 then I think you need to designate what attorney or set of
6 attorneys are going to take each one.

7 MR. GOLDSTEIN: Well, that's fine, Judge.

8 THE COURT: Okay.

9 MR. GOLDSTEIN: Once we get their notice, we can do
10 that.

11 THE COURT: I don't want you to show up at the
12 deposition and there's a disagreement between you all whether
13 you are going to do it, or Mr. Gambel is going to do it, or who
14 is going to do it. And after all you're going to get another
15 shot at it --

16 MR. GOLDSTEIN: Judge, I'm not arguing with you.

17 THE COURT: -- at the same witness. Yeah, okay.

18 MR. GOLDSTEIN: I think the sooner we know that, the
19 sooner that we can all meet and do that.

20 THE COURT: All right.

21 MR. GOLDSTEIN: We can do that.

22 MR. HORN: Are we using Mr. Goldstein's notice for
23 the totality of the corporate depositions? I want to make sure
24 that we're all on the same page.

25 THE COURT: Those 31?

1 MR. HORN: Yeah, I mean I think if anybody has any
2 other areas of inquiry, we should put a burden on them and --

3 MR. GAMBEL: Can we get a window to supplement that?

4 MR. HORN: You know, I think we should make a short
5 fuse on that.

6 THE COURT: Well --

7 MR. GAMBEL: Some of us hadn't even seen
8 Mr. Goldstein's 31.

9 THE COURT: Well, the trouble with giving you a
10 window to do that, then that's going to delay the time he can
11 designate which witness can answer --

12 MR. HORN: That's right.

13 THE COURT: -- if you're going to come in with a
14 whole new area of --

15 MR. GAMBEL: Well, I mean it can be by Friday of this
16 week.

17 MR. HORN: That's fine with us.

18 THE COURT: All right, by Friday you've got to
19 supplement that and then by Tuesday you've got to designate
20 which witness, which deponent will be --

21 MR. HORN: For which areas.

22 THE COURT: -- and then by Friday you designate which
23 attorneys are going to do the depositions --

24 MR. GOLDSTEIN: Yes, sir.

25 THE COURT: -- of each designated representative.

1 MR. GOLDSTEIN: Yes, sir. Okay.

2 MR. HORN: And by the 25th we're going to produce our
3 documents, our answers to the written discovery on general
4 issues.

5 THE COURT: Right. Now, all future discovery is
6 stayed until further order of the Court --

7 MR. FORSYTH: We've been --

8 THE COURT: -- and all portions of the discovery that
9 pertain only to specified doctor's problems or individual
10 problems is stayed until further order of the Court. Now, I
11 realize I'll have to deal with those in advance of the next
12 round of depositions.

13 MR. GOLDSTEIN: Can we schedule a conference for the
14 week of the 13th?

15 THE COURT: Yeah.

16 MR. GOLDSTEIN: If we could do it on any day other
17 than Monday the 13th --

18 THE COURT: Okay.

19 MR. GOLDSTEIN: -- I would appreciate it.

20 THE COURT: See, the 15th is out because that's a
21 motion day and I haven't had a motion for two Wednesdays
22 before, so there's not going to be any time at all.

23 MR. GOLDSTEIN: Any other day that week other than
24 Monday, Your Honor.

25 MR. HORN: What day are we looking at?

1 MR. GOLDSTEIN: Any day other than Monday and
2 Wednesday, the week of the 13th.

3 MR. HORN: I'm available.

4 THE COURT: Now, this conference is going to be to
5 try to agree on something for the next round of depositions.

6 MR. GOLDSTEIN: Yes, sir.

7 MR. HORN: And written discovery probably.

8 THE COURT: All right, I'm looking at the 16th now.
9 Does anybody have any problems with that? Monday and Tuesday
10 is a trial that I think I'm pretty sure is going to go.
11 Wednesday is a bad motion day, a heavy motion day.

12 MR. GOLDSTEIN: Thursday the 16th is fine by me,
13 Your Honor.

14 THE COURT: Wait a minute, I've got stuff on the
15 16th, but I'm going to try to squeeze this in. And I'm going
16 to suggest something to you that may shorten that. I'm just
17 trying to find out how long this little case that's scheduled
18 at 10:00 is going to take.

19 MR. GOLDSTEIN: Yes, sir.

20 THE COURT: All right, while we're looking for a date
21 let me suggest that rather than our doing all this in open
22 court, let me suggest that you submit another scheduling order,
23 management order, whatever you want to call it, that will set
24 out what you suggest for this second round of discovery and get
25 that to them at least a couple of days before the hearing, and

1 then y'all can file your objections to it or just come in and
2 voice your -- but at least we'll have something to start
3 working from.

4 MR. GOLDSTEIN: Yes, sir.

5 THE COURT: Something written, okay.

6 MR. GOLDSTEIN: Okay.

7 MR. GAMBEL: Can we make sure we have a clear
8 understanding of the dates we've agreed to today though?

9 (Pause)

10 THE COURT: All right, let's make it at 2:00 on the
11 16th, and I'll have to continue some status conferences. All
12 right.

13 MR. FORSYTH: And circling back, this only applies to
14 the 92 adversary proceedings before this Court and it does not
15 involve any of the --

16 MR. HORN: No, no --

17 MR. FORSYTH: Well, no, I mean, Your Honor, there are
18 20 or 30 lawsuits that are in other courts. They have not been
19 transferred here, and there's not even a caption or anything
20 here. Those cases are still pending somewhere else and they
21 may not ever be here. And so I think that -- excuse me -- so,
22 I mean some of those are stipulating parties in the sense that
23 nothing was going to be happening with them. But I think
24 Your Honor has already ruled that basically all that the
25 assumption does is say that there was an exercise of the

1 business judgment and all the rest of this awaits the outcome
2 of that litigation. All I'm saying is that unless and until
3 anything were transferred here, then there is not litigation on
4 those that come here, so that people that are pending in
5 Colorado or wherever who are in the process of moving for
6 summary judgment or whatever they're going to do, those don't
7 have to jump into this whole line of everything here.

8 THE COURT: Specifically you're talking about those
9 suits in which the illegality --

10 MR. FORSYTH: Well, there are other issues there too,
11 but the point is that --

12 THE COURT: Well, I thought the only ones that I
13 lifted the stay to allow there to continue to adjudicate was
14 those where the illegality vel non of the BSAs --

15 MR. FORSYTH: Right, but my point is that even -- the
16 stay is a different issue. The point is that whatever happens
17 with them later we'll have to address that later, but for now
18 those are not involved in this because they're not before
19 Your Honor except for the -- you know, you've already done what
20 you're going to do on those in the sense you said that those
21 can be assumed conditioned upon the outcome of the litigation.

22 THE COURT: They're not named as defendants in any
23 adversary right now.

24 MR. FORSYTH: No.

25 THE COURT: Okay. And no case concerning them has

1 been removed. All right, now let me see, why does that --

2 MR. HORN: Well, I'm not suggesting anything
3 different than abiding by your order dated July 17 that says,
4 "It is hereby ordered the case management and scheduling order
5 shall be and is hereby entered to consolidate for purposes of
6 discovery, pretrial motion practice, and trial the litigation
7 related to the BSAs including the adversaries by and against
8 the affiliated practices removed and/or transferred pre-
9 petition cases and lawsuits, the proofs of claim filed by the
10 affiliated practices, and the objections to said proofs of
11 claims, and the objections to assumptions and/or rejection of
12 the BSA."

13 MR. FORSYTH: It says "removed and/or transferred."
14 These have not been transferred.

15 MR. HORN: If they have not been removed or
16 transferred, then they're not subject to this --

17 MR. FORSYTH: Okay.

18 MR. HORN: -- but if they are and they don't appear,
19 it's at their own peril. And if they come back to do other
20 discovery and we will rely -- the Debtor is going to rely on
21 this order and the literal meaning of what these words I just
22 read said. So, if Mr. Forsyth --

23 THE COURT: You know the literal meaning means
24 different things to different people; that's the problem.

25 MR. HORN: Well, I think it's pretty clear and if

1 Mr. Forsyth believes that he's got a case that hasn't yet
2 been removed or transferred that's a pre-petition case and he's
3 not governed by this order, then that's fine. But if those
4 cases are removed or transferred --

5 MR. FORSYTH: Well, removal doesn't do it, it's got
6 to be transferred -- it could be removed to the Federal Court
7 in Texas, but not transferred. So, it wouldn't be before this
8 Court.

9 MR. HORN: We believe that these orders apply to
10 whoever is governed by your prior order. And I think everybody
11 should know whether they're governed by the prior order.
12 That's all we're saying. And if at a later date someone comes
13 back and says, "Well, at the time you took these depositions I
14 didn't think I was governed by it," or "I wasn't in the case,"
15 then we'll have to decide whether or not they were.

16 MR. FORSYTH: The only issue that I would see,
17 Your Honor, is that let's say there are 20 out there that are
18 not removed here and they're clearly not involved. And let's
19 just say that in 30 days a judge in somewhere rules on the
20 illegality or whatever and if there's anything left, and then
21 it's transferred here. It may not get here for 60 days or
22 something like that and then we'd have to address what would
23 have to happen. But that's the only -- it's out there,
24 Your Honor. I'm hoping that will never become an issue. But
25 meanwhile I just wanted to make it clear that those who have

1 not transferred here are not involved in this whole discovery
2 process right now and I think that you've answered it.

3 THE COURT: All right. All right, gentlemen, 2:00 on
4 the 16th, November 16th, and you're going to be limited to two
5 hours because I have a confirmation at 4:00 that has to go.
6 So, that's one reason why I want you to submit something in
7 writing ahead of time that you may be able to agree on.

8 MR. GOLDSTEIN: We will, Your Honor.

9 THE COURT: All right. All right, Court is
10 adjourned.

11 * * * * *

12 (Hearing is Concluded)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceeding in the
above-entitled matter.

\S\Dorothy M. Bourgeois
DOROTHY M. BOURGEOIS

10/27/06
Date