

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

**IN RE:**

**CASE NO. 06-10179**

**OCA, INC, et al.**

**CHAPTER 11 (B)**

**DEBTORS**

**(Jointly Administered)**

**DEBTORS' PROPOSED TIMELINE**  
**FOR DOCTOR SPECIFIC DISCOVERY**

**NOW INTO COURT**, through undersigned counsel, come OCA, Inc. ("OCA") and certain of its subsidiaries<sup>1</sup>, as debtors and debtors-in-possession (collectively, the "Debtors"), who submit the following Proposed Timeline for

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<sup>1</sup> Orthodontic Centers of Alabama, Inc. (06-10180); Orthodontic Centers of Arizona, Inc. (06-10181); Orthodontic Centers of Arkansas, Inc. (06-10182); Orthodontic Centers of California, Inc. (06-10183); Orthodontic Centers of Colorado, Inc. (06-10184); Orthodontic Centers of Connecticut, Inc. (06-10185); Orthodontic Centers of Florida, Inc. (06-10186); Orthodontic Centers of Georgia, Inc. (06-10187); Orthodontic Centers of Illinois, Inc. (06-10188); Orthodontic Centers of Indiana, Inc. (06-10189); Orthodontic Centers of Kansas, Inc. (06-10190); Orthodontic Centers of Kentucky, Inc. (06-10191); Orthodontic Centers of Louisiana, Inc. (06-10192); Orthodontic Centers of Maine, Inc. (06-10193); Orthodontic Centers of Maryland, Inc. (06-10194); Orthodontic Centers of Massachusetts, Inc. (06-10195); Orthodontic Centers of Michigan, Inc. (06-10196); Orthodontic Centers of Minnesota, Inc. (06-10197); Orthodontic Centers of Mississippi, Inc. (06-10198); Orthodontic Centers of Missouri, Inc. (06-10199); Orthodontic Centers of Nebraska, Inc. (06-10200); Orthodontic Centers of Nevada, Inc. (06-10201); Orthodontic Centers of New Hampshire, Inc. (06-10202); Orthodontic Centers of New Jersey, Inc. (06-10203); Orthodontic Centers of New Mexico, Inc. (06-10204); Orthodontic Centers of New York (06-10205); Orthodontic Centers of North Carolina, Inc. (06-10206); Orthodontic Centers of North Dakota, Inc. (06-10207); Orthodontic Centers of Ohio, Inc. (06-10208); Orthodontic Centers of Oklahoma, Inc. (06-10209); Orthodontic Centers of Oregon, Inc. (06-10210); Orthodontic Centers of Pennsylvania, Inc. (06-10211); Orthodontic Centers of Puerto Rico, Inc. (06-10212); Orthodontic Centers of Rhode Island, Inc. (06-10213); Orthodontic Centers of South Carolina, Inc. (06-10214); Orthodontic Centers of Tennessee, Inc. (06-10215); Orthodontic Centers of Texas, Inc. (06-10216); Orthodontic Centers of Utah, Inc. (06-10217); Orthodontic Centers of Virginia, Inc. (06-10218); Orthodontic Centers of Washington, Inc. (06-10219); Orthodontic Centers of Washington, D.C., Inc. (06-10220); Orthodontic of West Virginia, Inc. (06-10221); Orthodontic Centers of Wisconsin, Inc. (06-10222); Orthodontic Centers of Wyoming, Inc. (06-10223); OrthAlliance, Inc. (06-10229); OrthAlliance New Image, Inc. (06-10230); OCA Outsource, Inc. (06-10231); PedoAlliance, Inc. (06-10232); Orthodontics Centers of Hawaii, Inc. (06-10503); Orthodontics Centers of Iowa, Inc. (06-10504); and Orthodontics Centers of Idaho, Inc. (06-10505).

Doctor Specific Discovery in connection with the BSA Litigation<sup>2</sup>, as per the Court's instruction:

### **BACKGROUND**

It is anticipated attorneys representing more than one doctor in the BSA Litigation will provide notices of deposition in the form of 30(b)(6) notices, identifying the areas of inquiry for the individual doctors upon whom they want to take testimony. Other attorneys representing individual doctors may also notice depositions of individual key employees or former employees of OCA that they want to depose.

Debtors propose a multiple (quadruple) track whereby OCA will present individuals who will be designated as the person to respond to the areas of inquiry, and all individual doctors will depose that person, in order. It has been suggested, and debtors generally agree, that those attorneys representing more than one doctor should begin the questioning. Discussion was had concerning the timing of the depositions and the possibility that those representing individual doctors, or smaller groups of doctors, may instead, begin the individual

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<sup>2</sup> The BSA litigation is the litigation consolidated for discovery purposes pursuant to the *Order Granting Motion for Case Management and Scheduling Order in Connection With Assumption of Business Service Agreements Under Joint Chapter 11 Plan of Reorganization of OCA, Inc. and File Subsidiaries* dated July 17, 2006 [**P-1091**], the *Scheduling Order Pursuant to Case Management Order*, dated August 1, 2006 [**P-1295**], the *Stipulations and Order by and between the Debtors and Other Stipulating Parties* dated August 3, 2006 [**P-1316**], as well as the *Order and Reasons* by Judge Vance denying the Motions to Withdraw the Reference to the Bankruptcy Court dated September 19, 2006, wherein she agreed, that the consolidation of all the BSA litigation, for discovery purposes, on core issues, should be better handled by this Honorable Court.

depositions. The debtors are open to whatever the doctors' counsel may agree upon.

For example, Richard Goldstein, who represents approximately 48 doctors, may send 30(b)(6) notices for each doctor identifying the areas of inquiry they want to take testimony upon. We would then designate the employees or representatives of OCA who would respond to the particular areas, *e.g.* Tony Paternostro, Terri Zeringue, Cathy Green, etc., and those depositions would be taken concurrently.

Mr. Goldstein has proposed that he would take the deposition of Tony Paternostro, for instance, and his partner, Keith Gaudio, may take the deposition, at the same time, of Terri Zeringue, on the specific areas of inquiry that we have identified each to be the respondent for. At the same time as those depositions are taken, the other attorneys, representing smaller groups or possibly individual doctors would be participating in and attending the depositions of the other individuals who they want to take testimony from on their issues.

Mr. Goldstein has estimated that he could probably complete all of his deposition testimony for the individual, doctor specific questions in five (5) to ten (10) days. Assuming these estimates are correct, it is estimated that the individual depositions for all parties in the BSA Litigation could be completed in approximately three (3) weeks.

The debtors would propose utilizing as many days available per week for these depositions, keeping in mind both the attorneys and the witnesses will

need breaks in the testimony to prepare for the issues relating to the individual doctors' cases upon whom there will be questioning.

It is interesting to note, notwithstanding the doctors' strenuous argument in favor of multiple tracking to complete the common issue corporate depositions, it appears they were "crying wolf." In point in fact, when the Debtors advised they were prepared to present their four (4) corporate representatives for multiple tracking depositions beginning October 30, 2006 at 9:00 a.m., the doctors advised that they had reconsidered their demand for multiple tracking, and now believed it would be best to conduct those depositions instead in order, which is exactly what the Debtors had originally proposed. Thus, notwithstanding the Court's Order that the corporate deposition of Debtors on common issues go forward on a multiple track, Debtors, in the spirit of cooperation with the doctors, presented each corporate representative one at a time, and those depositions were completed **in less than four (4) days!**

#### **DEBTORS' PROPOSED TIMELINE**

The following is Debtors' proposed schedule for this doctor specific discovery<sup>3</sup>:

**November 15, 2006** Notices of deposition on doctor specific issues  
to be served.

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<sup>3</sup> The parties conferred several times over the last weeks in an effort to reach agreement on the schedule for the remaining discovery in this litigation. It appears none of the other parties have provided the Court with a suggested timeline or schedule to complete this discovery. Obviously, some of these proposed dates, which have already passed, will need to be adjusted as they were presented over a week ago with the expectation that agreement could be reached. Nonetheless, it appears all parties agree all discovery can be completed by January 15, 2007.

**November 15, 2006** Notices of deposition by OCA, including 30(b)(6) and individuals, to be served. (Debtors reserve the right to further notice depositions of those persons identified by the doctors as individuals they want to perpetuate testimony from.)

**November 17, 2006** Doctor specific written discovery by all parties to be served.

**December 4, 2006** Responses to doctor specific written discovery due.

**November 20 - December 15, 2006** Depositions of OCA representatives responsive to doctors' notices beginning in New Orleans.

**November 30, 2006** doctors identify those staff members and other fact witnesses who they want to perpetuate testimony from.

**December 6, 2006** Debtors identify those staff members or other fact witnesses identified by doctors for perpetuation testimony that they want to take discovery depositions from.

**December 15, 2006** individual doctor depositions of OCA fact witnesses to be completed.

**December 18, 2006** depositions of doctors and doctor staff members and 30(b)(6) depositions of Doctors' Associations by OCA begin.

**January 15, 2007** fact discovery ends.

It is believed that many of the doctors will have to present themselves for deposition testimony in New Orleans. It is understood that there are a number of staff members, representatives of doctors' professional associations, and vendors around the country who the doctors and the debtors may want to depose. In the event perpetuation depositions are agreed upon, or ordered by the Court, the debtors would reserve and factor into the schedule the discovery depositions of any witnesses who any doctors intend to perpetuate testimony from. Of course, the same would go for the doctors' counsel, who would have the right to depose first any perpetuation witnesses of the debtors. We would anticipate that many of these depositions could be taken by phone, thereby saving the cost and expense of travel.

The debtors and the doctors would agree to the above expedited discovery schedule on written discovery, with the understanding that the written discovery would be answered, and the responsive documentary materials would be provided on the individual doctors before the deposition testimony is taken. That means it will be incumbent upon the doctor's respective counsel to coordinate, amongst themselves, the scheduling of the deposition, in consultation with the debtors, so that the written discovery will be responded to prior to the depositions being taken. If, as suggested, Mr. Goldstein would go first, then it would be his written discovery that would be responded to first. It is surprising to see that Group I Doctors, represented by Mr. Goldstein, now want to push off the start date of the depositions to November 27, 2006. It is disingenuous to suggest Group I Doctors were ready to proceed on November 6, the Monday after the

completion of the common issue corporate depositions of Debtors, but they are now not ready to begin on November 20, 2006, if it is for any reason other than personal calendar conflicts. Nonetheless, the Debtors would be willing to begin the depositions on November 27, with a commensurate and corresponding adjustment on the other deadlines proposed in the above timeline.

If the doctors utilize 30(b)(6) notices for their individual doctors, the debtors will designate who would be responsive for what areas of questioning. It would be requested of the Court that it build in a status conference, possibly on a weekly basis, for purposes of handling discovery disputes and other matters. It is also understood that a few of the above dates on the schedule will need to be expanded, and we leave for discussion the final schedule, based on the order of questioning by the individual doctors, which is to be agreed upon by their counsel.

After the completion of the discovery on January 15, 2007, the Debtors believe it would then be appropriate at the next scheduled status conference for the Court and the parties to discuss the cases and matters to be tried commencing March 1, 2007.

Respectfully submitted,

**HELLER, DRAPER, HAYDEN,  
PATRICK & HORN, L.L.C.**

/s/ Warren Horn

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## **CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the above and foregoing Debtors' Proposed Timetable for Scheduling Order upon all parties on the attached list, via United States Mail, postage prepaid this 15<sup>th</sup> day of November, 2006.

/s/ Warren Horn

**WARREN HORN**