

Court's consideration at the Status Conference scheduled for November 16, 2006, and state as follows:

1. Under the schedule agreed to by the parties to the various adversary proceedings, and as ordered by this Court in its August 1, 2006 Scheduling Order [Docket #865], general discovery in all adversary proceedings is to be completed on or before January 15, 2007. Accordingly, the remaining discovery must be completed in less than 60 days (including the Thanksgiving, Christmas, Hanukkah, and New Year's holidays).

2. To date, OCA has provided initial disclosures to all Stipulating Doctors in response to requests for production served by five of the Group I Doctors and a number of the other Stipulating Doctors.

3. OCA's initial disclosures for each doctor consists of hundreds to several thousands of pages of documents; primarily general ledgers and quarterly statements, along with contracts, correspondence, and other documentation maintained in the "doctor's file" at OCA.

4. It is not surprising that the initial documentation provided by OCA is voluminous, as OCA created and maintained virtually all of the orthodontists' business records, as well as OCA's corporate records.

5. Although voluminous, OCA's initial disclosures were not complete and all or parts of entire categories requested remain unresponded to as of this filing. In this regard, the Group I Doctors have informally notified OCA of the deficiencies in the initial disclosures and have specifically identified items and categories of items which need to be provided. A copy of undersigned counsel's November 7, 2006 letter to OCA's attorneys is attached hereto as Exhibit

“A”. At this point, OCA has not responded to this letter nor produced any of the requested documents.

6. It is likely that OCA will be producing hundreds, if not thousands, of pages of documents in the immediate future in response to the pending requests for production and supplemental doctor specific requests to be served.

7. The parties and the Court must determine a fair, judicious, and efficient procedure for completing discovery in the 90 or so adversary proceedings, including Rule 30(b)(6) depositions for each orthodontist’s practice – specific to that orthodontist and OCA’s performance under that particular BSA – as well as likely depositions of the affiliated orthodontists by OCA, various members of the orthodontists’ office staff, and third-party witnesses.

8. OCA’s depositions of the orthodontists and the depositions of their respective office staff raise additional issues and further complicate the sequencing and ability to complete discovery.

9. The Group I Doctors advised counsel for OCA that they intend to take perpetuation depositions of office staff members across the country. Such depositions do not require the agreement of the parties, and the Group I Doctors have a right to take these depositions and preserve the testimony of office staff members (all of whom are former OCA employees) where the witnesses live far from the forum where the trial will be conducted. OCA counsel has suggested that OCA be permitted to conduct discovery depositions immediately prior to the perpetuation depositions, and the Group I Doctors do not have any objection to proceeding with these depositions in that manner.

10. OCA seeks to conduct depositions of non-resident orthodontists in New Orleans. Whether the individual doctors must travel to New Orleans for their depositions is an issue for the Court to decide and is not a matter of right. The Court has discretion to determine the fairest, most efficient, and judicious way to proceed with discovery. Although OCA may be able to compel the orthodontists to appear in New Orleans for their depositions, OCA cannot compel the office staff to travel to New Orleans, nor would such an undertaking be judicious or fair to the affiliated practices and their employees. For purposes of judicial economy, it would be more efficient to depose the orthodontists along with and at the same time as the office staff at the practice locations.

11. OCA has suggested that the orthodontists and staff perpetuation depositions not commence until after the Rule 30(b)(6) doctor-specific depositions. The Group I Doctors do not object to this order but note that it may make it impossible to complete discovery by January 15, 2007. More likely, additional attorneys will have to be dispatched by both parties to perform these depositions, while the Rule 30(b)(6) practice-specific depositions are occurring in New Orleans, if the parties intend to complete all discovery by January 15, 2007.

12. On Tuesday, November 14, 2006, at approximately 2:15 p.m., EST, the Group I Doctors received a "Suggested Timeline for Doctor Specific Discovery" from OCA. The OCA suggested timeline is unworkable and unfair to the Group I Doctors and other affiliated orthodontists.

13. For example, OCA demands that the Group I Doctors serve doctor-specific notices of deposition no later than tomorrow, November 15, 2006 and all written discovery by Friday, November 17, 2006. OCA's demand that the Group I Doctors file discovery in forty-

three (43) separate cases in 1-3 days belies common sense and all notions of fair play. This is especially true given the fact that the Group I Doctors previously served specific Requests for Production and specific Notices of Deposition for five doctors in August 2006. To date, OCA has failed to fully respond to the written discovery, and failed to respond to the Group I Doctors' informal letter itemizing specific documents and categories of documents not responded to.

14. In addition, although OCA has had Notices of Deposition from five of the Group I Doctors for approximately 2 ½ months, OCA has yet to advise who it will designate to testify on which areas.

15. After the conclusion of the Rule 30(b)(6) depositions on issues general to all Stipulating Doctors, the Group I Doctors again requested that OCA designate who will be testifying so that the Group I Doctors could work with OCA and formulate an efficient discovery process. However, as of the date of this filing, OCA has not responded to the Group I Doctors' overtures.

16. OCA has also notified the Group I Doctors and other Stipulating Doctorsthat OCA wants to commence the doctor-specific depositions in five days, on November 20, 2006. The undersigned had offered to commence the doctor-specific Rule 30(b)(6) depositions on Monday, November 6, 2006. However, OCA was not prepared or unwilling to proceed with the

depositions at that time and wanted to wait until after the status conference. As a result, the undersigned has scheduled other matters for the weeks commencing November 13 and November 20, 2006 and cannot commence depositions until *Monday, November 27, 2006*.²

17. Completing the discovery under the current timeframe will require a tremendous commitment by OCA and the Stipulating Doctors of their time and efforts during the period remaining to complete discovery. As the Group I Doctors have stated all along, discovery is a two-way street and cooperation must be mutual.

Option I - Multi-Tracking

18. Fortunately, multi-tracking was unnecessary for the Rule 30(b)(6) depositions as to issues general to all cases. However, the sheer number of pending adversary proceedings would appear to require multi-tracking of the practice-specific Rule 30(b)(6) depositions.

19. Depending on who OCA designates and on what issues they would be testifying, the Group I Doctors can multi-track the depositions.

20. By way of example, it would work as follows:

- a. Richard Goldstein will depose Tony Paternostro on his designated categories, for each orthodontist/dentist, until completion of all Group I Doctors on those areas of inquiry;

² Commencing on November 27, 2006 assumes that OCA has sufficiently responded to Group I Doctors' requests for documents several working days in advance of that date, and with Group I Doctors reserving the right to recall witnesses where additional information or documents are disclosed later in discovery.

- b. Keith Gaudioso will depose Paul Spansel on his designated categories, for each orthodontist/dentist, until completion of all Group I Doctors on those areas of inquiry; and
- c. Depending on who else may be designated and the number of areas they are designated to testify upon, Robert Burvant and/or Susan Trench will be available during the 2-week period commencing November 27, 2006 to depose other designated witnesses.³

21. Upon completion of the Group I Doctors' Rule 30(b)(6) depositions, Group I Doctors assume that suitable arrangements will be made between OCA and other Stipulating Doctors to conduct the remaining Rule 30(b)(6) depositions expeditiously.

22. Understandably, conducting depositions in this fashion will require an extraordinary commitment of time and effort by OCA's management and supervisors, both in preparing to testify fully and informatively, and in actual deposition time. Likewise, it will require a substantial commitment of time and effort by counsel for the Group I Doctors, along with assistance from the Group I Doctors and their staff in preparing for these depositions, with a small amount of preparation time and a tremendous amount of files and documents to review.

23. Notwithstanding the inherent difficulties, the Group I Doctors are committed to completing all of the pending litigation under the Scheduling Order and will be prepared to multi-track depositions on November 27, 2006.

³ These are examples only. OCA has not indicated who it intends to designate as witnesses on the individual doctor matters and the Group I Doctors have not yet finalized the Rule 30(b)(6) deposition notices concerning areas of inquiry for practice-specific issues.

24. In addition to the difficulties created by conducting discovery simultaneously in 90 cases, the Scheduling Order presumes that the Court will immediately begin conducting trial on March 1, 2007 and will do one after another until they are completed. At a minimum, each trial will take 3-5 days, while some may take longer. Assuming none of the contracts are declared illegal on the basis that OCA's relationship with the affiliated orthodontists constitutes the unlawful corporate practice of dentistry, these trials will take approximately 90 consecutive weeks to complete.

25. As it is unlikely that the Court will want to, or be able to, conduct 90 consecutive trials for a period of 90 weeks without any breaks or tending to any other matters. As an alternative, the Group I Doctors suggest a second option.

Option II - Proceed With Subsets

26. Instead of proceeding with all 90 adversaries simultaneously under the current discovery and trial schedule, the adversaries can be divided into subsets and the discovery and trial schedule can be reformulated by subset in four to six month intervals.

27. For example, divide the adversaries into nine subsets of ten, with the first ten cases to be tried under the current schedule.

28. By reducing the number of cases subject to the discovery and trial schedule, the matters become more manageable and it is likely that discovery will be more efficient and meaningful with regard to those ten cases than if the parties are required to proceed with discovery through 90 cases at a breakneck pace.

29. The second grouping of ten cases will then have a discovery commencement date of May 1, 2007 and a cutoff date of July 15, 2007, with trials to commence on September 1, 2007.

30. After the first grouping is completed, the parties and the Court will have a better grasp of how much time is necessary for discovery and for trial, and the issues may very well have been streamlined through the first series of trials. The subsequent groupings and schedule can be adjusted accordingly.

31. While the downside to this option is that the adversary proceedings, assuming they all go to trial, will take several years to complete in their entirety, it is likely that patterns will develop that may encourage the parties to reach compromises on the remaining cases without the additional expenditures of costly discovery and trial time, thereby decreasing the burden on the Court's time, as well as the financial drain on the reorganized OCA and the Stipulating Doctors.

Other Factors

32. As these cases proceed to trial, the issues to be tried will be those for which the parties have a right to jury trial. Accordingly, the Group I Doctors intend to renew their motions to withdraw the reference on a case-by-case basis as the matters proceed to trial in accordance with Judge Vance's Order dated September 18, 2006, in Case No. 2:06-CV-02874-SSV-DEK [Docket #34].

33. Perhaps, most importantly, the question of illegality and enforceability of the BSAs on a state-by-state basis must be determined.

DATED this 15th day of November, 2006.

/s/ Robert J. Burvant

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of Group I Doctors' Memorandum Concerning Scheduling and Coordination of Rule 30(b)(6) Depositions Specific to Each Adversary Proceeding was served via U.S. Mail upon debtors' counsel as identified below this 15th day of November, 2006.

/s/ Robert J. Burvant

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