

HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
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2015 OCT 23 PM 3:51

IN THE MATTER OF THE
COMPLAINT AGAINST:

STANISLAW R. BURZYNSKI, M.D.

BEFORE THE

TEXAS MEDICAL BOARD

BOARD STAFF RESPONSE TO RESPONDENT'S MOTION FOR CONTINUANCE OF
HEARING ON THE MERITS AND TO MODIFY ORDER NO. 27

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES ROY SCUDDAY AND
CATHERINE EGAN:

COMES NOW, the Staff of the Texas Medical Board (Board), by and through its attorney of record, Lee Bukstein, and files this Response to Respondent's Motion for Continuance of Hearing on the Merits and to Modify Order No. 27 (Response) and in support of such Response would show the following:

I. Background

The Honorable ALJ's Order No. 27 issued September 2, 2015, set the hearing on the merits in this case to begin on November 19, 2015. In particular, the Honorable ALJs demonstrated the intent to start the trial on November 19, 2015, for the presentation of the Board's witnesses, including expert witnesses, between November 19, 2015, and November 25, 2015.

II. Response/Objection to Respondent's Motion for Continuance

Respondent claims that his former legal counsel, Richard Jaffe, unexpectedly and without providing notice or explanation to Respondent, filed a Motion to Withdraw from this case. Respondent's claim is inaccurate and misleading, because Mr. Jaffe had already been advising Respondent in July 2015 that he was intending to withdraw as legal counsel in this case. Respondent's claim is inaccurate and misleading, because the

attached Exhibit A, Petition for Involuntary Bankruptcy filed on September 8, 2015, demonstrates (whether accurately or not) that Mr. Jaffe and Respondent's conflict had started long enough ago to generate a quarter million dollars in unpaid attorney fees for work that Mr. Jaffe did in this case. (Even at a speculated \$400 per hour fee, this represents close to 625 hours of legal work on the part of Mr. Jaffe.)

Mr. Jaffe, out of earshot of the parties in this case, informed another Honorable ALJ back in September 2015 about this long-brewing conflict. While this information about the dispute between Respondent and Mr. Jaffe has no relevance to the issues in this case and need not be revealed to the parties, Board Staff requests and suggests that the Honorable ALJs obtain information from their fellow Honorable ALJ as to whether Mr. Jaffe confirmed that the conflict had been just as "protracted" as Mr. Jaffe's representation of Respondent. Board Staff respects the privacy of the attorney-client relationship, but Respondent should not be able to use that privacy as a means to manipulate this proceeding. Either none of this private information is in the record, or all of it is in the record subject to disclosure.

Respondent acknowledges that the issue of continuing this hearing on the merits due to newly-arrived legal counsel was already decided by the Honorable ALJs after a pre-trial conference and the issuance of Order No. 27. Respondent provides no new basis for his continuance other than he hired more lawyers. There are no new allegations. There are no new boxes of evidence. There is no new discovery, despite Respondent's new counsel's effort to depose Board Staff's witnesses long after the deadline for depositions and discovery in this case has passed.

Respondent, in Section 5 of his Motion, claims that he has had no opportunity to depose Board Staff's experts. Respondent has no evidence to back this claim up, because it is untrue. Respondent's new counsel are accepting a case that has baggage. Respondent presented no compelling reason to relieve him of the consequences of his failure to pursue a litigation strategy that included more efforts at discovery. Respondent provides no explanation of how it is unfair for him to face the consequences of his own lack of diligence.

When Respondent claims that Mr. Jaffe “cast a shadow and concern regarding his actions in his representation of Respondent in this matter”, that’s just another way of saying that somebody thinks that Mr. Jaffe did a really bad job as Respondent’s attorney. There is no legal precedent in civil or administrative law cases for a claim of ineffectiveness of counsel to be recognized by a court or SOAH as a defense. There is no legal precedent or rule that supports upending a trial schedule at the last minute, especially a trial schedule for which Respondent received numerous delays in the two years since 2013.

Even if Respondent has such a claim to complain about Mr. Jaffe, that is a legal matter outside the scope of this proceeding and not relevant to this proceeding, no matter how much Respondent now dislikes the litigation strategy pursued by his former attorney. No matter how “imperative” Respondent believes depositions to be now, at the eleventh hour, Respondent did not act timely to part ways with Mr. Jaffe when he was pursuing a litigation strategy that did not include depositions of two of Board Staff’s witnesses.

Respondent did not demonstrate his claim of “imperative” months ago when the trial was moved from July to November 2015 at his behest. This movement of the trial schedule from July to November 2015 cost this proceeding the testimony of Patient E in this case, who died from his cancer in August 2015. Respondent’s dumping of his former counsel is now just another attempt to get another bite of the discovery and trial schedule apple. The Honorable ALJs ruled on an almost identical attempt little more than a month ago.

There is no compelling reason for the Honorable ALJs to further indulge Respondent’s attempt to avoid adjudication of this Complaint. Board Staff particularly finds Respondent counsel’s claim, in Section 6 of the Motion, that Board Staff has sought a continuance of the hearing on the merits in this proceeding other than at the time that Board Staff expanded the original complaint to over 200 pages of facts and violations. This fact can be readily determined just by reading the SOAH case file – which Respondent’s new counsel should have done before making such a misleading claim. Respondent’s counsel also makes the false claim that the reasons provided in the present

Motion have never been presented by Respondent before. The current Motion for Continuance presents the same issues that Respondent presented a month ago!

The extensive trail of Respondent's long history of litigiousness demonstrates that he is not an ingénue to legal process, particularly the public complaint and administrative hearing process. Respondent has been engaging in and responding to discovery, including depositions of his own experts and the experts of other parties, for over two decades.

Respondent did not even try to allege that Board Staff had anything to do with his and his former legal counsel's decision-making about discovery. The truth is, Board Staff inundated Respondent's counsel with requests to schedule expert witness depositions of Board Staff's experts and for Respondent to respond to Board Staff's discovery. Board Staff feels compelled to tip our hats to Mr. Jaffe, because at least he got Respondent to provide some response without Board Staff being forced to come running to the Honorable ALJs with motions to compel. Board Staff had nothing to do with Respondent's previous failure to pursue discovery to his current expectations and demands, and Board Staff will respond vigorously with evidence that such claims are made in bad faith and frivolous if they are raised. Board Staff has included some of the correspondence with Mr. Jaffe to demonstrate this point. (attached as Exhibit B)

Respondent's new counsel has almost a month to prepare for cross-examination of Board Staff's witnesses and almost three months to prepare for presentation of Respondent's defense. Under the circumstances, this is more than fair to Respondent, considering that the Honorable ALJs previously have granted multiple requests by Respondent to delay this trial.

Respondent audaciously "offers" to start the proceeding on January 19, 2016. This was the offer Respondent's counsel made during the last pre-trial conference. Respondent is "offering" for Board Staff to force three expert witnesses who have full-time occupations outside of providing expert testimony (Dr. Wetmore has a clinical practice treating children for cancer in Atlanta, Georgia) and three fact witnesses to reorganize schedules

that were put in place timely and appropriately by Board Staff months ago in response to the scheduling orders of the Honorable ALJs. Respondent claims that this presents no prejudice to Board Staff. That claim is infuriatingly inaccurate. Respondent's claim that the "hardship" of his medical license potentially being on the line has nothing to do with the scheduling of this hearing on the merits. If Respondent was so concerned about that "hardship", then he should have been paying more attention to his litigation strategy. There is no "hardship" involved in this scheduling, because Respondent has already had years, not months of notice; years, not months of opportunity for discovery; years, not months of delays in being held accountable.

While Board Staff did provide Respondent's new counsel with scheduling availability for a hearing on the Motion for Continuance, Board Staff would request that the Honorable ALJs issue a decision on this Motion, including an order addressing the request to re-open discovery and depositions, without holding a hearing. Board Staff believes that the Honorable ALJ already decided these exact issues when they entered Order No. 27.

III. Respondent's Mediation Request

Board Staff's Complaint in this case sets out Respondent's egregious, unethical, unprofessional conduct that includes serious violations of the standard of care and a systematic practice set up for Respondent to avoid responsibility for his clinical decision-making, the adverse effects of his treatment decisions, his direction of his unlicensed employees to mislead patients into believing that they are being treated by licensed physicians and his failure to appropriately and adequately supervise the employees under his direction and control. Respondent made no previous attempts to even inquire about mediation, but under these allegations, it is difficult to see any prospect that has not already been repeatedly communicated to Respondent's counsel, former and current. If there was ever a time for the mediation process at SOAH, it has long passed. If Respondent wishes to make an offer of settlement, Board Staff will appropriately handle it, but that is no reason for delay in this proceeding.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Board Staff requests that the Honorable Administrative Law Judges DENY Respondent's Motion for Continuance of Hearing on the Merits and to Modify Order No. 27 and DENY any request by Respondent to engage in discovery and/or depositions, and grant such other relief to Board Staff as appropriate.

Respectfully submitted,

CHRISTOPHER PALAZOLA
Litigation Manager
SUSAN RODRIGUEZ
Lead Attorney

By:



Lee Bukstein, Staff Attorney
Texas State Bar No. 3320300
Telephone: (512) 305-7079
FAX # (512) 305-7007
333 Guadalupe, Tower 3, Suite 610
Austin, Texas 78701

CERTIFICATE OF SERVICE

I certify that on October 23, 2015, a true and correct copy of the foregoing document has been served as follows:

VIA HAND DELIVERY BY COURRIER

Docket Clerk
State Office of Administrative Hearings
William P. Clements Bldg.
300 W. 15th Street, Suite 504
Austin, Texas 78701-1649

By Fax Transmission To: (713) 426-2255

Dan Cogdell, Attorney at Law
The Cogdell Law Firm, PLLC
402 Main St., 4th Floor
Houston, TX 77002

By Fax Transmission To: (713) 278-9163

J. Gregory Myers, Attorney at Law
Melanie Rubinsky, Attorney at Law
7676 Woodway Drive, Suite 350
Houston, TX 77063

BY HAND DELIVERY:

Hearings Coordinator
Texas Medical Board
333 Guadalupe, Tower 3, Suite 610
Austin, Texas 78701

A handwritten signature in cursive script, reading "Lee Bukstein", written over a horizontal line.

Lee Bukstein

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	
STANISLAW R. BURZYNSKI,	§	CASE NO. 15-34872 (DRJ)
	§	
Debtor.	§	Chapter 7 (involuntary)

**MOTION TO DISMISS INVOLUNTARY PETITION AND REQUEST FOR
ATTORNEYS' FEES**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

**To the Honorable David R. Jones,
Chief United States Bankruptcy Judge:**

Dr. Stanislaw R. Burzynski ("Burzynski") files this Motion to Dismiss Involuntary Petition and Request for Attorneys' Fees pursuant to Rule 1011 of the Federal Rules of Bankruptcy Procedure, Rule 12(b) of the Federal Rules of Civil Procedure and 11 U.S.C. § 303.

SUMMARY

This involuntary petition must be dismissed because, as the petitioning creditor is well aware, Burzynski has more than 12 creditors and the petition was filed by less than three creditors. Additionally, the debt of the sole petitioning creditor, Burzynski's former attorney, is

subject to a bona fide dispute. Based on the foregoing, Burzynski requests an award of attorneys' fees and punitive damages against the petitioning creditor under 11 U.S.C. § 303(i).

LEGAL STANDARD

1. Rule 12(b)(6) allows a Court to dismiss a case for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). In deciding a Rule 12(b)(6) motion, the Court must accept as true all well pleaded factual allegations. *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008). In addition, the Court must view all facts, and reasonable inferences drawn therefrom, in the light most favorable to the plaintiff. *See Wilson v. Birnberg*, 667 F.3d 591, 595 (5th Cir. 2012), *cert. denied*, 133 S. Ct. 32 (2012). However, the Court does not have to accept unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations contained in the complaint and a complaint may be dismissed where the facts pleaded, and reasonable inferences drawn therefrom, are insufficient to support the relief sought. *Plotkin v. IP Axess Inc.*, 407 F.3d 690, 696 (5th Cir. 2005).

2. To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 677-79, 129 S.Ct. 1937, 1949-50, 173 L.Ed.2d 868 (2009) (internal citations and quotations omitted). Thus, in deciding a motion to dismiss, "the Court must limit its analysis to the four corners of the complaint." *Florio v. Canty*, 954 F. Supp. 2d 227, 231-32 (S.D.N.Y. 2013). However, the Fifth Circuit has expressly recognized that documents attached to a motion to dismiss that are "referred to in the plaintiff's complaint and . . . central to her claim" are considered part of the pleadings. *Causey v. Sewell Cadillac Chevrolet, Inc.*, 394 F.3d 285, 288 (5th Cir. 2004); *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498-99 (5th Cir. 2000).

3. Courts should "scrutinize the creditor's filing carefully because 'the filing of an involuntary petition is an extreme remedy with serious consequences to the alleged debtor, such

as loss of credit standing, inability to transfer assets and carry on business affairs, and public embarrassment.” *In re Cates*, 62 B.R. 179, 180 (Bankr. S.D. Tex. 1986). “An allegation of bankruptcy invokes remedies not available to any ordinary debt collection procedures. It should not be invoked unadvisedly and contrary to statutory right.” *In re Walden*, 781 F.2d 1121, 1123 (5th Cir. 1986).

4. The burden is on the petitioning creditor to prove that the requirements of 11 U.S.C. § 303 have been satisfied. *See, e.g., In re Xacur*, 216 B.R. 187, 194 (Bankr. S.D. Tex. 1997).

FACTUAL BACKGROUND

5. On September 17, 2015, Richard A. Jaffe, Esq. (“Jaffe”), Burzynski’s former attorney, filed an involuntary chapter 7 petition based on a claim of unpaid legal fees in the amount of \$248,221.63 (Doc. No. 1). No other debts were listed and no other creditor joined the involuntary petition.

6. Jaffe provided legal representation to Burzynski and his sole proprietorship, the Burzynski Clinic, for almost 30 years prior to the filing of this involuntary case. Jaffe was very familiar with the Burzynski Clinic’s business and the existence of well in excess of 12 creditors. The legal services in dispute were allegedly rendered between December 2014 and June 2015.

7. Burzynski disputes the validity of the time sheets submitted with Jaffe’s invoices because Jaffe’s time was inflated and the amounts charged are not commensurate with the services provided.

8. Burzynski, through the Burzynski Clinic, has more than 12 creditors.

MOTION TO DISMISS

9. Section 303(b)(2) of the Bankruptcy Code provides that an involuntary case may

only be commenced by a single creditor if the debtor has fewer than 12 creditors. If a debtor has more than 12 creditors, § 303(b)(1) requires that three or more creditors join in the involuntary petition.

10. Burzynski has more than 12 creditors and, notwithstanding Jaffe's knowledge of this fact, Jaffe is the sole petitioning creditor. Therefore, this involuntary case, which amounts to nothing more than a two-party dispute, must be dismissed. *See, e.g., In re James Plaza Joint Venture*, 67 B.R. 445 (Bankr. S.D. Tex. 1986); *see also, In re Cates*, 62 B.R. 179, 180 (Bankr. S.D. Tex. 1986) (dismissing case and assessing damages against creditor where involuntary was used by a single creditor as a forum for the trial and collection of an isolated disputed claim).

11. Further, § 303(b)(1) requires that the petitioning creditors' claims not be the subject of a bona fide dispute as to liability or amount. The Bankruptcy Code does not define "bona fide dispute," but the Fifth Circuit has held that a debt is subject to a bona fide dispute when "there is an objective basis for either factual or legal dispute as to the validity of the debt." *In re Edwards*, 501 B.R. 666, 681 (Bankr. N.D. Tex. 2013) (citing *In re Sims*, 994 F.2d 210, 221 (5th Cir. 1993)). The amount of Burzynski's debt to Jaffe is the subject of a bona fide dispute as to amount because Jaffe's invoices are inflated and the amounts charged are not commensurate with the services provided.

Request for Attorneys' Fees and Punitive Damages

12. Section 303(i)(1) of the Bankruptcy Code allows this Court to grant a judgment in Burzynski's favor against Jaffe for costs and reasonable attorney's fees upon dismissal of the involuntary petition. Section 303(i)(2) of the Bankruptcy Code further allows this Court to award actual and punitive damages against Jaffe upon a finding that the petition was filed in bad faith.

13. “[T]he onus is on the [creditor’s] attorney to investigate the debtor’s financial position prior to filing an involuntary petition in bankruptcy.” *Walden*, 781 F.2d at 1123. Jaffe filed the involuntary petition in bad faith because he had actual knowledge that Burzynski had more than 12 creditors due to knowledge gained in connection with his prior, long-standing legal representation of Burzynski and the Burzynski Clinic. Jaffe’s failure to comply with the requirements of 11 U.S.C. § 303 by filing this involuntary petition alone is particularly egregious given that Jaffe is himself an attorney. Accordingly, Burzynski requests this Court’s order dismissing the case include an award of costs and reasonable attorneys’ fees plus appropriate punitive damages.

14. Section 303(e) of the Bankruptcy Code allows this Court to require a petitioning creditor to post a bond to indemnify the debtor for such amounts that may later be allowed under Section 303(i). Burzynski estimates that his attorneys’ fees related to contesting this involuntary proceeding, assuming a contested trial, will be approximately \$25,000.00. Therefore, Burzynski requests that the Court order Jaffe to deposit \$25,000.00 into the registry of the Court.

Accordingly, Burzynski request entry of an order dismissing this involuntary bankruptcy case with prejudice and requiring Jaffe to pay Burzynski's attorneys' fees incurred in responding to the involuntary petition.

Dated: October 14, 2015.

Respectfully submitted,

Porter Hedges LLP

By: /s/ Joshua W. Wolfshohl
Joshua W. Wolfshohl
State Bar No. 24038592
Aaron J. Power
State Bar No. 24058058
1000 Main Street, 36th Floor
Houston, Texas 77002
(713) 226-6000
(713) 228-1331 (fax)

Counsel to Dr. Stanislaw R. Burzynski

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was duly served by United States first class mail on Richard A. Jaffe, 770 L Street, Suite 960, Sacramento, CA 95616, on October 14, 2015.

/s/ Aaron J. Power
Aaron J. Power

EXHIBIT B

Lee Bukstein

From: Lee Bukstein
Sent: Monday, November 17, 2014 11:06 AM
To: 'Rick Jaffe'
Subject: RE: depositions

Importance: High

Rick,

Here is the current status of depositions in the future. Please confirm or reply otherwise ASAP. I am not scheduling anything until after my early December trial in order to give us time to deal with the issues that might have a significant effect on discovery/depositions. Gentlemen's agreement that Board Staff will not spend more time on depositions/discovery about compliance with federal regulations if the ALJ's strike the "clinical investigator Rule 200 issues" that replaced the federal law violations allegations.

However....bit however, you are being given notice by the newest requests for production, that you should be poised to respond to these requests by the beginning of January so that when you depose my experts, they have had a reasonable opportunity to review this information. In other words, I do not expect a response in 20 days. I think that our production/scan operation went pretty well – so we could take it from there, maybe in late December just around the Xmas holidays. I just got the disc from the scanning service. As with the three discs that Dr. Janicki provided, I am reproducing them with bates numbers and sending them back with records custodian affidavits to execute and return in order to authenticate appropriately. I will get these to you very soon. Let me know if you would prefer me to send you a copy and simultaneously send Dr. Janicki the CD's with the docs for him to sign and return.

I did not make the leash this short, but I think that our continued cooperation can bring us to the trial on time and.....well, maybe not under budget, but at least not bugged out about discovery.

Wednesday, December 10, by phone

1. Dr. Calvin Kuo – 1.5 hour
2. Dr. Lance Lassiter – 1.5 hr.
3. Dr. Thomas Waits – 1.5 hour

Thursday December 11

in person in Houston, most convenient place would be the Burzynski Clinic

4. Dr. Robert Weaver – deposition in Houston, Texas – 3 hours - in person
5. Valerie Wileford - deposition in Houston, Texas – 2.5 hours - in person
6. Jasmine Spotswood - deposition in Houston, Texas – 2.5 hours - in person

Friday, December 12

Dr. Zanhua Yi mediation at SOAH in Austin

Monday, December 15

7. Pam Pellegrino – deposition in Cornelius, North Carolina – north of Charlotte, North Carolina – 3 hrs -
This deposition can be done totally by phone as far as I am concerned
8. Stacey Huntington – deposition in Chehalis, Washington – halfway between Portland and Seattle – 3 hrs -
This deposition can be done totally by phone as far as I am concerned

Tuesday, December 16

Patient E, Stanley Hersh in person in Manhattan starting at 9 a.m. IT WOULD MAKE MORE SENSE TO MOVE THIS DEPOSITION TO JANUARY SO THAT WE CAN MAKE ONE TRIP FOR HIM AND DR. LEVIN.

Wednesday, December 17, I am in Austin, but unavailable

Friday, December 19

Dr. Jose Luis Valladares - in El Paso, in person

Friday, January 9, 2015

Leann Chiapetta, in Houston -- NOT at the Burzynski Clinic -- 9 a.m.

Sonia Hodgson in Houston -- NOT at the Burzynski Clinic -- 11:30 a.m.

Suggestion

Carelton Hazelwood -- Houston, at the Burzynski Clinic - 1:00 p.m.

My current January -- February availability:

January 5, 6, 7, 12, 13, 14, 15, 19, - February 2, 3, 4, 5, 6, 18, 19, 20, 24, 25, 26, 27

January -- February Depositions

Dr. Norman Fost -- deposition in Madison, Wisconsin -- single day/6 hrs.

Dr. Cynthia Wetmore -- deposition in Atlanta, Georgia -- single day/6 hrs

Any Burzynski expert witnesses -- due to the problems of document handling, each expert witness deposition will take the max 6 hours for sure. You have listed 13 additional expert witnesses, which brings the witness count upit may behoove you to reduce your roster, but that is your choice.

Dr. Alejandro Marquis -- deposition in Houston, Texas -- 6 hours -- one whole day

Dr. Zanhua Yi -- deposition in Houston, Texas -- 6 hrs., since you listed him as an expert

Dr. Greg Burzynski -- deposition in Houston, Texas -- 4 hours if he signs the remedial plan, 6 hours if he does not sign and I file a SOAH complaint --

Dr. Stanislaw Burzynski -- deposition in Houston, Texas -- 6 hours -- one whole day

FDA Inspectors: Assuming that the FDA issues get to stay in the case after the Second Amended Complaint, these are fact witnesses who performed the "inspections."

Patrick Stone -- deposition probably in Silver Springs, Maryland??? -- 3 hrs

Joel Martinez -- deposition in Dallas, Texas -- FDA 2.5 hrs

Hugh McLure -- deposition in Dallas, Texas -- FDA 2.5 hrs.

Andrea Branche -- deposition in Dallas, Texas -- FDA 2.5 hrs

Patrick McNeilly -- deposition in Dallas, Texas -- FDA 2.5 hours

From: Richard Jaffe [mailto:rickjaffeesquire@gmail.com]
Sent: Wednesday, November 12, 2014 2:16 PM
To: Lee Bukstein
Subject: depositions

ok I've left a message on carltons's phone and I'm emailed sonia through linken. I'll try to get better contact info from the clinic but carolyn's out until monday and she's the most competent person there.

do you really want to depose the IRB Vice chair right off the bat? I don't know him and you know alot more about the IRB than I do if you've read the minutes, but it's hard to believe that he's going to have important separate info from Carlton, but I'll reach out to him if you want to do him also.

--
Richard Jaffe, Esq.
770 L Street, Suite 950
Sacramento, California, 95814
916-492-6038
916-492-6039 (fax)

Houston, Tx. numbers:
713-626-3550
713-626-9420 (fax)

email: rickjaffeesquire@gmail.com
www.rickjaffeesq.com (web site)

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Thank you.

Lee Bukstein

From: Lee Bukstein
Sent: Wednesday, November 12, 2014 5:22 PM
To: 'Richard Jaffe'
Subject: RE: depositions

Importance: High

Rick

Here is a proposed schedule. As you can see, there are potentially 37 deponents to go. My suggestions:

Day Five - Done by telephone – December 10

1. Leanna Chiapetta – 3 hrs
2. Dr. Kuo – 1 hour
3. Dr. Lassiter – 1 hr.
4. Dr. Waits – 1 hour

Day Two – December 11

5. Dr. Robert Weaver – deposition in Houston, Texas – 3 hours - in person
6. Jasmine Spotswood - deposition in Houston, Texas – 2+ hours – in person
7. Valerie Wileford - deposition in Houston, Texas – 2+ hours – in person

Day Three – December 16

8. Stanley Hersh, M.D. – deposition in New York City – 3 hrs - I want to do my part in person and video

Day Four – December 17

9. Pam Pellegrino – deposition in Cornelius, North Carolina – north of Charlotte, North Carolina – 3 hrs - This deposition can be done totally by phone as far as I am concerned
10. Stacey Huntington – deposition in Chehalis, Washington – halfway between Portland and Seattle – 3 hrs - This deposition can be done totally by phone as far as I am concerned

Day Five – December 19

11. Dr. Jose L. Valladares – deposition in El Paso, Texas – 4-5 hrs – if you want to participate by telephone hook-up, let me know. Dr. Valladares' attorney Josh Davis will attend – but you've already heard my "double team" speech

Board Staff's experts

Day Six – January 5

12. Dr. Norman Fost – deposition in Madison, Wisconsin – single day/6 hrs.

Day Seven – January 6

13. Dr. Cynthia Wetmore – deposition in Atlanta, Georgia – single day/6 hrs

Day 8 through 21 – January 9 – all done by telephone deposition

14. Any Burzynski expert witnesses – due to the problems of document handling, each expert witness deposition will take the max 6 hours for sure. You have listed 13 additional expert witnesses, which brings the witness count upit may behoove you to reduce your roster, but that is your choice.

- 15. .
- 16. .
- 17. .
- 18. .
- 19. .
- 20. .
- 21. .
- 22. .
- 23. .
- 24. .
- 25. .
- 26. .

Day 22 – January 12

- 27. Dr. Alejandro Marquis – deposition in Houston, Texas – 6 hours – one whole day

Day 23 – January 13

- 28. Dr. Zanhua Yi – deposition in Houston, Texas – 6 hrs., since you listed him as an expert

Day 24 – January 14

- 29. Dr. Greg Burzynski – deposition in Houston, Texas – 4 hours if he signs the remedial plan, 6 hours if he does not sign and I file a SOAH complaint –
If Dr. Yi resolves the SOAH case through the mediation, and you are not going to use him as an expert witness in any case, Dr. Yi’s deposition would only take 4 hours and could be done on the same day as Greg B.

Day 25 – January 15

- 30. Carleton Hazlewood, Ph.D. – BRI-IRB – deposition in Houston, Texas - 4 hours
- 31. Sonia R. Hodgson, M.D. - deposition in Houston, Texas - 4 hrs

Day 26 and 27 – February 2 and February 3

FDA Inspectors: Assuming that the FDA issues get to stay in the case after the Second Amended Complaint, these are fact witnesses who performed the “inspections.”

Could be done by telephone –

- 32. Patrick Stone – deposition probably in Silver Springs, Maryland??? – 3 hrs
- 33. Joel Martinez – deposition in Dallas, Texas – FDA 2.5 hrs
- 34. Hugh McLure – deposition in Dallas, Texas – FDA 2.5 hrs.
- 35. Andrea Branche – deposition in Dallas, Texas – FDA 2.5 hrs
- 36. Patrick McNeilly – deposition in Dallas, Texas – FDA 2.5 hours

Day 28 – February sometime

- 37. Dr. Stanislaw Burzynski – deposition in Houston, Texas – 6 hours – one whole day

Let me know how to better accommodate your schedule. This still leaves some room for activity in the last ten days of February 2015.

Sincerely,
Lee

Lee Bukstein

From: Lee Bukstein
Sent: Wednesday, January 28, 2015 12:13 PM
To: 'Richard Jaffe'
Subject: RE: my schedule and proposed time period for depositions
Attachments: january 28 deposition scheduling letter Burzynski.docx
Importance: High

Rick, I have received your email today, and I am a little confused. You stated that you might not depose all of Board Staff's experts. I think that for the purposes of not getting into a time bind that we do schedule as many deposition dates as possible as soon as possible. You can always decide later to not depose someone on the list of the usual suspects.

You have proposed scheduling the depositions of Dr. Stanislaw Burzynski, Dr. Marquis, Dr. Yi and Dr. Greg Burzynski during the week of April 13 through 17. I am going to assume that you would wish to do this four days straight, so I will send notices as follows:

Monday, April 13, 2015	the deposition of Dr. Greg Burzynski
Tuesday, April 13, 2015	the deposition of Dr. Zanhua Yi
Wednesday, April 13, 2015	the deposition of Dr. Alejandro Marquis
Thursday, April 13, 2015	the deposition of Dr. Stanislaw Burzynski

Elaine Kloos, Dr. Fost and Dr. Wetmore will be available during the first ten days of April 2015.

We still have the depositions of the follow fact witnesses to schedule: Patient E, Dr. Stanley Hersh in New York City; Sonia Hodgson and Dr. Hazlewood in Houston; and the FDA investigators. I am awaiting the FDA's instructions about the availability schedule of those witnesses and where they will be. As far as scheduling these witnesses for second half of March, that does present some concerns. Mainly, when are we going to schedule the depositions of your client's experts? This is why, despite both of us being "tied up" through mid-February, we should figure the remainder of the deposition schedule out as soon as possible.

Which awaits your determination of who will be presented as experts in support of Dr. Burzynski and the availability of those witnesses. We have previously agreed that these expert depositions can be by phone as long as we can provide some workable mechanism for viewing documents. You are already aware of my prejudice against relying on computers to view records during a deposition, but I am willing to work together if I can avoid carting three copies of 50 volumes around the country.

As soon as we finish numbering the pages produced at the B Clinic on December 29-30, 2014, I will send you a copy.

From: Richard Jaffe [<mailto:rickjaffeesquire@gmail.com>]
Sent: Wednesday, January 28, 2015 9:01 AM
To: Lee Bukstein
Subject: my schedule and proposed time period for depositions

fyi: It's possible I might not depose all of your experts. I'll need to see the reports to make that call. but since we're pre filing direct, I may forgo the depositions of at least the standard of care expert. but I'll probably want to depose the FDA related expert.

did we say that we do the remaining clinic docs last, after the experts? if so, then we can do sr, marquis, yi and gred the week of april 13th,

experts early april.

I'm hoping to put off my march 23rd board hearing. if so I'll be available from march 16th onwards. I'll file my motion for continuance next week, it's unopposed.

so remaining fact witnesses, second half of march.

because of other hearing commitments, the only thing I can do on this case until at the very least mid february is work on experts. then I have to work on revisions additional expert reports for this the week following is alot of wasteful stuff on my civil case (pre trial -mediation, another deposition).

so basically I'm only going to do this case from march 16th onwards. I might have a day here and there before then but absolutely not before mid february (you're tied up the 9-16th I recall).

--

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Thank you.

Lee Bukstein

From: Lee Bukstein
Sent: Friday, February 13, 2015 8:51 AM
To: 'Richard Jaffe'
Subject: RE: my schedule and proposed time period for depositions

Importance: High

For a reminder....please note that we have already scheduled Dr. Fost in Madison for April 1, 2015. Rescheduling him for March now is probably not possible, but if you give me a specific alternate date that you will actually be in Madison, Wisconsin to do this deposition, I will find out. I had understood you previously to indicate that you would be doing this deposition by phone and that I would be the only person in Madison physically present with Dr. Fost and the court reporter.

From: Richard Jaffe [mailto:rickjaffeesquire@gmail.com]
Sent: Tuesday, February 03, 2015 1:47 PM
To: Lee Bukstein
Subject: Re: my schedule and proposed time period for depositions

Ive emailed carleton.

my docket call on the 23rd might turn into a mediation one day and a deposition another, but I've got one day I think. let's see what carlton says.

it would allow me to be at docket call in person so early in the week does work, if it can be worked out and we get rid of this part of the fact case. I'll call him alittle later and get back to you.

On Tue, Feb 3, 2015 at 11:43 AM, Lee Bukstein <Lee.Bukstein@tmb.state.tx.us> wrote:

Sounds like the 24th is the best day. Or the 25 is another possibility

From: Richard Jaffe [mailto:rickjaffeesquire@gmail.com]
Sent: Tuesday, February 03, 2015 11:09 AM
To: Lee Bukstein
Subject: Re: my schedule and proposed time period for depositions

I have a docket call on the 23rd so I couldn't do the whole day. Let me check with carlton about his schedule. he teaches and has this car issue.

On Tue, Feb 3, 2015 at 9:03 AM, Lee Bukstein <Lee.Bukstein@tmb.state.tx.us> wrote:

Sonia Hodgson called and said that the best days for her deposition are February 23 and 24. Can we set up one of these days with Dr. Hazlewood, too, at the Burzynski Clinic. It should be 3 hours for Hodgson and 4.5 for Hazlewood.

Thanks

From: Richard Jaffe [mailto:rickjaffeesquire@gmail.com]
Sent: Monday, February 02, 2015 3:57 PM
To: Lee Bukstein
Subject: Re: my schedule and proposed time period for depositions

benkman lives in the birmingham area and can make himself available the week of the 6th. he has flexibility, so let's focus on the other three. I'll write hachem and see about his availability.

On Mon, Feb 2, 2015 at 1:50 PM, Lee Bukstein <Lee.Bukstein@tmb.state.tx.us> wrote:

Agreed. Radio silence once we can agree to most of our schedule of depositions. I am not going to file anything or make any demands, reasonable or unreasonable, that you have to look at before February 13.....I will be furnishing you timely with the initial expert reports and any earlier versions that our experts provided to Board Staff.

From: Richard Jaffe [mailto:rickjaffeesquire@gmail.com]
Sent: Monday, February 02, 2015 3:30 PM
To: Lee Bukstein
Subject: Re: my schedule and proposed time period for depositions

I expect to be open the last two weeks of march per previous. I'll know about my hearing the 25th this week I hope.

I'll need to get dates for Hachem. Benkman should be flexible. I'll check to see where he is, his cell is 205 which I think is birmingham

once we set this up. I'm going to go dark on this case except for working on expert reports until I finish my washington hearing on feb 14th. but you're tied up next week also.

On Mon, Feb 2, 2015 at 1:17 PM, Lee Bukstein <Lee.Bukstein@tmb.state.tx.us> wrote:

Rick, thanks for the prompt response. So Dr. Fost will be deposed on April 1, 2015. I will be unavailable the next two days, but I will be available for Dr. Wetmore's deposition and Elaine Kloos deposition. Dr. Hachem is in Huntsville, Alabama, which is near the Tennessee border. Dr. Benkman is where in Alabama? If we are going to do Dr. Hachem's and Dr. Benkman's deposition as part of a four day run during the week of 6 through 10 (or even Saturday, the 11th), then let's get that agreed to at the earliest opportunity. It will still be a bit difficult to figure out when we can schedule New York (Levin and Hersh - I would suggest that we do Levin and Hersh on April 6-7, then the four day run through the Deep South April 8 through April 11) and any of the other depositions of your remaining designated witnesses...if they remain designated...on April 17 and 18, and any days freed up on late March. Sure hope that we can free up some of late March for this.

Unfortunately for me, I don't get to turn down work during this time, so I am already in overdrive. So many witnesses, so little time.

Sincerely,

Lee

From: Richard Jaffe [<mailto:rickjaffeesquire@gmail.com>]
Sent: Monday, February 02, 2015 2:11 PM
To: Lee Bukstein
Subject: Re: my schedule and proposed time period for depositions

april 1 is ok with me. the other two we can do together. I've got an expert in alabama (Sam Benkman) and maybe we can do all three on the same trip. but since april 1st is a wednesday and we have to get there the day before. I think that week is shot.

so maybe the week following we go to the south for three depositions.

I filed my unopposed motion to continue my march 25th hearing and I expect it will be granted shortly. so it looks' like I'll be free after the week ending 13th I think it's possible that my march 9th setting is going to reset but I won't know until the 23rd, but if it is, I can move fast on scheduling stuff.

I've been turning down work now because of the anticipated push on this case. Also, if witnesses will agree I'll work on the weekends. I'm actually in a hearing on saturday the 14th in washington which is valentines day.

On Mon, Feb 2, 2015 at 11:58 AM, Lee Bukstein <Lee.Bukstein@tmb.state.tx.us> wrote:

Rick,

I am running into some problems with availability for my expert Norm Fost, MD in April. He is only available April 1 or 2. He's not available April 3 (because of Passover) and he really can't schedule anything else in April before our deadline. Can you look at your schedule and see if you can agree to depose him on April 1? Or April 2 as a second choice? I will be in Madison, Wisconsin with him with the medical records. I will not object if you want to do this deposition by phone. (Actually, I won't object to you appearing at any deposition by phone.)

Dr. Wetmore (in Atlanta) is only available April 1 through 10 (although I don't want to conflict with Dr. Fost's preference)

Ms. Kloos (in Charleston) is available April 1 through 17 (and I sure would appreciate it if you would agree to schedule Ms. Kloos back to back with Dr. Wetmore)

Dr. Hersh, by the way, is doing swimmingly well, but we really should wait until the deposition of Dr. Levin – that way we could run those two New York depositions back to back, also.

Thanks

Lee

From: Rick Jaffe [<mailto:rickjaffeesquire@gmail.com>]
Sent: Wednesday, January 28, 2015 5:12 PM
To: Lee Bukstein
Subject: Re: my schedule and proposed time period for depositions

Right told them that. Fyi contacting experts and telling them we will need to do telephone deposition early aprilish or late march (for the foreign guys) won't have all of those initially listed but will have a couple; tsuda and beresford for sure.

We can go back to the plan of doing my expert levin and hersh on same trip, first week of april or in combination with a couple of yours. Atlanta or wisconsin

Fyi i believe my march civil trial is going to get continued because of discovery issues. But i won't know until the feb 23rd. If it is i can do houston deposition that week instead.

I

Sent from my iPhone

On Jan 28, 2015, at 3:47 PM, Lee Bukstein <Lee.Bukstein@tmb.state.tx.us> wrote:

My apologies, the letter should have read:

Monday, April 13, 2015	the deposition of Dr. Greg Burzynski
Tuesday, April 14, 2015	the deposition of Dr. Zanhua Yi
Wednesday, April 15, 2015	the deposition of Dr. Alejandro Marquis
Thursday, April 16, 2015	the deposition of Dr. Stanislaw Burzynski

From: Richard Jaffe [<mailto:rickjaffeesquire@gmail.com>]
Sent: Wednesday, January 28, 2015 3:38 PM
To: Lee Bukstein
Subject: Re: my schedule and proposed time period for depositions

You have proposed scheduling the depositions of Dr. Stanislaw Burzynski, Dr. Marquis, Dr. Yi and Dr. Greg Burzynski during the week of April 13 through 17. I am going to assume that you would wish to do this four days straight, so I will send notices as follows:

Monday, April 13, 2015	the deposition of Dr. Greg Burzynski
Tuesday, April 13, 2015	the deposition of Dr. Zanhua Yi
Wednesday, April 13, 2015	the deposition of Dr. Alejandro Marquis
Thursday, April 13, 2015	the deposition of Dr. Stanislaw Burzynski

ok I've notified them all of the depositions the week of the 13th, monday through thursday unless I hear back from any of them soon about a conflict like vacation or something. we are good to go on these dates.

On Wed, Jan 28, 2015 at 1:33 PM, Richard Jaffe <rickjaffeesquire@gmail.com> wrote:

You have proposed scheduling the depositions of Dr. Stanislaw Burzynski, Dr. Marquis, Dr. Yi and Dr. Greg Burzynski during the week of April 13 through 17. I am going to assume that you would wish to do this four days straight, so I will send notices as follows:

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Wednesday, April 13, 2015	the deposition of Dr. Alejandro Marquis
Thursday, April 13, 2015	the deposition of Dr. Stanislaw Burzynski

they all are the same date

On Wed, Jan 28, 2015 at 10:09 AM, Lee Bukstein <Lee.Bukstein@tmb.state.tx.us> wrote:

Rick, I have received your email today, and I am a little confused. You stated that you might not depose all of Board Staff's experts. I think that for the purposes of not getting into a time bind that we do schedule as many deposition dates as possible as soon as possible. You can always decide later to not depose someone on the list of the usual suspects.

You have proposed scheduling the depositions of Dr. Stanislaw Burzynski, Dr. Marquis, Dr. Yi and Dr. Greg Burzynski during the week of April 13 through 17. I am going to assume that you would wish to do this four days straight, so I will send notices as follows:

Monday, April 13, 2015	the deposition of Dr. Greg Burzynski
------------------------	--------------------------------------

Tuesday, April 13, 2015	the deposition of Dr. Zanhua Yi
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Elaine Kloos, Dr. Fost and Dr. Wetmore will be available during the first ten days of April 2015.

We still have the depositions of the follow fact witnesses to schedule: Patient E, Dr. Stanley Hersh in New York City; Sonia Hodgson and Dr. Hazlewood in Houston; and the FDA investigators. I am awaiting the FDA's instructions about the availability schedule of those witnesses and where they will be. As far as scheduling these witnesses for second half of March, that does present some concerns. Mainly, when are we going to schedule the depositions of your client's experts? This is why, despite both of us being "tied up" through mid-February, we should figure the remainder of the deposition schedule out as soon as possible.

Which awaits your determination of who will be presented as experts in support of Dr. Burzynski and the availability of those witnesses. We have previously agreed that these expert depositions can be by phone as long as we can provide some workable mechanism for viewing documents. You are already aware of my prejudice against relying on computers to view records during a deposition, but I am willing to work together if I can avoid carting three copies of 50 volumes around the country.

As soon as we finish numbering the pages produced at the B Clinic on December 29-30, 2014, I will send you a copy.

From: Richard Jaffe [<mailto:rickjaffeesquire@gmail.com>]
Sent: Wednesday, January 28, 2015 9:01 AM
To: Lee Bukstein
Subject: my schedule and proposed time period for depositions

fyi: It's possible I might not depose all of your experts. I'll need to see the reports to make that call. but since we're pre filing direct, I may forgo the depositions of at least the standard of care expert. but I'll probably want to depose the FDA related expert.

did we say that we do the remaining clinic docs last, after the experts? if so, then we can do srb, marquis, yi and gred the week of april 13th,

experts early april.

I'm hoping to put off my march 23rd board hearing. if so I'll be available from march 16th onwards. I'll file my motion for continuance next week, it's unopposed.

so remaining fact witnesses, second half of march.

because of other hearing commitments, the only thing I can do on this case until at the very least mid february is work on experts. then I have to work on revisions additional expert reports for this the week following is alot of wasteful stuff on my civil case (pre trial

-mediation, another deposition).

so basically I'm only going to do this case from march 16th onwards. I might have a day here and there before then but absolutely not before mid february (you're tied up the 9-16th I recall).

--

Richard Jaffe, Esq.

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Sacramento, California, 95814

916-492-6038

916-492-6039 (fax)

Lee Bukstein

From: Lee Bukstein
Sent: Friday, February 13, 2015 5:26 PM
To: 'Richard Jaffe'
Subject: RE: FW: Exp Reports

Importance: High

Got em... thanks....talk to you next week.

February 25, 2015 are the Hodgson and Hazlewood depositions at the B Clinic

I will be setting up the following schedule so far for the other depositions:

Wednesday, April 1, 2015 Dr. Fost deposition. I will be with him in Madison, WI. Your option whether you want to appear in person or by phone. **Remember to make arrangements for your court reporter and venue!!!!** I will be unavailable the rest of the week, because I am visiting my brother in Madison.

Monday, April 6, 2015 is still open, but I will be traveling to Charleston that afternoon.

Tuesday, April 7, 2015, Elaine Kloos deposition. **Remember to make arrangements for your court reporter and venue!!!!** I will be with her in Charleston. Your option to appear in person or by phone. I will have a rental car with me for the rest of the trip.

Wednesday, April 8, 2015 Dr. Wetmore deposition. **Remember to make arrangements for your court reporter and venue!!!!** She works at Emory, so try to set it up near Emory. Atlanta is a transportation nightmare. I am trying to avoid the airport. I will be with her in Atlanta. Your option to appear in person or by phone.

Thursday, April 9, 2015 Dr. Beenken in Birmingham, Alabama. I will be there in person. Your option to appear by phone or in person. I will make arrangements for the court reporter and venue unless you make arrangements for him to be deposed at his office.

Friday, April 10, 2015, Dr. Hachem in Huntsville, Alabama near the Tennessee border. I will make arrangements for the court reporter and venue unless you make arrangements for him to be deposed at his office.

Monday April 13, 2015, Dr. Greg Burzynski at the B Clinic

Tuesday, April 14, 2015, Dr. Yi at the B Clinic

Wednesday, April 15, 2015, Dr. Marquis at the B Clinic

Thursday, April 16, 2015, Dr. Stan Burzynski at the B Clinic.

The schedule for the week of April 13, 2015, through April 16, 2015 is interchangeable if the four of them want to switch days around.

I would recommend that we do Dr. Brookman and Dr. Patil on that Friday, April 17, 2015.....but you let me know.

i actually have a big trial from April 20 through May 1 at SOAH. Judge Scudday, no less.

From: Richard Jaffe [mailto:rickjaffeesquire@gmail.com]
Sent: Friday, February 13, 2015 4:58 PM
To: Lee Bukstein
Subject: Re: FW: Exp Reports

haven't looked at the reports really yet. will do so over the weekend.
I've sent your reports to our relevant experts for their comments

have a question. is what the scheduling order and/or you envision is that we have our experts prepare responses to each other's experts and exchange on march 13th which might narrow the issues and make the depositions easier since we'd each know what each expert thinks about the other expert's position? AS long as your initial expert reports are sufficiently specific, (and vica versa) that would help it would seem to me.

On Fri, Feb 13, 2015 at 2:51 PM, Lee Bukstein <Lee.Bukstein@tmb.state.tx.us> wrote:

Please understand that Dr. Fost is our ethics guy, Dr. Wetmore is covering the clinical practice/SOC. They merge, of course, over several areas of the complaint, and I think that my letter is a pretty good explanation of that. Elaine Kloos, of course, is limited to coding/billing issues and standards of practice rather than SOC for a doc. I have provided notice that if discovery/deposition covers a topic with one of our experts, then the door is opened to that expert testifying about what you have opened up. This two levels of reports thing is unusual, so I am not demanding that the initial expert report define the range of what each expert will testify about, but I do expect that my the supplemental reports due on March 13. Today I have sent your expert reports to our experts. I sent Board Staff's reports by the last email so that you can easily and cheaply distribute them to your experts ASAP.

Thanks

Lee

From: Richard Jaffe [mailto:rickjaffeesquire@gmail.com]
Sent: Friday, February 13, 2015 3:46 PM
To: Lee Bukstein
Subject: Re: FW: Exp Reports

got your email. with the reports/ thanks.

the thing from fost seems alittle sparse. I was hoping for more detail with some chapter and verse citations or references. maybe it's in wetmores.

On Fri, Feb 13, 2015 at 1:44 PM, Lee Bukstein <Lee.Bukstein@tmb.state.tx.us> wrote:

Lee Bukstein

From: Lee Bukstein
Sent: Tuesday, March 10, 2015 11:32 AM
To: 'Rick Jaffe'
Subject: RE: expert depositions

Importance: High

Rick
Regarding Dr. Wetmore's April 8 deposition, if you decide to depose her...
I am suggesting that you arrange to do this at the place where I am staying April 7-8, the University Inn, 1767 Decatur, Atlanta. The staff of this hotel says that they will accommodate a deposition there....and there will be no charge to you, other than you arranging for a court reporter to show up.
My suggestion.
Lee

From: Rick Jaffe [mailto:rickjaffeesquire@gmail.com]
Sent: Wednesday, March 04, 2015 5:00 PM
To: Lee Bukstein
Subject: Re: expert depositions

Dates are fine if i do them.

Sent from my iPhone

On Mar 4, 2015, at 4:50 PM, Lee Bukstein <Lee.Bukstein@tmb.state.tx.us> wrote:

Rick,
The scheduling of these depositions is independent of the decision whether you want to do them or not. You can always make arrangements and then cancel them later. You have already agreed to the dates for Board Staff's depositions of your witnesses. We will have our venues and court reporters for Dr. Levin, Dr. Hachem, Dr. Beenken and the four doctors at the B Clinic set up by the beginning of next week and provide you notice. Dr. Fost is available, and only available April 1, 2015, in Madison, Wisconsin. Elaine Kloos is available, and only available April 6, 2015, in Charleston, SC. Dr. Wetmore is available, and only available, April 7, 2015, in Atlanta, GA...and since Atlanta is a huge place, we are respectfully requesting that you schedule it near the Emory University medical campus. This availability for these witnesses is set on those dates for regular business hours, because you have already agreed to those dates. You are welcome to wait until after March 13th to decide whether to depose our expert witnesses, but I am not agreeing to any change in the dates, even if you run into difficulty with making arrangements for venues or court reporters or your own schedule. I have already committed to travel arrangements based on your agreement. Apparently, I am not a "What's next" kind of guy.
Lee

From: Rick Jaffe [mailto:rickjaffeesquire@gmail.com]
Sent: Wednesday, March 04, 2015 4:02 PM
To: Lee Bukstein
Subject: Re: expert depositions

Thanks, but i'm a "what's next" kind of guy and worrying about something that may or may not happen in a month from now is the distant future for me. I understand that's it on me to get a reporter and venue.

Fyi: for alot of reasons, i'd prefer not to take any depositions (\$ and time). I'll see what if anything your folks say in response and decide. So i'll have a better idea the week of the 16th which is almost 3 weeks until that.

But appreciate the reminder. It's generally needed.

Sent from my iPhone

On Mar 4, 2015, at 3:32 PM, Lee Bukstein <Lee.Bukstein@tmb.state.tx.us> wrote:

Rick, now that you've no longer got the Jones trial distracting you....regardless of whether you appear by phone, please remember that you are responsible for setting up: Dr. Fost's deposition venue and court reporter on April 1, 2015 in Madison, WI
Elaine Kloos deposition venue and court reporter on April 6, 2015 in Charleston, SC
Dr. Wetmore deposition near Emory University venue and court reporter on April 7, 2015 in Atlanta, GA
Lee

From: Richard Jaffe [<mailto:rickjaffeesquire@gmail.com>]

Sent: Tuesday, March 03, 2015 10:09 AM

To: Lee Bukstein

Subject: Re: expert depositions

Actually for a couple of reasons, for these witnesses I'm intending to follow what the judges said and just for time purposes. I'm only going to turn what he said into testimony and that's it.

I don't think he can be ordered to appear at 6 am.

I also don't think it's reasonable to anticipate that I'm going to violate a court order. all I'm looking for him to say it what he said. I mean he's published this stuff.

On Tue, Mar 3, 2015 at 8:02 AM, Lee Bukstein <Lee.Bukstein@tmb.state.tx.us> wrote:

Rick, Dr. Burzynski could review Dr. Tsuda's article(s), Dr. Janicki's article, etc, etc. down your list of experts, and Dr. B could testify under the hearsay exception for learned treatises as to whether Dr. B agrees or does not agree. But you are choosing to throw in Dr. Tsuda's voice....and I don't think that you are going to limit yourself to the limitation expressed by the ALJ's recent order. I have to be ready for your witness to be ushered through a thousand doors that would take him far beyond the limitation of the order. So he is going to be treated just like any other expert, and the rules provide that I have six hours of deposition time for an expert. Any inconvenience should be shared. I'm doing more than my share by arranging an international telephone conference call and a court reporter to work until 10 p.m. The availability of your experts for deposition is your problem. Clearly, due to the level of inconvenience for all involved, these scheduling arrangements should be made as soon as possible.

Lee Bukstein

From: Lee Bukstein
Sent: Monday, March 16, 2015 4:33 PM
To: 'Richard Jaffe'
Subject: RE: deposition

Importance: High

Rick

We are definitely already booked up completely for March 30 and 31. It is on the verge as to whether Dr. Hersh will be healthy enough to testify on March 31, 2015, but he is going to get back to me after he sees his doctor this week.

As far as the six...well, now five...patients you are bringing in. There is no opportunity to depose them until May 13, unless you want to open up a date during the time period May 1 through May 11, which you previously wanted to avoid.

The Deposition schedule now:

Deposition Schedule

Monday, March 30, 2015, 9 a.m. - Dr. Levin at his home in Monsey, NY – plan for 6 hours of deposition time

Tuesday, March 31, 2015, 11 a.m. Eastern Standard Time in New York – Patient Dr. Stanley Hersh in Manhattan – Estimated time of my depo will be 1.5 hours. – he is still very ill and recovering from Neurosurgery. This may be a difficult deposition.

Wednesday, April 1, 2015 - you have this day/slot to depose Dr. Norman Fost, our expert from University of Wisconsin in Madison, WI – **But you must provide the venue and time ASAP. This is only two weeks away - you need to provide reasonable notice, so that means I need this information by next Monday.**

Monday, April 6, 2015, 10 a.m. by phone - Patrick Stone, former FDA investigator. He will be at the court reporter's office, we can call in by phone. Estimated time of my depo will be 1.5 hours.

Tuesday, April 7, 2015 you have this day/slot to depose Elaine Kloos, our billing/coding expert from Charleston, SC in Charleston – **But you must provide the venue and time ASAP. This is only three weeks away - you need to provide reasonable notice, so that means I need this information ASAP.**

Wednesday, April 8, 2015 you have this day/slot to depose Dr. Wetmore, our expert from Emory University, in Atlanta, GA as close to the hospital as possible – **But you must provide the venue and time ASAP. This is only three weeks away - you need to provide reasonable notice, so that means I need this information ASAP.**

Thursday, April 9, 2015 9 a.m. Dr. Beenken in Birmingham, AL - plan for 6 hours of deposition time

Friday, April 10, 2015, sometime between 9 a.m. and noon, Dr. Hachem in Huntsville, AL - plan for 6 hours of deposition time

Monday, April 13, 2015 Greg Burzynski Deposition at the B Clinic - plan for 6 hours of deposition time

Tuesday, April 14, 2015 Dr. Yi Deposition at the B Clinic - plan for 6 hours of deposition time

Wednesday, April 15, 2015 Dr. Marquis Deposition at the B Clinic - plan for 6 hours of deposition time

Thursday, April 16, 2015 Stanley Burzynski Deposition at the B Clinic - plan for 6 hours of deposition time

Monday, April 20, 2015, 9 a.m. deposition of three FDA investigators in Dallas, TX – will go through 5 p.m. – Amy Swanholm, Staff Attorney will be sitting in for me

Tuesday, April 21, 2015, 9 a.m. deposition of three FDA investigators in Dallas, TX – will go through 5 p.m. - Amy Swanholm, Staff Attorney will be sitting in for me

I am in trial April 20 – May 1

Tentative

There are no days between May 1 and May 11, 2015 available for deposition per your request that you have those days to work on the pre-filed testimony.

You had requested that depositions of the five patients you are bringing in to not begin until after May 11, 2015. By phone:

Wednesday, May 13, 2015 beginning 9 a.m. deposition of three of those patients

Thursday, May 14, 2015 beginning 9 a.m. deposition of remaining two of those patients

Friday, May 15, 2015 and Monday, May 18, through May 22 are open for the depositions of your experts, Dr. Janicki, Dr. Patil, Dr. Berrisford, Dr. Tsuda and Dr. Chumworathayi - one per day – plan for 6 hours deposition time each one

You line ‘em up – All by phone

May 22 should be the drop dead date for depositions, because my plan is:

1. You submit prefiled testimony as required for each witness.
2. I use the deposition as the cross-examination. And we can do our redirect and re-cross on the record at the deposition.
3. We submit the prefiled testimony and deposition as the complete testimony of the witnesses and no trial time is taken up for their testimony.

We will have just enough time to get the transcripts back before the trial.

Lets do this!

Sincerely,

Lee Bukstein

From: Richard Jaffe [mailto:rickjaffeesquire@gmail.com]

Sent: Monday, March 16, 2015 2:42 PM

To: Lee Bukstein

Subject: deposition

do me a favor, send me what you have for the deposition schedule and who else we have to schedule.

I think bandit and berresford have to be scheduled. he wanted to do it on the 30 or 31st of march but I told him we're tied up both days.

you mentioned something about the patients on the 8 and 9th?
chris needs to do it after work. Per previous pam w. is out.

--

Richard Jaffe, Esq.
770 L Street, Suite 950
Sacramento, California, 95814
916-492-6038
916-492-6039 (fax)

Houston, Tx. numbers:

Lee Bukstein

From: Lee Bukstein
Sent: Friday, March 20, 2015 1:17 PM
To: 'Rick Jaffe'
Subject: RE:

Importance: High

Rick, you are always a cut up. If you get Dr. Wetmore struck as an expert...how is that not important to me??? I don't need any more time to respond....I am doing it today.

So far, it does not look like you are catching my drift about asking the ALJs to either have a hearing or decide without a hearing. If you want to resolve this before your time ticks away for making decisions about whether to depose my experts or not, I am not so sure that it is wise to expect the ALJs to share our urgency about getting stuff done.

So the question still remains... Are you..and when and where are you....going to depose my experts?
Lee

-----Original Message-----

From: Rick Jaffe [<mailto:rickjaffeesquire@gmail.com>]
Sent: Friday, March 20, 2015 8:49 AM
To: Lee Bukstein
Subject:

Lee: as we discussed, the Wetmore motion is important to me that we get a quick resolution as it may be for you The other two motions, are not urgent. Therefore take more time on those if you need. I'll agree to extend the time for you to answer.

I'll probably be filing some more motions in the next week. Some will be motions to dismiss or summary disposition (which you have longer anyway to respond to), but on those as well, they are not time sensitive. So I'm open to putting off your response time for those as well, especially since we're going into depositions.

Per our discussion, (and your recommendation) I'll be filing something on Fost today. That's too late to get resolution next week

Sent from my iPhone

Lee Bukstein

From: Lee Bukstein
Sent: Friday, March 20, 2015 3:17 PM
To: 'Richard Jaffe'
Subject: RE: Re:
Attachments: rSPONSE TO MOTION TO STRIKE DR. WETMORE.doc; rSPONSE TO MOTION TO DISMISS AIDING AND ABETTING CLAIMS revised.doc; Second Motion to Exclude Limit Expert Witnesses Burzynski.doc

Importance: High

Today's crop. On file now.

From: Richard Jaffe [<mailto:rickjaffeesquire@gmail.com>]
Sent: Friday, March 20, 2015 1:30 PM
To: Lee Bukstein
Subject: Re:

well if wetmore isn't in the case there's no need for levin to be deposed or hachem for sure. the depositions of the clinic docs is much more limited. it impacts koos I think also.
short term it save prep time on levin for you. hersh you'll want to depose anyway on standard of care experts.

once I see your response on wetmore I'll decide on her. also, we know we have those days reserved for her and fost so theoretically they could be available for a telephone hearing if the court thinks one is necessary.

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I may just want to depose koos by phone. she's what, tuesday? If I have anything it won't be much.

we have the days reserved. what I can tell you is that I won't take six hours or 4 or 3 on fost or koos, if I do them. I think on fost we've got some legal issues to work through as you'll see from my motions.

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Thank you.

Lee Bukstein

From: Lee Bukstein
Sent: Friday, March 20, 2015 3:24 PM
To: 'Richard Jaffe'
Subject: RE: Re:

Rick, if you are talking about having witnesses available for a phone hearing, it's not acceptable to give them notice the day before, be it by phone or anyway else. I hope that you get the ALJs attention quickly next week, but I am not going to contact Dr. Wetmore about appearing unless I have a date and time for the pre-trial hearing already.

Lee

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To: Lee Bukstein
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Thank you.

Lee Bukstein

From: Lee Bukstein
Sent: Friday, March 20, 2015 3:27 PM
To: 'Richard Jaffe'
Subject: RE: Re:

Please remember that if you want to depose Ms. Kloos/Dr. Fost/Dr. Wetmore by phone, you have to set up the place and court reporter where the expert and I are supposed to show up to do it from our end. We just show up...you have to line up all the rest.

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Thank you.

Lee Bukstein

From: Lee Bukstein
Sent: Tuesday, March 24, 2015 10:50 AM
To: 'Richard Jaffe'
Subject: RE: Koos

Importance: High

Rick,
Please see if Dr. Berrisford and you can do his phone deposition on Friday, April 17, 2015, at 9:00 a.m. in Houston... which would be 2:00 p.m. his time?

Also, I am cancelling the April 20 and April 21 depositions of the FDA inspectors. Those dates are now unworkable. I will keep you posted about follow-up if I can figure this out how to make these depositions workable.

I am waiting to hear from you with a final word about Kloos in Charleston or by phone and Fost in Madison or by phone.

Thanks

Lee

From: Richard Jaffe [mailto:rickjaffeesquire@gmail.com]
Sent: Tuesday, March 24, 2015 3:56 AM
To: Lee Bukstein
Subject: Re: Koos

I'm not dragging my ass up to wisconsin. If I was a different kind of guy, I'd do a 20 minute telephone deposition of him and because of who you are, you'd go there for it. But you've litigated against me long enough to know that that's not what I do. Maybe I could get something useful in a short telephone deposition, I don't think my deposing this guy is going to make a difference in the outcome of the case, so I think I'm going to save you the trip and some wear and tear (and me the time to prepare) I've emailed srb about that and just want to have his agreement. But we've both got plenty to do and I'd just as soon have the rest of the week (after hersh) to focus on other things. So I expect to tell you tomorrow that I'm not deposing fost.

as to Koos, I'm thinking about doing the same thing with her and that trip too. I'll probably make a motion in limine about her but otherwise, I'll make due with her reports and your prefiled direct. That's my thinking anyway, I've also mentioned that to srb in my email and I want to wait to give you my final position on her until after I hear from him.

the patients are still 7 weeks away, the dates you suggested are ok with me. I've already told you that chris wants his deposition after work..some of the others might also want that.

foreign docs: I mentoned that the english doc won't work out at night since he's only 5 hours ahead. the other two docs we can do in the evenings of the clinic docs' depositons.

I don't have the dates yet. but we're shoot for that week. I hope to have dates in the next couple days. but as stated we'll need another date for berrisford.

On Mon, Mar 23, 2015 at 3:01 PM, Lee Bukstein <Lee.Bukstein@tmb.state.tx.us> wrote:

Rick,

I must have missed something. Why is there now a possibility that Dr. Levin and Dr. Hachem's depositions would not "go forward?" You say "if."

What about Dr. Brookman and Dr. Beenken? Is there suddenly some hindrance to them being deposed as noticed by Board Staff?

I got the message, you are not going to depose Dr. Wetmore, no matter the outcome of your Motions to Strike.

You have not provided me with the same clear message regarding whether you are going to depose Dr. Fost. "Maybe Fost" is not "No Frost."

I am not going to make any arrangements for your deposition of Ms. Kloos. Just tell me where my expert witness and I have to be on the previously designated date April 7, 2015 in Charleston. If you are going to make arrangements for this deposition to be by phone, then I still need to know where to go or how to call in. I have responsibility for getting an expert to a noticed deposition. So far, you haven't provided that notice and we are moving into the ten day zone of objectionableness of short notice. Don't forget to obtain a local notarization on Ms. Kloos' end if you are going to depose her by phone. You definitely need to request Ms. Kloos' permission to have somebody come to her residence, if that is what you are thinking.

If you are not going to depose her, then please figure that out now. It is only two weeks away.

And please figure out when I can depose each of the three "out of country" experts, Dr. Tsuda, Dr. Chemayorthi and Dr. Berrisford. We had said that the week of the B Clinic depositions, after hours, but I need some dates and time that you have them on board so that I can do my commission stuff.

And please figure out when I can depose each of the recently announced Patient Witnesses. We had initially set aside May 13 and 14, 2015, but I don't have your final agreement that those witnesses are going to be available, going to be available by phone, at what times they will be available, etc. I am particularly concerned about your connection to these witnesses, since you provided me with wrong mailing addresses initially for over half of them. (3 out of 5) While these are not expert witnesses, these folks are sponsored witnesses. I have every right to commission them to attend a deposition.

If you do not assist me soon with getting these remaining witnesses set up to attend a deposition by phone, then I will commission them for a date of my choosing with notice to you. And if they don't attend, I will move to strike them from appearing.

Please make all that unpleasantness unnecessary. To quote T Rex from Toy Story, "I don't like confrontations!"

Thanks

Lee

-----Original Message-----

From: Rick Jaffe [mailto:rickjaffeesquire@gmail.com]

Sent: Monday, March 23, 2015 3:13 PM

To: Lee Bukstein

Subject: Koos

Fyi i don't have much on koos. I certainly am showing up for levin and hachem if they go forward and i get that you would show up for wetmore and maybe fost.because they would long or involved. But just for koos, for wear and tear purposes you may want to consider preping her by phone and doing a three way call. I'm not going to take ger through documents.

Your call of course, but you could save some travel and dead time since i'm not doing wetmore

Lee Bukstein

From: Lee Bukstein
Sent: Tuesday, March 24, 2015 3:28 PM
To: 'Richard Jaffe'
Subject: RE: motion for summary disposition and motion in limine.

Importance: High

Rick
Please review the order that just came from the SOAH judges that denied your motion to strike Dr. Wetmore. I doubt if your additional stuff will get any traction, either. The point is not gloating.....well, okay, I lied about the gloating. But I really am concerned that you will change your mind about deposing Dr. Wetmore now. I was on the verge of sending her notice and rearranging the schedule. Please, ASAP, either confirm no deposition for Dr. Wetmore or send me the notice of deposition so that Dr. Wetmore and I can plan.
Thanks
Lee

From: Richard Jaffe [mailto:rickjaffeesquire@gmail.com]
Sent: Tuesday, March 24, 2015 3:18 PM
To: Lee Bukstein
Subject: Re: motion for summary disposition and motion in limine.

thanks for the quick response. what a bunch of crap from the judges on substantive motions a certificate of conference, really?.

btw: care to share with me the basis of your comments about my protecting patients' confidentiality. I don't think my attachments mentioned any patient names, at least I didn't knowingly put any in. I don't think I said anything different than what's in the complaint. am I missing something?

On Tue, Mar 24, 2015 at 1:15 PM, Lee Bukstein <Lee.Bukstein@tmb.state.tx.us> wrote:

All requested relief opposed. Fire away.

From: Richard Jaffe [mailto:rickjaffeesquire@gmail.com]
Sent: Tuesday, March 24, 2015 3:14 PM
To: Lee Bukstein
Subject: motion for summary disposition and motion in limine.

Lee here is what I'm going to file. The summary disposition motion does not require a certificate of conference but even though the motion in limine is joined with it, I'm going to assume it requires a certificate. Please let me know today that you oppose the relief requested,.

thanks

--

Richard Jaffe, Esq.

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Thank you.

Lee Bukstein

From: Lee Bukstein
Sent: Wednesday, March 25, 2015 4:23 PM
To: 'Richard Jaffe'
Subject: RE: Depositions of Board Staff Experts

Importance: High

Rick,
I am answering your motion to limit/strike Dr. Fost, but you still have not given me a definitive answer about whether you are going to depose him and it is now less than one week away. Please provide this answer today.
Lee

From: Richard Jaffe [<mailto:rickjaffeesquire@gmail.com>]
Sent: Monday, March 23, 2015 8:31 AM
To: Lee Bukstein
Subject: Depositions of Board Staff Experts

Lee; I've decided that I'm not going to depose Dr. Wetmore, so you can release her from the reserved deposition date.
Here is my reply to the your response on the motion to strike her which was uploaded to soah and faxed to you yesterday.

I'll let you know about Fost, later today.

On Koos, I'll arrange to have a short telephone deposition of her. I'll give you the particulars of where today or tomorrow. I'm planning on starting it in the 11- am to 1 pm EDT time frame. I doubt it will be over an hour and it will probably be much less. Have her reserve two hours to be safe.

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Thank you.

Lee Bukstein

From: Lee Bukstein
Sent: Wednesday, March 25, 2015 4:29 PM
To: 'Rick Jaffe'
Subject: RE: Depositions of Board Staff Experts

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From: Rick Jaffe [<mailto:rickjaffeesquire@gmail.com>]
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Thank you.

Lee Bukstein

From: Lee Bukstein
Sent: Wednesday, March 25, 2015 4:42 PM
To: 'Rick Jaffe'
Subject: RE: Depositions of Board Staff Experts

Importance: High

I am also releasing Dr. Wetmore from her date due to your prior communications.

That leaves Ms. Elaine Kloos. It is less than two weeks before her agreed date... and you have provided no notice so that we can know what to do or where to be. Please do so now or release her, too.

From: Rick Jaffe [<mailto:rickjaffeesquire@gmail.com>]
Sent: Wednesday, March 25, 2015 4:29 PM
To: Lee Bukstein
Subject: Re: Depositions of Board Staff Experts

You can release him from the date

Sent from my iPhone

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Lee Bukstein

From: Lee Bukstein
Sent: Thursday, March 26, 2015 11:35 AM
To: 'Richard Jaffe'
Subject: RE:

thanks

From: Richard Jaffe [<mailto:rickjaffeesquire@gmail.com>]
Sent: Thursday, March 26, 2015 11:24 AM
To: Lee Bukstein
Subject:

and to re reconfirm. I am not going to depose Fost or Wetmore.

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Richard Jaffe, Esq.
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