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STATE OF WASHINGTON
BEFORE THE WASHINGTON STATE
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of:

Seattle Children's Hospital Appeal of OIC's
Approvals of HBE Plan Filings.

Docket No. 13-0293

SEATTLE CHILDREN'S
HOSPITAL'S MOTION FOR
PROTECTIVE ORDER

I. RELIEF REQUESTED

Seattle Children's Hospital (SCH) asks for a protective order to set reasonable parameters on discovery in anticipation of the upcoming August 18, 2014 hearing date. In response to SCH's repeated proposals on this topic, the OIC Staff and the Intervenors have done nothing but raise objections, without making any counterproposals. Judicial intervention is necessary in order to establish a reasonable schedule and procedures for discovery prior to hearing.

II. FACTUAL BACKGROUND

SCH filed a motion for a protective order on April 1, 2014, requesting that the Hearings Unit set parameters on discovery. Neither the OIC Staff nor Intervenors filed any written objection to that motion. No order was entered on that motion.

The Intervenors have served no requests for written discovery, even though more than six months have elapsed since the final Order that granted them leave to intervene. SCH and the OIC have already exchanged written discovery requests.¹ The parties are required, as established

¹ The OIC Staff served a set of interrogatories and requests for production on November 7, 2013. SCH served a set of interrogatories and requests for production, and a set of requests for admission, on December 11, 2013.

in the June 12, 2014 Order on Pre-Hearing Conference, to exchange exhibit lists by August 11, 2014.

The parties have filed and served preliminary witness disclosures; by the same June 12, 2014 Order, the parties are required to file and serve final witness disclosures by June 25, 2014. No depositions have been conducted to date. SCH, by an email dated June 2, 2014, offered dates and times when its SCH witnesses were available for deposition. No party responded to that email.

Less than two months remain before the August 18, 2014 hearing. Any discovery must be completed within that timeframe. Seeking again to reach agreement with the other parties regarding a discovery plan, SCH sent a letter, dated June 13, 2014, to opposing counsel proposing new parameters for discovery. Specifically, SCH proposed:

- The parties will exchange documents (to the extent not already disclosed) likely to be referenced at the hearing by named witnesses by an agreed date prior to the depositions of those witnesses. No other written discovery will be conducted;
- Each deposition will be limited to a maximum of 3 hours; and
- No depositions will be requested or scheduled of witnesses not identified on a party's witness list.

Declaration of Carol Sue Janes ("Janes Decl."), Ex. A. SCH also proposed that depositions be completed no later than August 1, 2014, and that all parties provide available dates of their witnesses for depositions no later than June 25, 2014. *Id.*

As with the SCH's April 1, 2014 motion, the opposing parties have failed to provide a substantive response or counterproposal to SCH's June 13, 2014 letter. In an email dated June 16, 2014, the OIC Staff counsel made some general comments regarding the availability of two of his multiple disclosed witnesses, but said nothing about his other witnesses, and made no substantive response to the above proposals other than to say: "I am not sure of the need for time limits or the other rules you are proposing." Janes Decl., Ex. B. The only substantive response from counsel for Intervenor Premera was an email that stated in relevant part: "your [proposed]

restrictions seem very draconian.” Janes Decl., Ex. C. SCH has received no response from counsel for Regence to the June 13, 2014 letter.

III. ISSUES PRESENTED

The presiding officer has authority to condition or limit discovery. Are the limits on discovery proposed here by SCH reasonable and appropriate in order to allow discovery to be completed in a fair and timely fashion prior to the scheduled hearing date?

IV. EVIDENCE RELIED UPON

SCH relies upon the accompanying Declaration of Carol Sue Janes, with the exhibits thereto, and the records and files herein.

V. ANALYSIS

A. Applicable Law.

The chief presiding officer has “primary responsibility for the conduct of hearings [and] the preliminary matters preliminary thereto.” WAC 284-02-070(2)(d)(i).

The chief presiding officer also has “discretion and authority to condition or limit discovery as set forth in RCW 34.05.446(3).” WAC 284-02-070(e)(iii); *see also* RCW 34.05.446(1) (the presiding officer “may enter protective orders”). RCW 34.05.446(3) provides that the presiding officer “may decide whether to permit the taking of depositions, the requesting of admissions, and all other [discovery] procedures.” The statute further provides:

The presiding officer may condition use of discovery on a showing of necessity and unavailability by other means. In exercising such discretion, the presiding officer shall consider: (a) Whether all parties are represented by counsel; (b) whether undue expense or delay in bringing the case to hearing will result; (c) whether the discovery will promote the orderly and prompt conduct of the proceeding; and (d) whether the interests of justice will be promoted.

Id. By its Order dated December 19, 2014, which granted the petitions to intervene, the Hearings Unit noted its authority to limit discovery under this provision.²

² *See generally* CR 26(c) (“Upon motion by a party ... from whom discovery is sought, and for good cause shown, the court ... may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including ... that the discovery not be had”); CR 26(b)(1)(A), (C) (trial court may also limit discovery if it “is obtainable from some other source that is more

B. Good Cause Exists to Grant a Protective Order to Establish Procedures for Completion of Discovery Before the August 18, 2014 Hearing Date.

SCH has made repeated efforts to seek agreement with opposing counsel regarding the schedule and parameters for discovery. Opposing counsel have either ignored these efforts, or flatly opposed them without offering any counterproposals. Judicial intervention is warranted and appropriate in order to establish a reasonable schedule for discovery, and reasonable limits that will allow discovery to be completed in a fair and timely fashion prior to the scheduled hearing date.

IV. CONCLUSION

The OIC Staff and Intervenors' failure to agree to or offer counterproposals for discovery is yet another example of their obstructionist tactics in this litigation. For the reasons stated, the Hearings Unit should adopt the reasonable discovery limits identified in this motion.

DATED this 19th day of June, 2014.

BENNETT BIGELOW & LEEDOM, P.S.

By 
Michael Madden, WSBA # 8747
Carol Sue Janes, WSBA # 16557
Attorneys for Seattle Children's Hospital
mmadden@bblaw.com
csjanes@bblaw.com
601 Union Street, Suite 1500
Seattle, WA 98101
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convenient, less burdensome, or less expensive", or "the discovery is unduly burdensome and expensive, taking into account the needs of the case ... and the importance of the issues at stake in the litigation"); *Hallmann v. Sturm Ruger & Co.*, 31 Wn. App. 50, 53, 639 P.2d 805 (1982) (a trial judge has a responsibility to administer justice and to ensure that order is maintained in the litigation); *Barfield v. City of Seattle*, 100 Wn.2d 878, 885, 676 P.2d 438 (1984) ("[p]rotective orders enable trial courts 'to manage the discovery process in a fashion that will implement the goal of full disclosure of relevant information and at the same time afford the participants protection against harmful side effects'"); *Marine Power & Equip. Co. v. Dep't of Transp.*, 107 Wn.2d 872, 875, 734 P.2d 480 (1987) (a court's determination on a motion to grant a protective order is discretionary, and is reviewed only for abuse of discretion).

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of this document on all parties or their counsel of record on the date below by the method of delivery specified below on today's date addressed to the following:

Presiding Officer

Hon. George A. Finkle (ret.)
gfinkle@jdrllc.com
forbes@jdrllc.com

- Legal Messenger
- Facsimile
- Email
- U.S. Mail

Hearings Unit

Attn: Kelly Cairns
KellyC@oic.wa.gov
Office of the Insurance Commissioner
Hearings Unit
5000 Capitol Boulevard
Tumwater, WA 98501

- Legal Messenger
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- U.S. Mail

Office of the Insurance Commissioner

Charles Brown
charlesb@oic.wa.gov
Office of the Insurance Commissioner
5000 Capitol Boulevard
Tumwater, WA 98501

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Seattle, WA 98101-2375

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- Email
- U.S. Mail

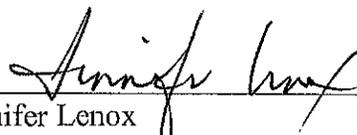
BridgeSpan Health Company

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701 Fifth Avenue, Suite 3600
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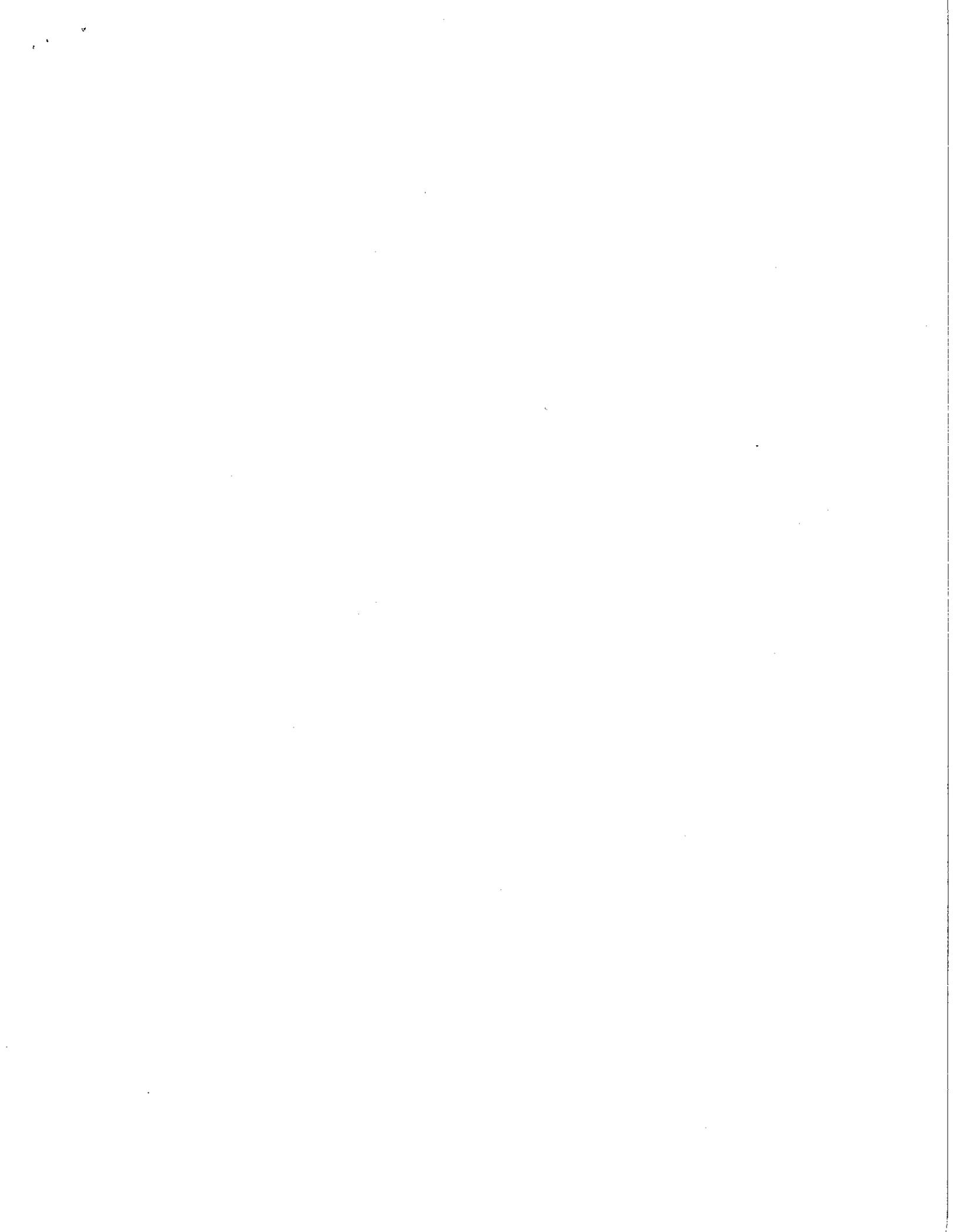
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, this 19th day of June, 2014.



Jennifer Lenox
Legal Assistant

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Jennifer K. Lenox

From: Jennifer K. Lenox
Sent: Thursday, June 19, 2014 1:53 PM
To: gfinkle@jdrllc.com; forbes@jdrllc.com; KellyC@oic.wa.gov; charlesb@oic.wa.gov; Paytong@lanepowell.com; parker@carneylaw.com; Mike Madden; Carol Sue Janes
Cc: Gerri E. Downs; Jennifer K. Lenox
Subject: (13-0293 -- SCH / OIC) Attaching for service and filing: 6-19-14 SCH Motion for Protective Order, Declaration of Carol Sue Janes in Support, and Proposed Order
Attachments: SCH's Motion for Protective Order (6-19-14) (M1053176).pdf; Declaration of Carol Sue Janes ISO SCH's Motion for Protective Order (6-19-14) (M1053178).pdf; Proposed Order Granting SCH's Motion for Protective Order (6-19-14) (M1053183).pdf
Follow Up Flag: Copied to WORLDOX (BB&L - Client Files\0766\00018\EMAIL\M1053223.MSG)

Re: SCH Appeal of OIC's Approvals of HBE Plan Filings
Docket No. 13-0293

Dear Judge Finkle: (copy Ms. Cairns and All Counsel)

Please find attached for filing and service today:

1. Seattle Children's Hospital's Motion for Protective Order;
2. Declaration of Carol Sue Janes in Support of Seattle Children's Hospital's Motion for Protective Order; and
3. Proposed Order Granting Seattle Children's Hospital's Motion for Protective Order.

The originals will be mailed today to Ms. Cairns for the file, and paper copies will be mailed to All Counsel.

If you require a copy of the Proposed Order in Word format, please just let us know and it will be sent to your office, promptly.

Please let us know if anyone has difficulty accessing the attached. Thank you.

JENNIFER LENOX

Legal Assistant to Carol Sue Janes, Amy DeLisa, and Robert Stevens, COO

BENNETT BIGELOW & LEEDOM P.S. | BBLAW.COM

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STATE OF WASHINGTON
BEFORE THE WASHINGTON STATE
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In the Matter of:

Seattle Children's Hospital Appeal of OIC's
Approvals of HBE Plan Filings.

Docket No. 13-0293

DECLARATION OF CAROL SUE
JANES IN SUPPORT OF SEATTLE
CHILDREN'S HOSPITAL'S MOTION
FOR PROTECTIVE ORDER

I, Carol Sue Janes, declare as follows:

1. I am an attorney with Bennett Bigelow & Leedom, P.S., counsel for Plaintiff Seattle Children's Hospital (SCH) in this matter. I make this declaration based on my personal knowledge and am competent to testify herein. This declaration is submitted in support of SCH's Motion for Protective Order.
2. Attached hereto as **Exhibit A** is a true and correct copy of a letter from Mike Madden and Carol Sue Janes to opposing counsel in this action, dated June 13, 2014.
3. Attached hereto as **Exhibit B** is a true and correct copy of an email from Chuck Brown, counsel for the OIC Staff, dated June 16, 2014.
4. Attached hereto as **Exhibit C** is a true and correct copy of an email from Gwendolyn Payton, counsel for Premera, dated June 16, 2014.

I declare, under penalty of perjury under the laws of the state of Washington, that the foregoing is true and correct.

Executed at Seattle, Washington this 19th day of June, 2014.



CAROL SUE JANES, WSBA # 16557

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of this document on all parties or their counsel of record on the date below by the method of delivery specified below on today's date addressed to the following:

Presiding Officer

Hon. George A. Finkle (ret.)
ginkle@jdrllc.com
forbes@jdrllc.com

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Hearings Unit

Attn: Kelly Cairns
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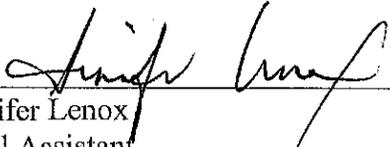
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, this 19th day of June, 2014.



Jennifer Lenox
Legal Assistant

{0766.00018/M1052544.DOCX; 2}

EXHIBIT A



BENNETT
BIGELOW
& LEEDOM, P.S.

LAW OFFICES

Michael Madden
Attorney
mmadden@bblaw.com

Carol Sue Janes
Attorney
csjanes@bblaw.com

June 13, 2014

Via Email and U.S. Mail

Charles Brown
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Timothy Parker
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Carney Badley Spellman, P.S.
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Gwendolyn Payton
Paytong@lanepowell.com
Lane Powell PC
1420 Fifth Avenue, Suite 4200
Seattle, WA 98101-2375

Re: SCH v. OIC: Proposed Discovery Procedures

Dear Counsel:

In follow-up to the telephone conference with Judge Finkle on June 11, 2014, and the establishment of the hearing date in this matter, we are revisiting the issue of discovery. We propose the following:

- The parties will exchange documents (to the extent not already disclosed) likely to be referenced at the hearing by named witnesses by an agreed date prior to the depositions of those witnesses. No other written discovery will be conducted;
- Each deposition will be limited to a maximum of 3 hours; and
- No depositions will be requested or scheduled of witnesses not identified on a party's witness list.

As you are aware, we had moved, on April 1, 2014, for a protective order to set parameters for discovery. We received no opposition from any party to that motion. We also contacted you, by email dated June 2, 2014, with dates and times when SCH witnesses were available. We

Charles Brown, *et al.*
Re: Proposed Discovery Procedures
June 13, 2014
Page 2

received no response from any party. We propose that all depositions be completed no later than August 1, 2014, and ask that all parties provide available dates of witness no later than Wednesday, June 25, 2014.

Please provide your written response to this proposal no later than the close of business on Monday, June 16, 2014. If all parties are not in agreement, we will raise the issue with Judge Finkle for resolution at the earliest convenience.

We look forward to hearing from you.

Very truly yours,

BENNETT, BIGELOW & LEEDOM, P.S.

A handwritten signature in black ink, appearing to read "Michael Madden", written over a horizontal line.

Michael Madden
Carol Sue Janes

MM/CSJ:jl

EXHIBIT B

Jennifer K. Lenox

Subject: RE: (SCH / OIC) -- Attaching: 6-13-14 letter from Mike Madden / Carol Sue Janes to All Counsel re proposed discovery procedures

From: Brown, Charles (OIC) [<mailto:CharlesB@OIC.WA.GOV>]

Sent: Monday, June 16, 2014 4:20 PM

To: Mike Madden; Payton, Gwendolyn; Jennifer K. Lenox

Cc: parker@carneylaw.com; Carol Sue Janes; Anne E. Ebbighausen; Gerri E. Downs; Gellermann, AnnaLisa (OIC); Nollette, Molly (OIC); Kreitler, Jennifer (OIC)

Subject: RE: (SCH / OIC) -- Attaching: 6-13-14 letter from Mike Madden / Carol Sue Janes to All Counsel re proposed discovery procedures

Mike,

I have not a chance to review your proposal with AnnaLisa, but like Gwendolyn, I am not sure of the need for time limits or the other rules you are proposing. If you intend to depose Molly Nollette, she is out of the office for three days following July 4th. Although her remaining schedule is pretty full, if you can give me some proposed dates, Molly and I will try to accommodate them. Jennifer Kreitler's schedule is more flexible. If you want to depose these OIC staff witnesses, it probably makes sense to do them both in one day here in Tumwater. I would think the parties should be able to complete the depositions of the five witnesses you previously listed if we set aside two days in Seattle.

Thanks,

Chuck

From: Mike Madden [<mailto:mmadden@bblaw.com>]

Sent: Monday, June 16, 2014 3:14 PM

To: Payton, Gwendolyn; Jennifer K. Lenox

Cc: Brown, Charles (OIC); parker@carneylaw.com; Carol Sue Janes; Anne E. Ebbighausen; Gerri E. Downs

Subject: RE: (SCH / OIC) -- Attaching: 6-13-14 letter from Mike Madden / Carol Sue Janes to All Counsel re proposed discovery procedures

We look forward to a proposal from the staff and intervenors that will fit the schedule we all have to deal with.

MICHAEL MADDEN

Attorney / Director

From: Payton, Gwendolyn [<mailto:PaytonG@LanePowell.com>]

Sent: Monday, June 16, 2014 1:07 PM

To: Jennifer K. Lenox; Mike Madden

Cc: charlesb@oic.wa.gov; parker@carneylaw.com; Mike Madden; Carol Sue Janes; Anne E. Ebbighausen; Gerri E. Downs

Subject: Re: (SCH / OIC) -- Attaching: 6-13-14 letter from Mike Madden / Carol Sue Janes to All Counsel re proposed discovery procedures

Mike, your arbitrary deadlines in this letter are challenging. I can't get back to you by the close of business on all this: I told you I am traveling and I am going to be in the air until later tonight. All that said, at first glance, your restrictions seem very draconian.

Gwendolyn

EXHIBIT C

Jennifer K. Lenox

From: Payton, Gwendolyn [PaytonG@LanePowell.com]
Sent: Monday, June 16, 2014 1:07 PM
To: Jennifer K. Lenox; Mike Madden
Cc: charlesb@oic.wa.gov; parker@carneylaw.com; Mike Madden; Carol Sue Janes; Anne E. Ebbighausen; Gerri E. Downs
Subject: Re: (SCH / OIC) -- Attaching: 6-13-14 letter from Mike Madden / Carol Sue Janes to All Counsel re proposed discovery procedures

Mike, your arbitrary deadlines in this letter are challenging. I can't get back to you by the close of business on all this: I told you I am traveling and I am going to be in the air until later tonight. All that said, at first glance, your restrictions seem very draconian.

Gwendolyn