

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE (PORTLAND)

L.L. BEAN, INC., :
Plaintiff/Defendant-in-counterclaim, :
 : CIVIL ACTION
 v. : 08-177-PH
 :
BANK OF AMERICA CORPORATION and :
FIA CARD SERVICES, N.A., :
Defendants/Plaintiffs-in-counterclaim. :
 :
FIA CARD SERVICES, N.A., :
Plaintiff-in-counterclaim, :
 :
 v. :
 :
L.L. BEAN, INC., :
Defendant-in-counterclaim. :

MEMORANDUM & ORDER
RE MOTIONS HEARD
NOVEMBER 30, 2009

Before the Court are two motions:

1. Defendants' Motion for Protective Order with Incorporated Memorandum of Law (Doc. #179) ("Defendants' Motion for Protective Order"); and

2. Joint Motion of L.L. Bean and Brann & Isaacson to Quash Subpoena and for Protective Order and Objection to Defendants' Motion for Protective Order (Doc. #182) ("Joint Motion to Quash").

A hearing was held on November 30, 2009, at the conclusion of which the Court granted Defendants' Motion for Protective

Order and granted the Joint Motion to Quash to the extent that it sought to quash the subpoena served on Brann & Isaacson, trial counsel for Plaintiff L.L. Bean, Inc. ("Bean"). To the extent that the Motion to Quash sought to suspend all remaining discovery, the motion was denied. The Court stated that it would issue a written order within forty-eight hours, memorializing the rulings and explaining its reasoning. This is that Memorandum and Order.

I. Background

As the impending December 4, 2009, deadline for the completion of fact discovery provides the context in which the above motions are considered, the Court recounts the prior proceedings which led to its establishment. Bean commenced this action on June 3, 2008, against Defendants Bank of America Corporation ("Bank of America") and FIA Card Services, N.A. ("FIA") (collectively "Defendants"). See Docket. The Court initially set December 23, 2008, as the deadline for the completion of discovery. See Scheduling Order (Doc. #25) at 2. However, the parties objected to the Court's Scheduling Order and jointly moved to modify it. See Objection and Joint Motion to Modify Scheduling Order (Doc. #29) ("Joint Motion"). The Court granted this request. See Text Order of 8/13/08 (granting Joint Motion). By doing so, the deadline for the completion of fact discovery became January 30, 2009. See Joint Motion at 2.

At a January 16, 2009, hearing on Defendants' Motion to Designate Case as Complex Track (Doc. #55), counsel for Defendants orally moved to extend by five months the deadlines for fact and expert discovery, see Order (Doc. #67) ("Order of 1/16/09") at 2 n.2. The Court granted this request, making June 30, 2009, the new deadline for the completion of fact discovery. See id. The final sentence of the Order of 1/16/09 reflecting this action, however, contained the following caution:

Any requests for further extensions will not be viewed favorably, and the parties are advised to act accordingly.

Id. at 2.

On May 19, 2009, the parties filed a Second Joint Motion to Modify Scheduling Order (Doc. #135) ("Second Joint Motion"), seeking, *inter alia*, to extend the deadline for the completion of fact discovery to October 2, 2009. See Second Joint Motion at 3. The Court granted this request, but in so doing the Court warned the parties that "**there will be no further extensions.**" Order Granting Second Joint Motion to Modify Scheduling Order (Doc. #137) ("Order of 5/21/09") at 1. Despite this warning, on September 3, 2009, Defendants sought still another extension. See Motion to Modify Scheduling Order (Doc. #154). At a hearing held on September 17, 2009, this Magistrate Judge with great reluctance granted the motion. As a result, the deadline for the completion of fact discovery became December 4, 2009. See Order

Granting Motion to Amend Scheduling Order (Doc. #166) ("Order of 9/17/09"¹).

II. Defendants' Motion for Protective Order

A. Relief Sought

Defendants seek a protective order to preclude Bean from taking the 30(b)(6) deposition of FIA on December 3, 2009, the deposition of Drew Civiletti on December 3, 2009, and the deposition of Michelle Y. Chamberlain on December 4, 2009, on the ground that Bean provided insufficient written notice for each deposition under Fed. R. Civ. P. 30(b)(1). See Defendants' Motion for Protective Order at 1. In support of the motion Defendants rely upon the following facts.

B. Facts

On Friday, November 20, 2009, Bean noticed the 30(b)(6) deposition of FIA for the Monday after Thanksgiving, November 30, 2009. See Memorandum of Law in Support of Defendants' Motion for Protective Order ("Defendants' Mem.") at 1; see also id., Exhibit ("Ex.") A (L.L. Bean, Inc.'s Notice of Videotaped Deposition of FIA Card Services, N.A. ("Notice of Deposition")) at 2. The Notice of Deposition listed eighteen deposition topics on which Bean sought testimony from FIA representatives. See Notice of

¹ Although the Order Granting Motion to Amend Scheduling Order (Doc. #166) was entered on September 22, 2009, the ruling granting the motion was made at the hearing on September 17, 2009. Thus, the Court identifies this order as the "Order of 9/17/09."

Deposition at 3-6. Among the topics were “[a]ll facts relied upon by FIA in support of its counterclaims,” id. at 5, and “FIA’s damages, including the alleged basis for and calculation of such damages,” id.

Upon receiving the Notice of Deposition, Defendants’ counsel contacted Bean’s counsel and objected on the ground that Bean had provided insufficient written notice under Fed. R. Civ. P. 30. See Defendants’ Mem., Ex. B (Email from Stanley to Schaefer of 11/20/09). In an email sent at 4:11 p.m. on Friday, November 20th, Defendants’ counsel advised Bean’s counsel that unless Bean agreed to move the date, Defendants would move for a protective order on Monday, November 23rd. See id. Defendants’ counsel explained that additional time was needed because:

FIA will most likely need to designate multiple witnesses to cover the 18 deposition topics, and it is simply physically impossible to review the documents and educate the witnesses on such short notice over a holiday week, not to mention the travel difficulties involved in making travel arrangements to Wilmington, DE the Sunday after the Thanksgiving holiday, which is one of the busiest travel days of the year. Your four-business-day notice of deposition (or 9-day notice if you include the weekends and holiday) blatantly violates Rule 30.

Id. In the final paragraph of the email, Defendants’ counsel noted that because “the calendar is filling up with deposition dates (as we approach the close of fact discovery on December 4, 2009), FIA would be amenable to making itself available after the close of fact discovery if that is acceptable to Bean.” Id.

Bean responded to Defendants’ request on Monday, November

23, 2009, by issuing a revised notice of deposition which scheduled FIA's 30(b)(6) deposition for December 3, 2009. See Defendants' Mem., Ex. C (L.L. Bean, Inc.'s Revised Notice of Videotaped Deposition of FIA Card Services, N.A. ("Revised Notice of Deposition")). In an email which accompanied the Revised Notice of Deposition, Bean's counsel advised that Bean was "not prepared to schedule the deposition outside the discovery period, given the circumstances." Defendants' Mem., Ex. G (Email from Schaefer to Stanley of 11/23/09). Bean also issued on November 23rd two additional deposition notices, one to take the deposition of Drew Civiletti, in-house business counsel for FIA,² on December 3, 2009, in Wilmington, Delaware, see id., Ex. D (L.L. Bean, Inc.'s Notice of Videotaped Deposition of Andrew Civiletti ("Civiletti Notice")), and one to take the deposition of Michelle Y. Chamberlain on December 4, 2009, in Lewiston, Maine, see id., Ex. E (L.L. Bean, Inc.'s Notice of Videotaped Deposition of Michelle Y. Chamberlain ("Chamberlain Notice")). Hereafter, the Revised Notice of Deposition, the Civiletti Notice, and the Chamberlain Notice are collectively referred to as the "Notices of Deposition."

² Bean advises that it issued the deposition subpoena to Andrew Civiletti "solely as a defensive measure in the event that the Court determines that it is 'open season' for the deposition of lawyers in this case." Memorandum in Support of Joint Motion and Objection to Motion for Protective Order ("Bean Mem.") at 7 n.8. Bean further advises that it "does not intend to proceed with Mr. Civiletti's deposition if the Court grants the instant Motion to Quash [Doc. #182]." Id.

On November 24, 2009, Defendants' counsel contacted Bean's counsel by email and informed him of Defendants' position that the Notices of Deposition provided insufficient written notice under Rule 30(b)(6) for essentially the same reason stated in Defendants' counsel's email of November 20, 2009. See Defendants' Mem., Ex. F (Email from Stanley to Schaefer of 11/24/09). Defendants' counsel again advised Bean that if Bean did not agree to move the depositions beyond December 4, 2009, Defendants would seek a protective order. Id. The email concluded with a request that Bean's counsel let Defendants know as soon as possible whether Bean was amenable to moving the date of the depositions beyond December 4, 2009. Id.

Bean's counsel responded within the hour, disputing that insufficient notice had been given and stating that Bean "cannot agree to reschedule after the deadline based on your mere implied commitment in an e-mail to produce witnesses after December 4." Id., Ex. G (Email from Shaefer to Stanley of 11/24/09). Bean's counsel further wrote:

Given your stated refusal to make the witnesses available within the discovery period, it would be unfair and inappropriate for the Defendants to proceed with any of the discovery that they have noticed. There should be a complete suspension of discovery, including specifically the deposition of RSG scheduled to occur promptly after the holiday week[]end, so that this apparent refusal to participate in completion of discovery can be resolved appropriately. Please confirm immediately that you will suspend you[r] discovery efforts accordingly so that counsel can address this matter.

Id.

Defendants' counsel replied that Defendants were unwilling to suspend their discovery efforts and disputed the assertion that Defendants had refused to participate in the completion of discovery. See id., Ex. H. (Email from Stanley to Schaefer of 11/24/09). Defendants' counsel reiterated that Defendants' objection to the three depositions was based on a lack of sufficient notice:

The Federal Rules of Civil Procedure and case law are clear that the deposition notices served by Bean right before the close of fact discovery are insufficient because they do not provide adequate time for FIA's witnesses to prepare for the deposition. Nothing was preventing Bean from serving the deposition notices earlier. Nevertheless, in an attempt to compromise, we are willing to discuss the witnesses' availability after December 4, 2009. You have expressed no interest in that suggestion. As such, we intend to move for a protective order, in which we will request that the notices of deposition be vacated, or alternatively that the depositions be rescheduled.

Id. In accordance with this message, Defendants filed the instant motion for protective order on November 24, 2009. See Docket.

The following day, November 25, 2009, the Court conducted a telephone conference with counsel regarding scheduling a hearing on the motion. See Docket. At the outset, the Court observed that Defendants had expressed a willingness to have the depositions proceed after December 4, 2009, and that if the motion were heard and granted, Bean would be prevented from

taking the three depositions (because of the impending close of fact discovery). The Court asked Bean's counsel whether the motion could be resolved on the basis suggested by Defendants. Bean's counsel responded that Bean was not agreeable to this³ and indicated that Bean was desirous of a hearing at which it would not only object to Defendants' Motion for Protective Order but also argue its own forthcoming motion for a protective order to bar the deposition of Bean's trial counsel, Brann & Isaacson, (which Defendants had noticed for December 3, 2009). After further discussion with counsel, the Court scheduled a hearing at 2:00 p.m. on November 30, 2009, and directed Bean to file its motion as soon as possible.

C. Law

Federal Rule of Civil Procedure 30(b)(1) states that "[a] party who wants to depose a person by oral questions must give reasonable written notice to every other party." Fed. R. Civ. P. 30(b)(1). What constitutes "reasonable" notice is fact-specific and depends on the circumstances of the case. In re Sulfuric Acid Antitrust Litig., 231 F.R.D. 320, 327 (N.D. Ill. 2005) ("Obviously no fixed rule can be laid down because much will depend on the other circumstances of the particular case.") (quoting 8A C. Wright, A. Miller & R. Marcus, Fed. Prac. & Proc.:

³ The Court's recollection is that Bean's counsel stated that conducting the depositions after December 4, 2009, was "not an option."

Civil § 2111 (1994)).

While Fed. R. Civ. P. 30 does not set forth a minimum notice period, the version of Fed. R. Civ. P. 32 which was effective until December 1, 2009, provided protection where less than eleven days notice was given.⁴ Specifically, this version of Rule 32(a)(5)(A) provided that “[a] deposition must not be used against a party who, having received less than 11 days’ notice of the deposition, promptly moved for a protective order under Rule 26(c)(1)(B) requesting that it not be taken or be taken at a different time or place—and this motion was still pending when the deposition was taken.” Fed. R. Civ. P. 32(a)(5)(A). The Advisory Committee Notes with respect to this provision state:

Although the revision of Rule 32(a) covers only the risk that the deposition could be used against the non-appearing movant, it should also follow that, when the proposed deponent is the movant, the deponent would have “just cause” for failing to appear for purposes of Rule 37(d)(1). Inclusion of this provision is not intended to signify that 11 days’ notice is the minimum advance notice for all depositions or that greater than 10 days should necessarily be deemed sufficient in all situations.

Fed. R. Civ. P. 32 advisory committee note (re 1993 Amendments).

D. Application

Defendants note that Bean served the original Notice of

⁴ Effective December 1, 2009, Fed. R. Civ. P. 32(a)(5)(A) provides that “[a] deposition must not be used against a party who, having received less than 14 days’ notice of the deposition, promptly moved for a protective order under Rule 26(c)(1)(B) requesting that it not be taken or be taken at a different time or place and this motion was still pending when the deposition was taken.” Id.

Deposition on the Friday before Thanksgiving (November 20, 2009) and noticed the deposition for the Monday after Thanksgiving (November 30, 2009). See Defendants' Mem. at 5. The Court agrees that the week of November 23rd is fairly described as a holiday week which bears on the reasonableness of the notice. The Court also finds plausible Defendants' claim that the eighteen topics identified by Bean for the deposition will require that FIA designate multiple witnesses to address the topics. Indeed, after examining the eighteen topics, the Court finds the following argument by Defendants to be persuasive:

[I]n order to meet its obligation with respect to the 30(b)(6) deposition, FIA will have to designate one or more individuals on the 18 deposition topics. Those designee(s) will have to work with FIA counsel to look through documents, contact present and former employees, and attempt to integrate the information to be able to provide answers on behalf of FIA. The amount of time required will be substantial. Indeed, it is physically impossible to review the documents and educate the witnesses on such short notice, particularly given that the week of November 23rd is a holiday week. The FIA witnesses had holiday plans in place before Bean served the Original or Revised Notice of Deposition, and counsel for FIA is already occupied preparing for depositions that were previously properly noticed, including the RSG (non-party) deposition on December 1, the Brann & Isaacson 30(b)(6) deposition on December 3,^[5] and the deposition of Ric Struthers (FIA employee) on December 4, not to mention counsel's own holiday plans.

Defendants' Mem. at 5-6.

Bean claims to have given "thirteen-days notice ... for the

⁵ As a result of the Court's November 30, 2009, ruling on the Joint Motion to Quash, the Brann & Isaacson 30(b)(6) deposition will not take place.

FIA deposition.” Memorandum in Support of Joint Motion and Objection to Motion for Protective Order (“Bean Mem.”) at 10. The Court rejects this claim. At no time did Defendants have thirteen-days notice. Bean arrives at this figure by counting the days between its service of the original Notice of Deposition and the December 3rd date contained in the Revised Notice of Deposition. Thus, in Bean’s view, upon receiving the original Notice of Deposition, FIA should have immediately swung into action on Friday, November 20th and begun scrambling to prepare for a deposition scheduled only three or four⁶ business days hence. Presumably Bean also believes that upon receiving the Revised Notice of Deposition on November 23rd, FIA should have breathed a slight sigh of relief and continued to work furiously to prepare for a deposition which was then only four or five business days away.

The Court, however, takes a different view. When confronted on November 20th with what, under the circumstances, the Court agrees was inadequate notice, Defendants reasonably sought more time to prepare and expressed a willingness to be deposed after December 4, 2009. Bean’s response on November 23rd to renotice the deposition for December 3, 2009, did little to address the primary problems which FIA had identified, the intervening

⁶ Defendants represent that the Friday after Thanksgiving is a state holiday in Maine and is not to be counted in calculating the number of days. See Defendants’ Mem. at 1 n.1.

Thanksgiving holiday period and the need to prepare for other depositions that had already been scheduled. Thus, the Court also finds that the Revised Notice of Deposition, which Defendants received on November 23rd, did not provide Defendants with reasonable notice and, thus, violated Rule 30(b)(1).

The Court is cognizant that, by granting Defendants' Motion for Protective Order, Bean will be prevented from obtaining what it deems is essential discovery (unless Defendants agree to have the depositions conducted after the December 4, 2009, close of fact discovery). However, Bean waited until the waning days of the discovery period to notice these depositions. The Court explicitly cautioned the parties in January 2009 that requests for further extension of the discovery deadline would not be viewed favorably and that they should "act accordingly." Order of 1/16/09 at 2. Certainly, after the Court's May 21, 2009, written warning that there would "be no further extensions," Order of 5/21/09, any doubt that the parties needed to conduct the remaining discovery with a sense of urgency was eliminated. Finally, when the Court reluctantly granted a further extension, on September 17, 2009, this Magistrate Judge's comments at the end of that hearing clearly signaled that the resulting deadlines (which included the December 4, 2009, deadline) were the end of the line. In effect, the parties were granted a final opportunity to conduct whatever discovery they had failed up to

that point to conduct. Yet, Bean waited more than two months to notice a deposition which it reasonably could have anticipated would generate howls of protest from Defendants if they were not given sufficient notice. Thus, any hardship Bean may suffer is due to its own failure to notice the depositions earlier.⁷

For the reasons stated above, Defendants's Motion for Protective Order is GRANTED.

III. Joint Motion to Quash

A. Relief Sought

By this motion, the law firm of Brann & Isaacson and its client, Bean (collectively "Movants"), move to quash a subpoena served upon the law firm by Defendants and also move for a protective order. See Joint Motion to Quash at 1. The subpoena seeks to have Brann & Isaacson produce numerous documents. See Bean Mem., Ex. B (Notice of Issuance of Subpoena Duces Tecum) at 6-13. The request for a protective order seeks to preclude Defendants from conducting a Rule 30(b)(6) deposition of Brann & Isaacson which Defendants have noticed for December 3, 2009. See

⁷ The Court recognizes that one of the reasons offered for the extension sought by the September 3, 2009, Motion to Modify Scheduling Order (Doc. #154) was to allow another attempt at settlement. However, the Court rejects any suggestion that parties can avoid the consequences of failing to complete discovery in accordance with the schedule the Court establishes by offering the excuse that they delayed doing so because they wanted to see if the case would settle. Cf. Tower Ventures, Inc. v. City of Westfield, 296 F.3d 43, 45 46 (1st Cir. 2002) ("[A] litigant who ignores case management deadlines does so at his peril."); id. at 46 (noting court's strong independent interest in administering its docket).

Bean Mem. at 10. Movants further seek an order suspending all remaining discovery until the matters raised by the pending motions are resolved.⁸ See Joint Motion at 2.

B. Facts

After the close of business hours on Thursday, November 19, 2009, Defendants served a subpoena on Brann & Isaacson requiring the law firm to produce numerous categories of documents on November 30, 2009.⁹ See Bean Mem. at 10. The description of the various categories of documents to be produced requires almost seven double-spaced pages (twelve pages if the definitions are included). See id.

On Wednesday, November 25, 2009, counsel for Brann & Isaacson emailed Defendants' counsel, objecting to the subpoena and advising that the law firm would file a motion to quash and seek a protective order if Defendants did not withdraw the subpoena and agree to suspend all depositions scheduled for the following week. See id., Ex. A (Email from Bertoni to Stanley of

⁸ In their memorandum, the Movants:

ask this court to quash the subpoena served on Brann & Isaacson, and to enter an order suspending depositions to provide counsel for Bean with an adequate opportunity to prepare for such depositions and to reschedule them promptly at such time after December 4, 2009_[,] as can be accommodated by counsels' respective schedules.

Bean Mem. at 10.

⁹ Movants represent that there are eighty three document requests, including subparts. Bean Mem. at 10.

11/25/09). The email stated in part:

Your local counsel served a subpoena on L.L. Bean's outside law firm which seeks clearly privileged information (and work product) from multiple lawyers at Brann & Isaacson, including its trial attorneys. The subpoena is vast in scope, extraordinarily short in notice (particularly given over seventy-five document requests, including subparts), and covers attorney client communications and documents immune from discovery for a period exceeding a decade.

Id. Counsel for Brann & Isaacson also noted that Defendants had moved to quash the deposition of FIA scheduled for the following week on a variety of grounds, including short notice—yet Defendants were seeking to impose an even more onerous burden on Brann & Isaacson since Bean had not asked FIA to produce any documents but only to provide testimony. See id.

During the telephone conference which the Court conducted at 2:00 p.m. on November 25, 2009, Movants' counsel indicated that they would be filing a motion for relief regarding the discovery sought by Defendants which would also contain a response to Defendants' Motion for Protective Order. The instant Joint Motion was filed later that day.

C. Law

The law discussed in Section II is equally applicable to the Joint Motion to Quash. Thus, it is incorporated here by reference.

"Although not strictly forbidden, the procurement of trial testimony from opposing counsel is generally disfavored."

Bogosion v. Woloohojian Realty Corp., 323 F.3d 55, 66 (1st Cir. 2003); see also Shelton v. Am. Motors Corp., 805 F.2d 1323, 1327 (8th Cir. 1986) (“We view the increasing practice of taking opposing counsel’s deposition as a negative development in the area of litigation, and one that should be employed only in limited circumstances.”). Among the factors the Court should consider in determining whether to allow opposing trial counsel to be deposed are: “whether (i) the subpoena was issued primarily for purposes of harassment, (ii) there are other viable means to obtain the same evidence, and (iii) to what extent the information sought is relevant, nonprivileged, and crucial to the moving party’s case.” Bogosion, 323 F.3d at 66; see also Shelton, 805 F.2d at 1327 (holding that circumstances where court orders the taking of opposing counsel’s deposition should be limited to those where the party seeking to take the deposition has shown that: 1) no other means exist to obtain the information than to depose opposing counsel, 2) the information sought is relevant and nonprivileged, and 3) the information is crucial to the preparation of the case). The burden is on the party seeking to take the deposition to show that these factors have been met. See id.; Boughton v. Cotter Corp., 65 F.3d 823, 831 n.10 (10th Cir. 1995) (same).

D. Application

1. Timeliness

For essentially the same reasons that the Court found that Bean's Notices of Deposition did not provide reasonable notice and, therefore, violated Rule 30(b)(1), see Discussion section II.D. supra at 10-14, the Court finds that Defendants' service of the subpoena and notice of deposition on Brann & Isaacson after business hours on November 19, 2009, did not provide reasonable notice. The fact that Brann & Isaacson received a few more days notice of the December 3, 2009, deposition than did Defendants is more than offset by the additional burden placed upon Brann & Isaacson by Defendants' exceedingly large document request. Attempting to comply with this request would put "opposing counsel through a tortuous compliance process at the very time counsel is preparing to participate in the final week of discovery." Bean Mem. at 5. Most significantly, Defendants (as did Bean) waited until almost the end of the discovery period, which had been repeatedly extended, to serve their subpoena. They did this despite the cautions and warnings which have already been detailed in this Memorandum and Order.

Just as the Court faulted Bean for waiting more than two months after the Order of 9/17/09 to notice a deposition which Bean reasonably could have anticipated would generate strong resistance from Defendants if they were not given sufficient notice, so too the Court here faults Defendants for waiting more than two months to seek documents and notice a deposition which

they almost certainly knew would generate a similar response. Thus, the Court similarly concludes that any hardship Defendants may suffer as a result of the granting of the Joint Motion is due to Defendants' own failure to notice the deposition and seek the documents earlier.¹⁰

2. Factors Relevant to Quashing Subpoena Served on Opposing Counsel

The timing of the subpoena and burdensome document request, coming near the end of a long discovery period when opposing counsel is engaged in efforts to complete discovery, is not inconsistent with an attempt to disrupt those efforts and distract counsel. This weighs in favor of quashing the subpoena. Movants persuasively argue that Defendants have not attempted to obtain the information they seek through ordinary discovery channels. See Bean Mem. at 9. The Court is unpersuaded that Defendants have shown that the information they seek could not have been obtained from other sources. Lastly, it does appear to the Court that at least some of the information which Defendants seek is privileged. Accordingly, the Court concludes that the relevant factors do not favor allowing Defendants to depose Brann & Isaacson. Thus, for this additional reason the subpoena should be quashed.

¹⁰ See n.7.

E. Other Relief Sought by Bean

To the extent that the Joint Motion to Quash objects to Defendants' Motion for Protective Order, Bean's objection is overruled for the reasons stated in Section II of this Memorandum and Order. To the extent that the Joint Motion to Quash seeks the suspension of discovery, the motion is denied. Given that the Court has quashed the subpoena and granted the request for a protective order prohibiting the deposition of Brann & Isaacson, the need for such suspension has been removed. To the extent that Bean may not agree that this is the case, the Court declines to be maneuvered into granting another extension of the fact discovery deadline.

IV. Conclusion

For the reasons stated above, Defendants' Motion for Protective Order is GRANTED. The Joint Motion to Quash of Bean and Brann & Isaacson is granted to the extent that the subpoena is quashed and the Rule 30(b)(6) deposition of Brann & Isaacson noticed for December 3, 2009, is vacated. In all other respects the Joint Motion to Quash is denied.

So ordered.

ENTER:

/s/ David L. Martin
DAVID L. MARTIN
United States Magistrate Judge
December 2, 2009