

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
Office of Administrative Law Judges**

In the Matter of

)
)
)

¹ See Respondents' Memorandum in Support of Motion to Quash Complaint Counsel's Notice of Deposition, dated September 9, 2004.

parties have scheduled (with leave of the Court) a limited number of depositions after the September 13, 2004, discovery cut-off date. Respondents did not even consider Complaint Counsel's proposal to do the same with respect to Mr. Loveland's deposition,² even though they recognized that ". . . the tight deadlines imposed by the Court render compromise mutually advantageous."³

Respondents' motion to quash is unwarranted. Complaint Counsel's notice of Mr. Loveland's deposition was prompted, *inter alia*, by the testimony of Jeffrey H. Hillebrand who – at his deposition only six days earlier, on September 1 and 2, 2004 – testified that Mr. Loveland was responsible for keeping the minutes of the meeting of the Evanston Northwestern Healthcare Board of Directors on February 3, 2000. *E.g.*, Hillebrand Dep. at 318, 319, 386, 404, 405, 428-29, 430-31. In the minutes of these meetings, Mr. Hillebrand explicitly linked Respondents' price increases to the merger: "Mr. Hillebrand commented on the recent renegotiation of managed care contracts and the *“added value” as a result of combining the medical staffs and hospitals.*" *See* Hillebrand Dep. at 427 (italics added).


As a witness who had been overly-prepared for his deposition,

² Indeed, Respondents did not even mention this alternative in their moving papers.

³ Respondents Opposition to Motion to Compel dated September 2, 2004, at 4.

Hillebrand Dep. at 427-28 (*italics added*). Mr. Hillebrand then criticized Mr. Loveland's ability to keep good records:

I



Hillebrand Dep. at 428 - 429 (italics added).

Finally, Mr. Hillebrand went so far as to label Mr. Loveland's work "nonsensical":

Hillebrand Dep. at 435 - 437 (italics added). Under these circumstances, Mr. Loveland's

deposition is clearly appropriate.

Second, under these circumstances, Complaint Counsel's notice was not untimely. The Commission's Rules require the parties to give "reasonable notice" of a deposition, *see* Rule 3.33(a), but the Rules do not set a specific time limit. Similarly, Rule 30(b)(1) of the Federal Rules of Civil Procedure – which are properly considered here for guidance, *see* FTC Operating Manual § 10.7 – does not set a fixed time limit, either. Here, Complaint Counsel noticed Mr. Loveland's deposition three business days after completing Mr. Hillebrand's deposition. Under

⁴ Further, the local rules cited by Respondents are not absolute; they recognize that shorter notice periods are regularly appropriate. *E.g.*, D.D.C Local Rule 30.1 (shorter notice period for good cause show); D. Kan. Local Rule 30.1 (same); D.Del Local Rule 30.1 (five days "unless otherwise ordered by the court"). In this light, now that Respondent have, through the filing of the motion to quash, gained the purportedly necessary time to prepare for Mr. Loveland's deposition, Complaint Counsel should be permitted to proceed with the discovery.

⁵ <http://www.nysd.uscourts.gov/rules/rules.pdf>

Stratosphere Corp. Sec. Litigation, 183 F.R.D. 684 (D. Nev. 1999).

Here, Respondents knew that Mr. Loveland was a potential witness and that his deposition might be necessary. Further, Complaint Counsel promptly noticed Mr. Loveland's deposition upon receiving the testimony of Mr. Hillebrand. Thus, the six day notice was reasonable under the circumstances of this case.

CONCLUSION

For the foregoing reasons, Respondents' motion to quash the notice of deposition of David Loveland should be denied.

Respectfully submitted,

Dated: _____

Thomas H. Brock, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room H-360
Washington, D.C. 20580
(202) 326-2813
Fax: (202) 326-2884
Email: tbrock@ftc.gov

