

EXHIBIT D

Stein, Micah D.

From: Medlock, Stephen M.
Sent: Wednesday, February 08, 2017 5:27 PM
To: Katz, Jennifer; Rice, Sarah
Cc: Kimberly, Michael B.; Hughes, Paul W.; Webb, Brantley; Stein, Micah D.
Subject: RE: Benisek v. Lamone, discovery schedule [MB-AME.FID1259210]

Jennifer and Sarah:

Thank you for your agreement to the three week extension. We will put together a short joint stipulation that we can file with the court tomorrow. I will send that to you for your approval this evening.

With respect to the location of the remaining depositions, holding seven depositions in Annapolis or Baltimore would be costly and very inconvenient to our team, all of whom live in Virginia or just outside Washington, D.C. What is more, when the roles were reversed, we agreed to make our clients available for deposition at your offices in Baltimore, despite their requests for depositions in locations more convenient to northwest Maryland; as a consequence, each drove between 60 and 90 minutes both ways to attend their depositions, at your insistence.

While we are sympathetic to the witnesses' desire not to have to travel more than a few blocks to their depositions (a courtesy the Plaintiffs would have appreciated when the tables were turned), we are within our rights to require compliance in Bethesda, which is less than an hour by car from both Annapolis and Baltimore. We have already taken Robert Garagiola's deposition there, and all of our deposition notices have consistently identified Bethesda as the location of compliance.

With regard to my correspondence concerning the 30(b)(6) deposition, it is very important that we meet and confer tomorrow. As explained in our letter, we believe that providing a witness with written script to read from at deposition is a serious discovery abuse; multiple courts have imposed sanctions for engaging in similar tactics. We believe this abuse will at minimum necessitate a new deposition on the 30(b)(6) topics already covered, and as we have seen, such coordination takes time. We also need to determine whether we will need seek relief from the Court as soon as possible.

Regards,

Steve

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From: Katz, Jennifer [mailto:jkatz@oag.state.md.us]

Sent: Wednesday, February 08, 2017 3:34 PM

To: Medlock, Stephen M.; Rice, Sarah

Cc: Kimberly, Michael B.; Hughes, Paul W.; Webb, Brantley; Stein, Micah D.
Subject: RE: Benisek v. Lamone, discovery schedule [MB-AME.FID1259210]

Steve,

We have considered your proposal and agree that a 3-week extension of the discovery schedule makes the most sense at this point.

Given our prior correspondence on the issue, is there a reason that you have not complied with the relevant non-parties request to depose President Miller and Speaker Busch in Annapolis and Governor O'Malley in Baltimore?

Finally, with regard to your letter concerning the 30(b)(6) deposition, we believe a meet and confer is necessary. Sarah and I are available Friday morning.

Best,
Jennifer

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From: Medlock, Stephen M. [<mailto:SMedlock@mayerbrown.com>]
Sent: Wednesday, February 08, 2017 9:34 AM
To: Katz, Jennifer <jkatz@oag.state.md.us>; Rice, Sarah <srice@oag.state.md.us>
Cc: Kimberly, Michael B. <MKimberly@mayerbrown.com>; Hughes, Paul W. <PHughes@mayerbrown.com>; Webb, Brantley <BWebb@mayerbrown.com>; Stein, Micah D. <MStein@mayerbrown.com>
Subject: RE: Benisek v. Lamone, discovery schedule [MB-AME.FID1259210]

Jennifer and Sarah:

Our counter-proposal is a simple, three-week extension of the discovery deadline. We cannot agree to a piecemeal extension applicable to only certain, cherry-picked aspects of discovery. As we explained during our phone call, your proposal would require Plaintiffs to waive their right (at a minimum) to move to compel should the parties come to an impasse regarding party discovery. This is of particular concern as Defendants have not produced any documents in response to several of our document requests and recently provided a 30(b)(6) witness with multiple pages of what appear to have been coached answers to deposition questions. We are not aware of any case in which the plaintiffs were required, as you propose, to waive their right to file further motions to compel in order to secure an extension of the discovery deadline. We are highly doubtful any such cases exist, particularly where, as here, the need for the extension was a consequence the defendants' conduct.

Although we would prefer not to burden the Court with this dispute, we cannot accept your proposal to extend the discovery deadline on such one-sided terms. You should not be able to pick and choose the consequences of your strategy to slow the discovery process.

To resolve this dispute, we propose the following: All remaining deadlines in the parties' Scheduling Order will be extended by three weeks, to and including March 3, 2017. This position is simple, fair, and consistent with routine practice. We propose three weeks for two reasons: first, it is a compromise between our initial offer of two weeks and

your counter-offer of four weeks, and second, it covers each of the proposed deposition dates that you have offered for the remaining deponents. Our proposal extends all discovery rights on even-handed terms for both Parties and allows the parties to complete all of the noticed depositions in a timely manner. If you do not agree to these common sense terms, we will raise this issue with the Court in a separate statement in the joint status report; we are confident that the Court will agree with our approach.

Please let us know by close of business today whether you agree to our proposal.

In addition, we agree to depose the following individuals on these dates:

2/17/17: Senator Muse, beginning at 9am
2/21/17: Richard Stewart, beginning at 9am
2/24/17: Speaker Busch, beginning at 10am
2/27/17: Delegate Anderson, beginning at 8am
2/28/17: Jeanne Hitchcock, beginning at 4pm
3/2/17: 30(b)(6) designee, beginning at 9am
3/3/17: Governor O'Malley, beginning at 9am
3/3/17: President Miller, beginning at 1pm

You'll note that we are proposing that the deposition of Martin O'Malley occur on March 3rd. We have conflicts that prevent us from deposing Governor O'Malley on the dates you provided (including the deposition of Speaker Busch). Please let us know if that date and time works for you.

Your email does not mention the location of these depositions. Therefore, we assume that there is no objection to holding these depositions at the Washington, D.C. offices of Mayer Brown. Please let us know if you have any objections to this location. We will send amended deposition subpoenas to you via email shortly.

Regards,

Steve

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From: Katz, Jennifer [<mailto:jkatz@oag.state.md.us>]

Sent: Tuesday, February 07, 2017 5:24 PM

To: Medlock, Stephen M.; Kimberly, Michael B.; Hughes, Paul W.; Webb, Brantley; Stein, Micah D.

Cc: Rice, Sarah

Subject: Benisek v. Lamone, discovery schedule

Counsel,

As we discussed on the phone today, on behalf of the non-party GRAC members and other legislators, the AG's Office will be filing a request for review by the 3-judge court, to be filed by the end of this week. In addition, in order to preserve Governor O'Malley's right to assert his legislative privilege, the AG's Office will be filing a short motion on his behalf, incorporating by reference arguments made on behalf of the GRAC members.

We understand your concerns about extending the discovery schedule and are sympathetic to them. We also agreed to your request for a compressed discovery schedule and do not see the need for a full extension of the discovery period. We hope to be able to reach a resolution and propose the following terms. We are available tomorrow to discuss.

We agree that if the pending motion to compel is resolved in your favor, including the issue of control, the Defendants will supplement all discovery responses for which the objection was made to the extent necessary to comply with the order, and reserve the right to ask for appropriate time to do so.

We agree to seek to extend the discovery period solely with respect to the non-party documents and depositions contemplated in Judge Bredar's order compelling compliance, and any motions practice required to resolve issues that arise with respect to those documents and depositions.

We agree to extend expert discovery for however long you deem necessary.

We do not agree to extend fact discovery for purposes of serving any new discovery requests or the issuance of new subpoenas.

We do not agree to extend the discovery period to allow for the filing of motions to compel raising issues related to the Defendants' discovery responses not already raised in your initial motion to compel, or any other matter you raise with us before February 10.

Below are dates supplied to us by non-parties on which they are available for deposition.

Senator Muse

Feb. 17

Feb. 24

Delegate Anderson

Feb. 13

Feb. 20

Feb. 27.

The earlier, the better for him – he can start as early as 8 a.m.

House Speaker Busch

Feb. 24, beginning at 10am

Senate President Miller

March 3, 1-6 p.m.

Jeanne Hitchcock

Feb. 22, all day

Any of the following days after 4pm:

Feb. 15

Feb. 21
Feb. 27-Mar. 1

Richard Stewart

Feb. 21
Feb. 16
March 1

Governor O'Malley

Feb. 22
Feb. 24

30(b)(6)
March 2

Best,
Jennifer

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