

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

In re HORIZON/CMS HEALTHCARE) Master File No.
CORPORATION SECURITIES LITIGATION) 96-0442-BB/LCS
)
) CLASS ACTION
)
_____))
This Document Relates To:)
)
)
ALL PROCEEDINGS.)
_____))

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO
MOTION OF STATE OF WISCONSIN INVESTMENT BOARD
FOR LEAVE TO TAKE DISCOVERY ON AN EXPEDITED BASIS



TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. ARGUMENT	5
A. SWIB Lacks Standing To Take Discovery	5
B. SWIB Is Not Entitled To The Discovery It Seeks	9
1. SWIB Is Not Entitled To Discovery By Plaintiffs' Counsel	9
2. SWIB Is Not Entitled To Documents Relating To Plaintiffs' Counsel's Work-Product	10
3. SWIB Is Not Entitled To Documents Relating To Attorneys' Fees	11
III. PLAINTIFFS SHOULD BE ENTITLED TO TAKE DISCOVERY OF SWIB	12
IV. CONCLUSION	13

I. INTRODUCTION

Plaintiffs submit this memorandum in opposition to the Motion of State of Wisconsin Investment Board For Leave to Take Discovery on an Expedited Basis (the "Motion"). The State of Wisconsin Investment Board ("SWIB") seeks information from plaintiffs' counsel's purportedly to determine the fairness of the proposed settlement. The Motion should be denied on the grounds that SWIB lacks standing to take discovery of plaintiffs' counsel at this time, and that it has already been afforded extraordinary access to information concerning the fairness of the proposed settlement. Moreover there is no exigency that requires expedited treatment of this request.

SWIB is an unnamed member of the class in this action. Although SWIB has filed a notice of appearance, it has not sought to intervene under Fed. R. Civ. P. 24(b), nor has it objected to the settlement, nor has it yet determined whether it will remain in the class or opt-out and pursue its own private action.

On June 16, 1997, the Court held a preliminary settlement hearing, at which time the Court approved the form of notice to be sent to the class, approved the method of notice (mailing and publication) and set the following schedule:

July 1, 1997 -- mailing notice;

July 7, 1997 -- publication of summary notice;

August 15, 1997 -- deadline to opt-out or object;

September 5, 1997 -- deadline for all papers in support of settlement, the plan of allocation, and any applications for attorneys' fees and reimbursement of expenses; and

September 12, 1997 -- final approval hearing.

While SWIB purports to be one of the largest shareholders of Horizon, SWIB may not even be a member of the class in this case because SWIB has suffered no damages from its acquisitions of Horizon/CMS Healthcare Corporation ("Horizon") stock. Indeed, through its Horizon stock transactions, it appears that SWIB has made approximately \$10 million in profits.

Although SWIB has thus far declined to provide us with documentation of its transactions in Horizon and Continental Medical Systems, Inc. ("CMS") stock, SWIB's counsel has represented to us that prior to the time of the merger between Horizon and CMS, SWIB owned 2,644,300 shares of CMS stock, which was converted on July 10, 1995, through the merger, into 1,427,128 shares of Horizon stock (the exchange rate was 0.5397 shares of Horizon stock for each share of CMS stock). The effective price at which SWIB acquired this stock was \$19 per share. In addition, SWIB's counsel informed us that in late June 1995, SWIB purchased on the open market 950,000 shares of Horizon stock, which was selling in the range of \$18 to \$19 per share at that time. Thus, upon completion of the merger, SWIB owned 2,377,128 shares of Horizon stock, all of which was acquired by SWIB for \$19 per share or less.

SWIB's counsel has further informed us that from July 17, 1995 through January 29, 1996, SWIB sold 1,001,000 shares of its Horizon stock (leaving 1,376,128 shares, which SWIB continues to hold today). During the time period from July 17, 1995 through January 29, 1996, Horizon stock was priced in the range of \$19 to \$27.625 per share (with only one day, October 27, 1995, at \$18.625). Given that range of trading levels, SWIB must have made money from the sale of its Horizon stock in this time period.

While SWIB has not shared with us its trading records relating to the 1,001,000 shares of Horizon stock that it sold, a fair assumption would be that SWIB sold this stock at a mid-range level of \$24 per share, which would account for an estimated gain in excess of \$5 million from these sales.

SWIB continues to hold 1,376,128 shares of Horizon stock today. The current market price of Horizon stock is \$22.375 -- which is at least \$3.375 per share above the price at which Horizon purchased or otherwise acquired this stock. Indeed, in the pending merger between Horizon and HealthSouth Corporation ("HealthSouth"), which is reportedly set to close in mid-August, SWIB's stock in Horizon will be exchanged for HealthSouth stock valued at approximately \$22.50 per share. Based on a profit of \$3.50 per share for the 1,376,128 shares that SWIB continues to hold, SWIB will gain a total of \$4,816,448 in the exchange of Horizon shares in the HealthSouth merger.

It appears that SWIB has not suffered any damages either from the Horizon stock it acquired in the CMS merger or from the Horizon stock it purchased on the open market. To the contrary, it appears that SWIB will have made approximately \$5 million from the stock it sold during the Class Period (and perhaps more), plus \$4,816,448 from the Horizon stock that will be cashed out in the HealthSouth merger. Based on SWIB's estimated gains of nearly \$10 million from its Horizon stock acquisitions during the Class Period, SWIB's status as a class member is unclear at best, and its call for expedited discovery is disingenuous. Indeed, SWIB has already been provided with extraordinary access to information concerning the fairness of the proposed settlement.

In response to SWIB's requests, we sent to SWIB's counsel copies of all relevant pleadings in the case: the Consolidated Class Action Complaint (the "Complaint"); all motions to dismiss and their supporting papers; our consolidated response to the motions to dismiss; the Stipulation of Settlement; and all Court Orders and approved Notices relating to the proposed settlement. Exhibits to the various motions and our response included virtually all relevant public releases and SEC filings, including, but not limited to, the Joint Proxy Statement and Prospectus; Horizon's Form 10-K and Form 10-Q's (all of which SWIB could get publicly); many of the press releases that we cite in the Complaint; and the two news reports concerning the settlement of the OIG's claims against Horizon, stemming from its Greenery-related retroactive billing program.

On July 16, 1997, we met with SWIB's counsel and expert consultant in Chicago and reviewed with them, among other topics, all of the claims in the case; our view of the strengths and weaknesses of the claims; the extent of the investigations that we conducted in the case (including the investigations we made before filing the Complaint, during the course of the case, and after signing the Stipulation of Settlement); and the parties' varying views of the range of likely recoveries in the case.

We further described for SWIB the precise nature of the documents of Horizon that we reviewed, and the identity of the five people at Horizon with the greatest knowledge of the facts underlying the claims in the case that we interviewed. **Importantly, Horizon itself has made available to SWIB all of the documents that we reviewed, all of the people that we interviewed, plus any**

additional people that SWIB would like to interview. This offer, clearly, makes available to SWIB the same information that it is seeking from us, in a way that does not require us to disclose documents and information that were provided to us pursuant to a confidentiality agreement, and without revealing our attorney work-product, to which SWIB is not entitled.

Under the newly enacted Private Securities Litigation Reform Act of 1995, §21D(a)(3)(B) of the Securities Exchange Act of 1934, §78u-4(a)(3)(B), SWIB could have moved to be appointed lead plaintiff and selected and retained counsel of its own choosing to prosecute these claims on behalf of the class. In fact, SWIB did meet with the attorneys for one of the plaintiffs, shortly after these cases were filed, but later advised him that SWIB had decided that it did not want to become actively involved in the litigation. Now that plaintiffs' counsel have achieved a successful result, SWIB has resurfaced, apparently in an effort to get a better deal for itself or to seek attorneys' fees for its own counsel.

II. ARGUMENT

A. SWIB Lacks Standing To Take Discovery

SWIB is not an objector; SWIB has not sought to intervene. SWIB seeks discovery based on its bare status as an unnamed member of the class. SWIB cites no authority for this proposition. Under SWIB's assertion of standing, every class member would be entitled to descend upon the offices of plaintiffs' counsel to review every note, every memorandum, every analysis, every draft and every piece of class counsel's work. Permitting all absent class members to review discovery conducted by class counsel and all of their work-

product concerning such discovery would severely undermine the efficiency of class actions.

An identical issue was presented in In re Potash Antitrust Litig., 162 F.R.D. 559 (D. Minn. 1995). In Potash, a class member sought to be "permitted to appear so as to assist its constituent members in making an informed decision on whether to opt in, opt out, or otherwise participate in this class action." Id. at 560. Additionally, the petitioner sought to be provided with all documentation -- including attorney work-product -- by the attorneys for the plaintiff class. Id. at 561. The argument proffered by the petitioner in Potash was that "counsel for the Plaintiffs have a professional obligation, which arises from their attorney-client relationship with all of the potential class members, to disclose their work product to [petitioners]." Id. at 561 n.3.

In interpreting Fed. R. Civ. P. 23(c)(2)(C), the district court specifically ruled that "the phrasing of the Rule articulates an intendment that a party may elect to appear [only] after it has decided not to opt-out of the class." Id. at 561. The court reasoned that "[i]f, as [petitioner] contends, the role of an appearance is to assist a class member in deciding whether to opt-in or -out of the class, then the drafters of the Rule could have made that intention plain, which they did not." Id. The court further noted that "to permit [petitioners] to inspect those documents that class counsel have culled . . . could contravene the interests of the class as a whole, particularly if [petitioner] should ultimately decide to opt-out of the class." Id. at 562 n.3.

Here, SWIB has neither opted-in, opted-out, nor formally intervened; however, they seek broad discovery, including analyses,

work-product and internal correspondence. As in the case of the petitioner in Potash, SWIB's interest in making an appearance in this matter is "premature, and [will] potentiate toward an unfairness to the class and to the conduct of this action through unnecessary delay, complication and expense to all concerned." 162 F.R.D. at 562.

In the only case cited by SWIB in support of its Motion, Gottlieb v. Barry, 43 F.3d 474 (10th Cir. 1994), the Tenth Circuit implicitly recognized only an objectors' right to create a record in support of his/her objection, not the right of an unnamed class member who has not filed an objection (indeed, not even determined whether to remain in the class). Id. at 481 n.2.

Only absent class members who object are entitled to review the record made in support of the settlement.¹ Discovery by objectors must bear upon the issue of whether the settlement is fair. Thus, the purpose of granting discovery to objectors is to assist the court in determining whether the settlement is fair. See In re Prudential Insurance Co. of America Sales Practices Litig., 962 F. Supp. 450, 563 (D.N.J. 1997) ("An objector is entitled to establish a record, but the Court has discretion to employ the procedures that it perceives will best permit it to evaluate the fairness of the settlement."). Not only has SWIB not filed an objection, but it has made no showing whatsoever that the

¹ SWIB may be hesitant to object because it is still considering opting out of the settlement class. SWIB should not be permitted to conduct discovery prior to its decision to opt-out and gain the benefit of class counsel's efforts. Any discovery allowed should be for the benefit of the class, not for SWIB in an individual action against defendants.

Court needs the information which it seeks in order to determine whether to approve the settlement.

It is well established that a class member is not entitled to engage in a fishing expedition to determine whether an objection should be made to a settlement. On the contrary, to the extent any discovery is permitted at all, such discovery is appropriate only where an objector has asserted "'cogent factual objections to the settlement'" and made a "clear and specific showing that the court lacks the vital information for its fairness determination." In re Ford Motor Co. Bronco II Prods. Liab. Litig., Civil Action MDL-991, 1994 U.S. Dist. LEXIS 15867, at *13 (E.D. La. Oct. 28, 1994) (citing Detroit v. Grinnell Corp., 495 F.2d 448, 464 (2d Cir. 1974)).

In Detroit, the Second Circuit rejected an argument asserted by objectors to a settlement that the district court should have permitted them an opportunity "to develop, through discovery, facts which might be germane to the propriety of the settlement." 495 F.2d at 462. The court held that the central issue was "whether or not the District Court had before it sufficient facts intelligently to approve the settlement offer. If it did, then there is no reason to hold an additional hearing on the settlement or to give appellants authority to renew discovery." Id. at 462-63.

In Gottlieb v. Wiles, 11 F.3d 1004 (10th Cir. 1993), the Tenth Circuit held an unnamed class member objecting to the settlement in a Rule 23(b)(3) case must intervene in the underlying suit in order to have standing to appeal the district court's approval of the settlement. 11 F.3d at 1009. In Rosenbaum v. MacAllister, 64 F.3d 1439 (10th Cir. 1995), the court held that a nonintervenor class

member who objects to the fee application has standing to appeal the court's award of attorneys' fees and expenses. Id. at 1443.

The portion of the Gottlieb v. Barry opinion cited by SWIB relates to a class member who had opted in and formally objected to the settlement agreement and later challenged the fee award to class counsel. The issue in that case was whether the district court erred in denying the objectors the opportunity to apply for a fee award, and in rejecting the special master's recommendation to award them some fees. 43 F.3d at 489. The opinion does not address the right of an unnamed class member to obtain discovery from plaintiffs' counsel.

B. SWIB Is Not Entitled To The Discovery It Seeks

SWIB's discovery request falls into three categories: (1) documents obtained by plaintiffs' counsel in discovery; (2) plaintiffs' counsel's work-product; and (3) documents concerning plaintiffs' counsel's application for attorneys' fees and reimbursement of expenses. Assuming, arguendo, that SWIB has standing to conduct limited discovery, it is still not entitled to the documents it seeks.

1. SWIB Is Not Entitled To Discovery By Plaintiffs' Counsel

SWIB seeks the documents obtained by class counsel through discovery in this action. There are three reasons why class counsel should not be compelled to provide such documents to SWIB. First, class counsel was not provided with a limited set of documents by defendants in this case, class counsel chose and selected the documents that were to be copied for us by defendants. Class counsel, employing a team of eight lawyers under the direction of

lead counsel, reviewed approximately 100 boxes of Horizon's documents, and chose those documents for copying most relevant -- in class counsel's eyes -- to counsel's analysis of the case. Thus, the documents obtained by class counsel represent counsel's own work-product, to which SWIB is not entitled.

Second, plaintiffs' counsel was provided with discovery pursuant to a confidentiality agreement reached with defendants. Thus, without agreement by defendants, plaintiffs' counsel is simply not free to honor SWIB's request for copies of the documents obtained through discovery.

And third, plaintiffs' counsel should not be compelled to provide documents to SWIB because SWIB has been granted the same opportunity by defendants to review the same documents made available to plaintiffs' counsel; to interview the same people interviewed by plaintiffs' counsel; and, in fact, to interview any other Horizon personnel that SWIB believes should be interviewed. Having been granted those opportunities by counsel for defendants, there is simply no reason why plaintiffs' counsel should be compelled to reveal their own work-product by being forced to share with SWIB -- a potential adversary in the present circumstances -- the documents class counsel selected from the production made by defendants.

2. SWIB Is Not Entitled To Documents Relating To Plaintiffs' Counsel's Work-Product

SWIB has no right to obtain plaintiffs' counsel's work-product. The discovery relationship between an objector and proponents of the settlement is adversarial. See In re General Motors Corp. Engine Intercharge Litig., 594 F.2d 1106, 1125 n.28

(7th Cir. 1979); Saylor v. Lindsley, 456 F.2d 896 (2d Cir. 1972). Thus, the work-product doctrine would preclude SWIB from obtaining the notes, memos and analyses it seeks from plaintiffs' counsel. See Fed. R. Civ. P. 26(b)(3).

3. SWIB Is Not Entitled To Documents Relating To Attorneys' Fees

SWIB's request for the time records of plaintiffs' counsel is both premature and inappropriate. First, discovery into the time records of plaintiffs' counsel is not relevant to a determination of fairness of the settlement.² Moreover, an objection to plaintiffs' counsel's fees is for the purpose of assisting the Court in determining a reasonable fee for plaintiffs' counsel. At this time, prior to the filing of plaintiffs' fee petition, the Court cannot determine if it needs any assistance in setting an appropriate fee for plaintiffs' counsel.

The Tenth Circuit has adopted the percentage-of-fund approach in awarding attorneys' fees in class actions, rather than the lodestar/multiplier method. Thus the court awards plaintiffs' counsel a percentage of the fund recovered on behalf of the class -- typically in the range of 25%-30% of the fund recovered. In determining the fee award the court considers the factors set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974). One of the Johnson Factors is the lodestar of plaintiffs' counsel.³

² In fact, the Stipulation of Settlement envisions separate orders from the Court on the fairness of the settlement and on the award of attorneys' fees.

³ The "Johnson Factors" are: The time and labor required, the novelty and difficulty of the question presented by the case, the skill requisite to perform the legal service properly, the

The schedule set by the Court requires objections to the settlement and/or fee to be filed on or before August 15, 1997, and requires plaintiffs' counsel to file their fee application on or before September 5, 1997. A copy of the fee application will be served on SWIB by overnight mail. It is premature to order discovery on this issue since SWIB may have no objection to the fee request. Although the class notice advises class members that plaintiffs' counsel will apply for an attorneys' fee of up to 33-1/3% of the fund recovered, plaintiffs' counsel has already advised SWIB that they intend to apply for a 25% fee. In addition, plaintiffs' counsel have also advised SWIB that the total lodestar of all plaintiffs' counsel through the end of June is approximately \$2 million. There is no requirement that plaintiffs' counsel submit billing records to the Court. Thus, it would be anomalous to require plaintiffs' counsel to produce such records to SWIB at this time.

SWIB already has ample information to determine if it wishes to object to plaintiffs' fee application and to make a record in support of its objection, if one is filed.

III. PLAINTIFFS SHOULD BE ENTITLED TO TAKE DISCOVERY OF SWIB

In the event that this Court finds that discovery by SWIB of plaintiffs' counsel is appropriate, plaintiffs request that they be

preclusion of other employment by the attorneys due to acceptance of the case, the customary fee, whether the fee is fixed or contingent, any time limitations imposed by the client or the circumstances, the amount involved and the results obtained, the experience, reputation and ability of the attorneys, the "undesirability" of the case, the nature and length of the professional relationship with the client, and awards in similar cases. Johnson, 488 F.2d at 717-19.

permitted to take discovery of SWIB as to: (a) SWIB's transactions in Horizon and CMS stock to determine whether SWIB has suffered any damages and SWIB's standing as a class member; (b) fee agreements and/or retainer agreements between SWIB and its counsel; and (c) complete time records for all attorneys' acting as counsel for SWIB in connection with this action.⁴

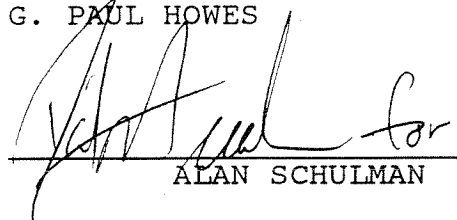
IV. CONCLUSION

SWIB's Motion should be denied on the grounds that SWIB lacks standing to take discovery at this time or, alternatively, is not entitled to the materials requested. In the event that the Court allows SWIB to take discovery of plaintiffs' counsel, plaintiffs respectfully request leave to take discovery of SWIB as described herein.

DATED: July 29, 1997

Respectfully submitted,

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⁴ Submitted herewith is a document request directed to SWIB in the event the Court allows discovery by SWIB.

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MAILING CERTIFICATE

I certify that a copy of Plaintiffs' Memorandum in Opposition to Motion of State of Wisconsin Investment Board for Leave to Take Discovery on an Expedited Basis was mailed to the following counsel this 29th day of July, 1997.

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David A. Freedman

United States District Court

FOR THE DISTRICT OF NEW MEXICO

SUBPOENA IN A CIVIL CASE

v.

In re HORIZON/CMS HEALTHCARE
CORPORATION SECURITIES LITIGATION

CASE NUMBER: Master File No.
96-0442-BB/LCS
CLASS ACTION

TO: STATE OF WISCONSIN INVESTMENT BOARD

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See Schedule A attached hereto.

PLACE Freedman, Boyd, Daniels, Hollander, Guttmann & Goldberg, P.A. (David A. Freedman) 20 First Plaza, Suite 700, Albuquerque, NM 87102	DATE AND TIME August 11, 1997 10:00 a.m.
---	--

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) Co-lead Liaison Counsel for Plaintiffs	DATE
--	------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
David A. Freedman, 20 First Plaza, Suite 700, Albuquerque, NM 87102 (505)842-9960

SCHEDULE A

I. DEFINITIONS

The following terms have the meanings indicated below:

1. The term "Horizon" refers to Horizon/CMS Healthcare Corporation and to any of its predecessors and successors, and includes any parent, subsidiary, affiliate, segment, executive office or division thereof, and any present or former employee, officer, director, agent, representative, investigator or other person acting on behalf of Horizon.

2. The terms "you" or "your" refers to the Wisconsin State Teachers' Fund and any of its predecessors and successors, and includes any parent, subsidiary, affiliate, segment, executive office or division thereof, and any present or former employee, officer, director, partner, agent, investigator, representative or other person acting on behalf of Smith Barney.

3. The term "document" is used in its broadest possible sense and means, without limitation, any written, printed, typed, photostatic, photographed, recorded, or otherwise reproduced communication or representation, whether comprised of letters, words, numbers, pictures, sounds or symbols, or any combination thereof. This definition includes copies or duplicates of documents contemporaneously or subsequently created that have any non-conforming notes or other markings. Without limiting the generality of the foregoing, the term "document" includes, but is not limited to, correspondence, memoranda,

notes, records, letters, envelopes, telegrams, messages, studies, analyses, contracts, agreements, working papers, summaries, statistical statements, financial statements or work papers, accounts, analytical records, reports, reports and/or summaries of investigations, trade letters, press releases, comparisons, books, calendars, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, drawings, diagrams, instructions, notes or minutes of meetings or other communications of any type, including inter- and intra-office communication, faxed materials (including fax cover sheets), questionnaires, surveys, charts, graphs, photographs, phonograph recordings, electronic mail, film, tapes, disks, diskettes, data cells, tape back-ups, drums, print-outs, all other data compilations from which information can be obtained (translated, if necessary, by you into usable form), and any preliminary versions, drafts or revisions of any of the foregoing.

4. The terms "identify," "identity" or "identification," when used in reference to a document, shall mean to state the following:

- (a) its date;
- (b) the identity of its author and/or signatory;
- (c) the type of document it is (e.g., letter, chart, memorandum, etc.);
- (d) its nature and substance and the subject matter

with which it deals;

(e) its present location and custodian; and

(f) a listing of all persons to whom it was shown or distributed.

5. The term "relating to" or "relate to" means concerning, referring to, describing, discussing, evidencing, constituting, or touching upon.

6. The terms "any" and "all" shall each be understood to mean "any and all."

7. The use of the conjunctive includes the use of the disjunctive and the use of the disjunctive includes the use of the conjunctive.

8. The use of the singular form of any word includes the plural, and vice versa; and the use of the masculine gender shall include the feminine and the neuter genders.

II. INSTRUCTIONS

1. You are requested to produce all documents in your possession, custody or control that are described below. In so doing, you are requested to produce all responsive documents which are in the possession of any of your attorneys, accountants, representatives, agents, investigators, employees or agents or are otherwise subject to your custody or control, or the custody or control of another person occupying a similar status or performing a similar function.

2. All documents shall be produced as they are kept in the

usual course of business or organized and labeled to correspond to each of the demanded categories. Any documents which must be removed from their original folders, binders, covers or containers in order to be produced shall be identified in a manner so as to clearly indicate where such documents originated.

3. All documents shall be produced in their entirety, including all attachments and enclosures, and in their original folder, binder, cover or container, unless that is not possible. Whenever a document or group of documents is removed from a folder, binder, file drawer, file box, notebook or other cover or container, a copy of the label of such cover or other container shall be attached to the document.

4. If any document was, but is no longer in your possession or subject to your control, state whether it (a) is missing or lost; (b) has been destroyed or discarded; (c) has been transferred, voluntarily or involuntarily, to any person; or (d) has been otherwise disposed of; and, in each instance, state the approximate date and explain the circumstances of such disposition.

5. You are requested to produce the original of each document described below or, if the original is not in your custody, a copy thereof. You are also requested to produce all non-identical copies which differ from the original or from the other copies produced for any reason, including, but not limited to, any copies which contain handwritten notes.

6. If any document responsive to these requests is withheld under a claim of privilege, or on any other ground, as to each such document identify the privilege being claimed and provide the following information in sufficient detail to permit the Court to rule on your claim:

(a) The date, author, primary addressee and secondary addressee or person copied, including the relationship of that person to the client and/or author of the document;

(b) A brief description sufficient to identify the type, subject matter and purpose of the document;

(c) the date of the document;

(d) the present location of the document;

(e) each person who had custody, possession or control of the document;

(f) All persons to whom its contents have been disclosed; and

(g) The party who is asserting the privilege.

7. You are required to produce all of the requested documents which are in your possession, custody or control, including documents in the possession, custody or control of your affiliates or merged and acquired predecessors and your present or former investigators, attorneys, partners, employees or other agents, as well as your present or former independent contractors over which you have control, and any other person acting on your behalf.

8. If any such document was at any time but is no longer in your possession, custody or control, state whether such document is: (1) missing or lost; (2) destroyed or discarded; (3) has been transferred, voluntarily or involuntarily, to any person; or (4) has been otherwise disposed of; and in each instance describe the circumstances surrounding such disposition, and identify both the person responsible for such disposition and the person to whom such document was transferred, if any.

III. DOCUMENTS REQUESTED

Request No. 1:

All documents relating to any purchase and/or other acquisition by you of any Horizon and/or Continental Medical Systems, Inc., securities, including, but not limited to, common and preferred stock, debentures, call or put options and/or futures contracts.

Request No. 2:

All documents relating to any sale and/or other disposition by you of any Horizon and/or Continental Medical Systems, Inc., securities, including, but not limited to, common and preferred stock, debentures, call or put options and/or futures contracts.

Request No. 3:

Any and all retainer agreements between you and the Grant & Eisenhofer, P.A.

Request No. 4:

All documents relating to any profits made by you from trading Horizon and/or Continental Medical Systems, Inc., securities.

Request No. 5:

All documents relating to any losses suffered by you from trading Horizon and/or Continental Medical Systems, Inc., securities.

Request No. 6:

All documents relating to your attorneys' time, (including all time records of the firm) and expenses attributed to their representation of you in this litigation.