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MEMORANDUM

To: All Counsel in the NYCAL
From: Laraine Pacheco, Special Master
Date: 10/26/2003
Re: DISCOVERY 101

The time has come for me to reiterate some basic principles of discovery that have been the source of some dispute in the recent past. Most of you know and abide by these rules.

1. Any party who serves a subpoena must serve a copy of the subpoena on all parties in the case. Service on parties should be simultaneous with service on the subpoenaed entity.
2. You may not direct a witness not to answer a question posed at a deposition except under very limited circumstances: when the answer involves a privilege or when the question inquires into a "scandalous" matter (e.g., an expert's sex life). "Relevance" is not a proper basis for directing a witness not to answer. Place an objection on the record and let the judge decide if the question is proper and the answer is admissible at trial. However, if counsel believes that a witness is being questioned excessively and at length about an "irrelevant" topic, which questioning will unnecessarily prolong a deposition, the objecting party may call me.
3. Discovery responses are not optional. This rule applies to both plaintiffs and defendants. Plaintiffs' interrogatories should be complete when they are served or there is a risk that the plaintiffs' deposition will be delayed. Defendants are to fully answer discovery within the timeframe set in the discovery schedule. Reasonable extensions should be granted, especially for defendants new to the litigation. However, defense counsel must ask for the extension – not merely ignore the discovery request and wait for plaintiffs' counsel to inquire as to why it has not been received. Additionally, defendants are to interpret the standard interrogatories broadly, to extend to their clients as is appropriate.

4. Beware: There is no privilege associated with representing or preparing a third party at depositions. Defense counsel's conversations with a former employee are discoverable unless that former employee is offered as a representative of the defendant whose answers will bind the defendant. Similarly, plaintiff's counsel's conversations with co-worker witness are discoverable, except as those conversations might apply to the co-worker's own case.

On a separate note, there is now only a two-hour time difference between Arizona and the East Coast.