

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF DURHAM

09 CVS 7838

BENTLEY CHEATHAM and BARRY
HENDERSON,)
)
) Plaintiffs)

v.)

**ORDER APPOINTING SPECIAL
DISCOVERY MASTER**

RIBONOMICS, INC., MEDICAL &)
BIOLOGICAL LABORATORIES CO., LTD.,)
MBL INTERNATIONAL CORPORATION,)
BION ENTERPRISES, LTD., JACK D.)
KEENE, KATSUHIKO NISHIDA, SACHIKO)
SUNO, SHINOBU KITAMURA and DENNIS)
WALCZEWSKI,)
) Defendants)

THIS CAUSE, coming before the court on its own motion; and

IT APPEARING to the court that:

1. There exist in this matter a number of discovery disputes between the parties, and the disputes have led to various unresolved discovery motions (the "Motions") being filed by the parties.
2. The respective Motions either seek to compel discovery from one or more parties or seek protective orders from discovery by one or more parties.
3. The court has heard and resolved several, but not all, discovery motions relative to this civil action. In the course of doing, so the court has been forced to conclude that the parties have failed to conduct their various discovery initiatives and responses in a reasonable manner consistent with the letter and spirit of Rules 26 through 37 of the North Carolina Rules of Civil Procedure ("Rule(s)"). In this regard, a

disproportionate amount of the propounded discovery is inappropriately broad, unfocused and is phrased in a way that makes a good-faith response inefficient, difficult and beyond the responsive duties required by the discovery Rules. Further, a disproportionate amount of the propounded discovery responses are inappropriately narrow and phrased in a way that tends to negate the substantive meaning of the responses. Collectively, the discovery initiatives and responses have not complied with the discovery rules and are impeding the efficient progress of this matter to a resolution in due course.

4. In an effort to help resolve the discovery disputes, the court has engaged in substantial dialogue with counsel for all parties and has encouraged each to reconsider their various discovery positions. The court's efforts have been to no avail and the Motions stand unresolved.

5. The Motions involve a substantial number of contended discovery issues, and a fair resolution of each Motion will require a detailed and time-consuming inquiry into their respective merits and the underlying legal issues raised in this matter. The disputes reflected in the Motions have delayed the closing of discovery in this matter beyond the milestones set by the Case Management Order ("CMO") previously entered.

6. Upon application of the parties, the discovery end date provided in the CMO has been amended by the court on numerous occasions.

7. By failing to comply with the letter and spirit of the discovery Rules, one or more of the parties seeks to impose an unreasonable burden on the court by asking it to consider and resolve issues raised by the Motions that reasonably could and should be resolved by counsel. See Rules 26(a), 26(b) and Rule 37; Rules 0.1(5), 3.2 and 3.4,

Revised Rules of Professional Conduct of the North Carolina State Bar and Rule 1, General Rules of Practice for the Superior and District Courts.

8. The burdens of a growing active case docket impact the court's ability to hear and resolve the Motions in an expedited manner. Yet, further delay in reaching a resolution of the Motions is not in the best interests of justice and causes unnecessary cost to the litigants.

9. Accordingly, the court has concluded that a Special Discovery Master ("Discovery Master") should be appointed to (a) discuss the Motions with the respective parties, (b) examine and familiarize himself with the substance and procedural posture of the Motions, (c) consider the Motions in the context of the issues raised in this matter and (d) make specific written recommendations ("Recommendations") to the court with regard to reasonable resolution of the Motions. The Discovery Master should have expertise in civil litigation in general and in the determination of discovery motions and disputes in specific.

10. The court understands that the Honorable Narley L. Cashwell, retired Resident Superior Court Judge for Judicial District 10, is willing to accept appointment as Discovery Master in this matter. The court concludes that Judge Cashwell is eminently qualified to examine and consider the issues reflected in the Motions and that it is in the best interests of justice and the parties to this matter that he be appointed Discovery Master forthwith. The court further concludes that an hourly fee of \$300 per hour is fair and reasonable compensation for the time expended by the Discovery Master in dealing with the Motions in this matter, in addition to an initial administrative fee of \$300.

NOW THEREFORE, in consideration of the foregoing, it hereby is ORDERED that:

1. The Honorable Narley L. Cashwell is appointed to act as Discovery Master in this matter. For the time expended in dealing with the Motions in this matter the Discovery Master shall charge an hourly fee of \$300 per hour, which shall be paid monthly, one-half by the collective Plaintiffs and one-half by the collective Defendants. The Discovery Master shall charge an initial administrative fee of \$300, to be paid within thirty days of entry of this Order.

2. The Discovery Master forthwith shall (a) discuss the Motions with the respective parties to this civil action, (b) examine and familiarize himself with the substance and procedural posture of the Motions, (c) consider the Motions in the context of the issues raised in this matter and (d) make his Recommendations to the court no later than May 16, 2011, or such other date as the court may set.

3. The Discovery Master shall have authority to access and examine the Motions and any exhibits thereto, including any exhibits that have been filed as "sealed" or which otherwise are being treated by the parties as confidential. The Discovery Master shall maintain the confidentiality of any such materials.

4. Counsel for the parties shall cooperate with the Discovery Master and shall comply with any reasonable requests or schedules that the Discovery Master in his discretion deems appropriate.

5. After receiving the Recommendations of the Discovery Master, the court will (a) consider and enter appropriate Orders with regard to the Motions, (b) determine

what further discovery, if any, will be allowed in this matter and (c) consider any proportionate allocations of the Discovery Master's fees to or between the parties.

SO ORDERED, this the 19th day of April, 2011.

/s/ John R. Jolly, Jr.
John R. Jolly, Jr.
Chief Special Superior Court Judge
for Complex Business Cases