UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

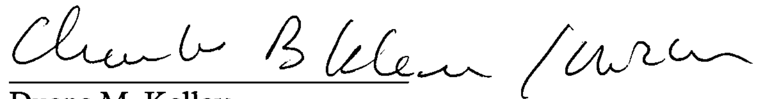
In the matter of	)	
	)	
Evanston Northwestern Healthcare Corporation,	)	Docket No. 9315
a corporation, and	)	**Public**
	)	
ENH Medical Group, Inc.,	)	
a corporation.	)	

RESPONDENTS' MOTION TO QUASH
COMPLAINT COUNSEL'S NOTICE OF DEPOSITIONS

Under the Federal Trade Commission's Rules of Practice, 16 C.F.R. §§ 3.31(d), 3.33(a), Respondents Evanston Northwestern Healthcare Corporation and ENH Medical Group, Inc., by counsel, move to quash Complaint Counsel's Notice of Depositions ("Notice") dated September 8, 2004. As explained more fully in the accompanying memorandum, Complaint Counsel has served the Notice only three business days before the deposition is scheduled to occur, in violation of the "reasonable notice" requirement of 16 C.F.R. § 3.33(a). During a conference with undersigned counsel about this motion, Complaint Counsel stated that they would oppose this motion.

Dated: September 9, 2004

Respectfully Submitted,



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Counsel for Respondents

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the matter of **Evanston Northwestern Healthcare Corporation,** a corporation, and **ENH Medical Group, Inc.,** a corporation.	))))))))))	Docket No. 9315 **(Subject to Protective Order)**

MEMORANDUM IN SUPPORT OF RESPONDENTS' MOTION TO QUASH COMPLAINT COUNSEL'S NOTICE OF DEPOSITIONS

Under the Federal Trade Commission's Rules of Practice ("FTC Rules"), 16 C.F.R. §§ 3.31(d), 3.33(a), Respondents Evanston Northwestern Healthcare Corporation and ENH Medical Group, Inc. (collectively, "Respondents") hereby move to quash Complaint Counsel's Notice of Depositions dated September 8, 2004. As grounds therefore, Respondents state as follows:

1. On September 8, 2004, Complaint Counsel noticed their intent to take the deposition of David Loveland, ENH's Senior Vice President of Corporate Relations, a mere three business days later, on the last day of fact discovery. This three-day notice[1] hardly constitutes "reasonable notice" of the deposition, which is required under the FTC Rules:

> The party seeking the deposition shall serve upon each person whose deposition is sought and upon each party to the proceeding ***reasonable notice*** in writing of the time and place at which it will be taken, and the name and address of each person or persons to be examined, if known, and if the name is not known, a description sufficient to identify them.

[1] *See* 16 C.F.R. § 4.3(a) ("When such period of time, with the intervening Saturdays, Sundays, and national holidays counted, is seven (7) days or less, each of the Saturdays, Sundays, and such holidays shall be excluded from the computation.").

16 C.F.R. § 3.33(a) (emphasis added).

2. Complaint Counsel's failure to give Respondents reasonable notice of Mr. Loveland's deposition is inexcusable, especially considering that Complaint Counsel had every opportunity and reason to provide Respondents with adequate notice. During the underlying Part II investigation, Complaint Counsel deposed Mr. Loveland to discover his relevant knowledge relating to the merger. As early as March 24, 2004, Respondents listed Mr. Loveland in their initial disclosures as an individual likely to have discoverable information. *See* Respondents' Initial Disclosures at 3 (Mar. 24, 2004). On April 13, 2004—almost four months ago—Complaint Counsel listed Mr. Loveland on its preliminary witness lists. *See* Complaint Counsel's Preliminary Witness List at 3 (Apr. 13, 2004). Mr. Loveland also was listed on Complaint Counsel's Revised Witness List filed on August 3, 2004. *See* Complaint Counsel's Revised Witness List at 5 (Aug. 3, 2004). To date, Complaint Counsel has provided no excuse justifying this eleventh-hour notice of Mr. Loveland's deposition.

3. Allowing Mr. Loveland's deposition to proceed as scheduled will impose an undue burden on Respondents and prejudice their defense. Respondents' counsel do not have adequate time to prepare Mr. Loveland for his deposition even assuming, for the sake of argument, that he is available on September 13, 2004, to be deposed. There are 13 depositions scheduled to be taken and defended in the three business days remaining of discovery. Respondents cannot be expected to prepare Mr. Loveland adequately for his deposition in light of this extremely heavy three-day deposition schedule. *See C & F Packing Co., Inc. v. Doskocil Co., Inc.*, 126 F.R.D. 662, 679 (N.D. Ill. 1989) ("[C]ounsel is entitled, when possible, to a date which does not conflict with other obligations and to an opportunity to prepare for the deposition.").

4. Although the Commission apparently has not ascribed a particular period of time to the phrase "reasonable notice" in FTC Rule 3.33(a), some federal district courts have promulgated local rules defining this identical phrase used in Rule 30(b) of the Federal Rules of Civil Procedure ("Rule 30(b)").[2] These rules expressly require five business days or more of notice for depositions. *See* D.D.C. L.R. 30.1 (at least five business days' notice); D. Kan. L.R. 30.1 (at least five business days' notice); D. Del. L.R. 30.1 (at least five business days' notice); N.D. Okla. L.R. 30.1 (at least five business days' notice); M.D. Fla. L.R. 3.02 (at least 10 "working" days' notice); D. N. Mex. L.R. 30 (at least 14 days' notice); *see also* 7 James Wm. Moore, et al., Moore's Federal Practice ¶ 30.20 (3d ed. 1999) ("Some courts, by local rule, have determined that a particular numeric limit constitutes 'reasonable' notice. This limit varies, with many courts setting the limit at five days, and other courts requiring a longer time period.").[3] Other federal district courts without such rules have held that even six days' notice is unreasonable under Rule 30(b). *See, e.g., Great Am. Ins. Co. v. McElwee Brothers*, Civil Action No. 03-2793, 2004 U.S. Dist. LEXIS 4613, at *10 (E.D. La. Mar. 19, 2004) (attached hereto); *In re Stratosphere Corp. Sec. Litig.,* 183 F.R.D. 684, 687 (D. Nev. 1999). Thus, under any standard, Complaint Counsel has not provided adequate notice here.

5. Finally, Complaint Counsel should be estopped from asserting that Respondents have adequate notice to prepare Mr. Loveland for his deposition. On the very same day Complaint Counsel noticed Mr. Loveland's deposition, they filed a motion to take other

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[2] FTC Rule 3.33(a) is substantially similar to Rule 30(b), which provides that "[a] party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action." This Court should interpret FTC Rule 3.33(a) consistent with the requirements of Rule 30(b). *See* FTC Operating Manual § 10.7 ("[S]ince many adjudicative rules are derived from the Federal Rules of Civil Procedure, the latter may be consulted for guidance and interpretation of Commission rules.").

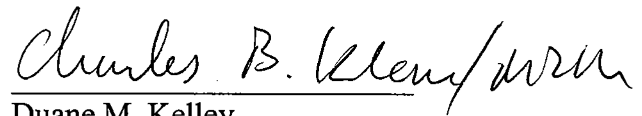
[3] Fed. R. Civ. P. 6(a) ("When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.").

depositions after the close of discovery on the ground that "Complaint Counsel does not have the time to prepare for or to take these depositions before the close of discovery." Complaint Counsel's Mot. for Leave to Take Disc. after Disc. Cut-Off Date and Stay Consideration of Mot. to Compel. ("Mot. for Leave") at 1; *see also* Complaint Counsel's Mem. in Support of Mot. for Leave at 3 ("Further, in the remaining discovery period, Complaint Counsel and Respondents already had scheduled more than a dozen depositions and, therefore, Complaint Counsel did not have the time to prepare for (or to depose) the Affiants."). Given these representations to the Court, Complaint Counsel could have no good faith basis to believe that the parties can squeeze Mr. Loveland into the final three days of fact depositions.[4]

WHEREFORE, for all of the foregoing reasons, Respondents respectfully request that the Court quash Complaint Counsel's Notice of Depositions dated September 8, 2004.

[4] Respondents will oppose Complaint Counsel's motion in due course.

Respectfully Submitted,



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Counsel for Respondents

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the matter of	)	
	)	
Evanston Northwestern Healthcare Corporation,	)	
a corporation, and	)	Docket No. 9315
	)	
ENH Medical Group, Inc.,	)	
a corporation.	)	

ORDER

Upon consideration of Respondents' Motion to Quash Complaint Counsel's Notice of Depositions dated September 8, 2004, Complaint Counsel's response thereto, any hearing thereon, and the entire record in this action, it is this ______ day of __________, 2004 hereby ORDERED, that the Motion is GRANTED.

____
The Honorable Stephen J. McGuire
CHIEF ADMINISTRATIVE LAW JUDGE
Federal Trade Commission

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2004, copies of the foregoing ***Respondents' Motion to Quash Complaint Counsel's Notice of Depositions*** and related papers were served (unless otherwise indicated) by email and messenger service on:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
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*2004 U.S. Dist. LEXIS 4613, **

GREAT AMERICAN INSURANCE COMPANY VERSUS MCELWEE BROTHERS, INC. ET AL.

CIVIL ACTION NO. 03-2793 SECTION "K" (2)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

2004 U.S. Dist. LEXIS 4613

March 19, 2004, Decided
March 19, 2004, Filed, Entered

SUBSEQUENT HISTORY: Sanctions allowed by Great Am. Ins. Co. v. McElwee Bros., Inc., 2004 U.S. Dist. LEXIS 7623 (E.D. La., Apr. 28, 2004)

PRIOR HISTORY: Great Am. Ins. Co. v. McElwee Bros., 94 Fed. Appx. 842, 2004 U.S. App. LEXIS 6738 (Fed. Cir., Mar. 18, 2004)

DISPOSITION: Plaintiff's Second Motion for Leave to Join Additional Party granted. Defendants motions for protective orders granted in part, and Defendants ordered to provide discovery responses.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff insurance company filed a second motion to join an additional party under Fed. R. Civ. P. 19. Defendants, a joint venture and an individual, moved for protective orders. The insurance company sought to sue an attorney , who was the attorney for the joint venture, seeking a declaratory judgment that he had no valid or first-ranking attorney's fee lien against any funds that the insurance company might recover.

OVERVIEW: In regards to the motion for compulsory joinder, the insurance company contended that it would be subject to inconsistent obligations because the attorney might assert an allegedly first-ranked attorney's lien against any recovery that it obtained. The insurance company had not made the requisite showing that it might have to pay an obligation twice. The insurance company showed only that it would not recover all that it sought, in the event it ever made a recovery. However, it appeared that requirements for joinder under Fed. R. Civ. P. 20(a) were met. Judicial efficiency and economy for the parties would be served by hearing all related claims concerning any funds recovered from the government in one action. In regards to the motions for protective orders, the six-day notice for a deposition provided by the insurance company was not reasonable notice under Fed. R. Civ. P. 30(b)(5). Additionally, the insurance company's requests for document production had to comply with the requirements of Fed. R. Civ. P. 34(b).

OUTCOME: The insurance company's second motion for leave to join an additional party was granted. The motions for protective orders filed by defendants were granted, but only subject to the magistrate judge's order contained herein.

CORE TERMS: occurrence, preliminary injunction, protective order, join, joinder, permissive joinder, substantial risk, question of law, deposition, notice, double, lawsuit, production of documents, right to relief, compulsory, recovered, quotations, pendency, deponent, logical, joined, prong, twice, contingency fee contract

LexisNexis(R) Headnotes

Civil Procedure > Injunctions > Preliminary & Temporary Injunctions
Civil Procedure > Appeals > Appellate Jurisdiction > Interlocutory Orders
HN1 The pendency of an interlocutory appeal from the grant or denial of a preliminary injunction ordinarily does not divest a district court of jurisdiction to proceed with other aspects of the case, including reaching a final decision on the merits of the case.

Civil Procedure > Joinder of Claims & Parties > Joinder of Necessary Parties
HN2 See Fed. R. Civ. P. 19(a)(2)(ii).

Civil Procedure > Joinder of Claims & Parties > Joinder of Necessary Parties
HN3 Fed. R. Civ. P. 19(a)(2)(ii) is intended to prevent a double or otherwise inconsistent liability. That means that, viewed practically, there is a substantial risk that an existing party to the lawsuit might face double liability as a result of the lawsuit. The existing party may, if the federal litigation is allowed to proceed, be forced to pay twice for the same alleged misconduct causing the same harm.

Civil Procedure > Joinder of Claims & Parties > Permissive Joinder of Coparties
HN4 See Fed. R. Civ. P. 20(a).

Civil Procedure > Pleading & Practice > Pleadings > Counterclaims & Cross-Claims
Civil Procedure > Joinder of Claims & Parties > Permissive Joinder of Coparties
HN5 The test for permissive joinder is whether there is a logical relationship between the claims and whether there is any overlapping proof or legal question. In determining what constitutes a single transaction or occurrence under the first prong, a number of courts have looked to the interpretation of transaction under Fed. R. Civ. P. 13(a)--compulsory counterclaims. Transaction, for the purposes of Rule 13(a), is a word of flexible meaning. It may comprehend a series of many occurrences, depending not so much upon the immediateness of their connection as upon their logical relationship.

Civil Procedure > Joinder of Claims & Parties > Permissive Joinder of Coparties
HN6 The second prong for permissive joinder under Fed. R. Civ. P. 20(a) does not require all questions of law and fact raised by the dispute to be common. Rather, only some question of law or fact must be common to all parties.

Civil Procedure > Joinder of Claims & Parties > Permissive Joinder of Coparties
HN7 The Fed. R. Civ. P. 20 standard does not require that there be a basis for joint liability, but allows joinder also on the basis of only several liability.

Civil Procedure > Discovery Methods > Oral Depositions
HN8 Six days is not the reasonable notice for a deposition required by Fed. R. Civ. P. 30 (b)(1).

Civil Procedure > Discovery Methods > Written Depositions
Civil Procedure > Discovery Methods > Requests for Production & Inspection
HN9 Fed. R. Civ. P. 30(b)(5) is clear that requests for production of documents in conjunction with a deposition notice to a party deponent must comply with Fed. R. Civ. P. 34. Under Rule 34(b), parties have 30 days to respond to requests for production of documents unless the court orders responses within some shorter or longer time.

COUNSEL: **[*1]** For GREAT AMERICAN INSURANCE COMPANY, plaintiff: Lloyd Noble Shields, Daniel Lund, III, Elizabeth Lapeyre Gordon, Stuart Glen Richeson, Shields Mott Lund, LLP, New Orleans, LA.

For MCELWEE BROTHERS INC & TRI- STATE DESIGN CONSTRUCTION CO, INC., defendant: Thomas Hadden Morrow, William Lee Melancon, Law Offices of William Melancon, Lafayette, LA.

For MCELWEE BROTHERS INC, SYLVIA HURST, defendants: Lori Folse White, The White Law Firm, LLC, Roederick C. White, Roederick C. White, Attorney at Law, Baton Rouge, LA.

MELVIN M MCELWEE, SR, defendant, Pro se, Independence, LA.

For - TRI-STATE DESIGN CONSTRUCTION CO., INC., defendant: Terrence L. Brennan, Jimmy Arthur Castex, Jr., Deutsch, Kerrigan & Stiles, New Orleans, LA.

JUDGES: JOSEPH C. WILKINSON, JR., UNITED STATES MAGISTRATE JUDGE.

OPINIONBY: JOSEPH C. WILKINSON, JR.

OPINION: ORDER AND REASONS

Oral argument was conducted on March 17, 2004 concerning (1) Plaintiff's Second Motion for Leave to Join Additional Party Under Rule 19 of the Federal Rules of Civil Procedure, Record Doc, No. 41; (2) the Motion for Protective Order filed by defendant, Melvin M. McElwee, Sr. ("McElwee"), Record **[*2]** Doc. No. 43; and (3) the Motion for Protective Order filed by McElwee Brothers, Incorporated and Tri-State Design Construction Company, A Joint Venture ("Joint Venture"). Record Doc. No. 46. Participating were Lloyd N. Shields and Elizabeth L. Gordon, representing plaintiff, Great American Insurance Company; and William L. Melancon, representing the Joint Venture.

In the first pending motion, plaintiff seeks to sue Melancon, who is the attorney of record for the Joint Venture, seeking a declaratory judgment that he has no valid or first-ranking attorney's fee lien against any funds that Great American may recover from the federal government on the claims at issue in this lawsuit. The presiding district judge has already granted a preliminary injunction declaring that Great American, rather than the Joint Venture and/or other defendants, has the right to pursue those claims and that defendants must cooperate in plaintiff's efforts to pursue those claims. Record Doc. No. 8. That order is being appealed.

The court previously denied plaintiff's original Motion for Leave to Join Additional Party Under Rule 19 because of the pendency of the appeal. However, in re-urging its motion, Great **[*3]** American correctly points out that *HN1*the pendency of an interlocutory appeal from the grant or denial of a preliminary injunction ordinarily does not divest the district court of jurisdiction to proceed with other aspects of the case, including reaching a final decision on the merits of the case. Hunt v. Johnson, 90 Fed. Appx. 702, 2004 U.S. App. LEXIS 606, No. 03-20555, 2004 WL 75421, at *1 (5th Cir. Jan. 16, 2004); State of Colo. v. Idarado Mining Co., 916 F.2d 1486, 1490 (10th Cir. 1990); West Publ'g Co. v. Mead Data Cent., Inc., 799 F.2d 1219, 1229 (8th Cir. 1986). Because the issues raised by the instant motion do not implicate the issues that are on appeal from this court's grant of a preliminary injunction, the court considers the motion.

I disagree with Great American's characterization of its attempt to join Melancon as a compulsory joinder under Fed. R. Civ. P. 19. Plaintiff relies on Rule 19(a)(2)(ii), which provides in relevant part:

> *HN2*☐A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the **[*4]** action if ... (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may ... (ii) leave any of the persons, already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

Fed. R. Civ. P. 19(a)(2)(ii).

Great American contends that it would be subject to inconsistent obligations because Melancon may assert an allegedly first-ranked attorney's lien against any recovery that Great American obtains. Melancon's alleged lien would be based on his contingency fee contract with the Joint Venture, a contract to which Great American is not a party.

Even assuming that such a lien and its purported ranking could bind a non-party to the contract, particularly when the party purportedly granting the lien has been adjudicated to have no such right, a result that appears unlikely, Rule 19(a)(2)(ii) *HN3*☐"is intended to prevent 'a double or otherwise inconsistent liability."' Pulitzer-Polster v. Pulitzer, 784 F.2d 1305, 1312 (5th Cir. 1986) (quoting Fed. R. Civ. P. 19 **[*5]** advisory committee note). This means that, "viewed practically, there is a substantial risk that [an existing party to the lawsuit] might face double liability as a result of this lawsuit. [The existing party] may, if the federal litigation is allowed to proceed, be forced to pay twice for the same alleged misconduct causing the same harm." Id. (emphasis added). "Certainly, there is a chance that [Melancon] might seek legal redress against [Great American] at some later time, but 'the key is whether the possibility of being subject to multiple obligations is real; an unsubstantiated or speculative risk will not satisfy the Rule 19(a) criteria.'" Faloon v. Sunburst Bank, 158 F.R.D. 378, 381 (N.D. Miss. 1994) (quoting 7 Charles A. Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1604 (2d ed. 1986)).

In the instant case, the facts alleged do not establish that Great American might be subject to double or inconsistent liabilities. Plaintiff has merely alleged that Melancon may assert a right to a portion of funds that may (or may not) be recovered in the future, to which Great American also asserts a right. There is no **[*6]** risk, much less the requisite substantial risk, that Great American may have to pay an obligation twice, only that it will not recover all that it seeks to recover, in the event it ever makes a recovery. In my view, plaintiff's allegation is not sufficient to satisfy Rule 19(a)(2)(ii).

However, Rule 20 provides for permissive joinder of defendants, as follows. *HN4*☐"All persons (and any vessel, cargo or other property subject to admiralty process in rem) may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a).

> Thus, permissive joinder is proper when (1) [the] right to relief arose out of the same transaction, occurrence, or series of transactions or occurrences, and (2) ... there is a question of law or fact common to all of the [defendants] that will arise in the action. Both of these requirements must be satisfied in order to sustain party **[*7]** joinder under Rule 20(a).

Weber v. Lockheed Martin Corp., 2001 U.S. Dist. LEXIS 3488, No. 00-2876, 2001 WL 274518, at *1 (E.D. La. Mar. 20, 2001) (Duval, J.) (quotations omitted) (citing Alexander v. Fulton County, 207 F.3d 1303, 1322-23 (11th Cir. 2000); Porter v. Milliken & Michaels, Inc., 2000 U.S. Dist. LEXIS 11366, No. 99-0199, 2000 WL 1059849, at *1 (E.D. La. Aug. 1, 2000) (Vance, J.); Little v. Bellsouth Telecommunication, 1995 U.S. Dist. LEXIS 11208, No. 95-1646, 1995 WL 468256, at *1 (E.D. La. Aug. 7, 1995) (Mentz, J.); C.A. Wright. A. Miller & M.K. Kane, Federal Practice & Procedure § 1653 (1986)). *HN5* The test for permissive joinder is (1) whether there is a logical relationship between the claims and (2) whether there is any overlapping proof or legal question. Id.; Porter, 2000 U.S. Dist. LEXIS 11366, 2000 WL 1059849, at *1.

> In determining what constitutes a single transaction or occurrence under the first prong, a number of courts have looked to the interpretation of "transaction" under Rule 13(a)-compulsory counterclaims. Transaction, for the purposes of Rule 13(a), is a word of flexible meaning. It may comprehend a series of many occurrences, depending not so much upon the immediateness **[*8]** of their connection as upon their logical relationship.

Id. (quotations omitted) (citing Alexander, 207 F.3d at 1323; Mosley v. General Motors Corp., 497 F.2d 1330, 1333 (8th Cir. 1974)); accord Lott v. Eastman Kodak Co., 1999 U.S. Dist. LEXIS 5833, 1999 WL 242688, at *3 (N.D. Tex. Apr. 16, 1999). "Absolute identity of all events is unnecessary." Id. (citing Mosley, 497 F.2d at 1333).

HN6 "The second prong [of Rule 20(a)] does not require all questions of law and fact raised by the dispute to be common. Rather, only some question of law or fact must be common to all parties."' Porter, 2000 U.S. Dist. LEXIS 11366, 2000 WL 1059849, at *2 (citing Alexander, 207 F.3d at 1324; Mosley, 497 F.2d at 1334; Guedry v. Marino, 164 F.R.D. 181, 184 (E.D. La. 1995) (Jones, J.)).

It appears that the Rule 20 requirements are met in this case. Plaintiff is seeking declaratory judgments against the existing defendants and against Melancon to clarify the rights of each party to claims and to eventual recovery of funds arising out of the same construction project and the contracts between the existing parties **[*9]** relating to that project. Although the claim against Melancon concerns his right to recover attorney's fees based on his contingency fee contract with the Joint Venture while the claims against the other defendants arise out of other contracts, the claims arise out of the same basic transaction or occurrence.

"In addition, *HN7* the Rule 20 standard does not require that there be a basis for joint liability, but allows joinder also on the basis of only 'several' liability." Brooks v. Paulk & Cope, Inc., 176 F. Supp. 2d 1270, 1276 (M.D. Ala. 2001) (citing Rumbaugh v. Winifrede R.R. Co., 331 F.2d 530 (4th Cir. 1964)).

In the instant case, judicial efficiency and economy for the parties would be served by hearing all related claims concerning any funds recovered from the government in one action. Great American Ins. Co. v. Harleysville Mut. Cas. Co., 285 F.2d 262, 264 (4th Cir. 1960); Briarpatch Ltd., L.P. v. Pate, 81 F. Supp. 2d 509, 515 (S.D.N.Y. 2000); Lumbermens Mut. Cas. Co. v. Borden Co., 241 F. Supp. 683, 695-96 (S.D.N.Y. 1965). Accordingly, Plaintiff's Second Motion for Leave to Join Additional Party **[*10]** Under Rule 19 of the Federal Rules of Civil Procedure, Record Doc. No. 41, is GRANTED.

The motions for protective order filed by McElwee and the Joint Venture, Record Doc. Nos. 43 and 46, are GRANTED, but only subject to the order contained herein. Plaintiff noticed the depositions of defendants McElwee and Sylvia Hurst on March 11, 2004, to be taken on

March 17, 2004. HN8 Six days is not the reasonable notice required by Fed. R. Civ. P. 30(b)(1). Therefore, both notices of deposition are quashed.

In addition, Great American asked that the deponents produce documents pursuant to Fed. R. Civ. P. 30(b)(5). HN9 That rule is clear that requests for production of documents in conjunction with a deposition notice to a party deponent must comply with Fed. R. Civ. P. 34. Under Rule 34(b), parties have 30 days to respond to requests for production of documents unless the court orders responses within some shorter or longer time. The court did not make such an order in this case before these requests for production were submitted.

Although **[*11]** Judge Duval required in his "Judgment on Preliminary Injunction Request," Record Doc. No. 8 at P 2, that defendants "produce all records requested by Great American Insurance Company," he did not impose particular time limits or other special logistical requirements on such requests and responses. In the absence of any special requirements in the preliminary injunction, I will apply the usual time periods and mechanisms for document production provided in the Federal Rules of Civil Procedure. Therefore, no response is due to the requests for production on the dates set out in the notice, and the motion for protective order is granted in this limited regard as well, because I see no reason to shorten the usual response time.

However, defendants are specifically reminded that the preliminary injunction requires that they "produce all records requested by Great American Insurance Company." Accordingly, **IT IS ORDERED** that responses to the subject requests for production, including actual production of the requested documents, must be made no later than 30 days after service of the requests, which has already occurred. No extensions of this time period will be permitted by me. **[*12]**

New Orleans, Louisiana, this 19th day of March, 2004.

JOSEPH C. WILKINSON, JR.

UNITED STATES MAGISTRATE JUDGE

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