

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 10-md-02183-PAS**

IN RE: Brican America LLC Equipment
Lease Litigation

ORDER FOLLOWING MAY 19, 2011, STATUS CONFERENCE

THIS MATTER is before the Court following a status conference on May 19, 2011.

Attorneys Ronald Gossett, David Charlip, Catherine Rodriguez, Michael Gallagher, Michael Verde, Mendy Halberstam and Alan Fine attended in person, attorneys Kenneth Catanzarite and Edward McConnell participated via video conference call. The following issues were addressed at the hearing.

A. PLAINTIFFS STIPULATE TO A "PAPER CASE"

During the conference the parties discussed the issues raised in Defendants' Notice of Filing Proposed Stipulation [DE-182]. As a result of that discussion, Plaintiffs made certain stipulations that impact the nature of this case going forward. Plaintiffs stipulated that the allegations of the First Amended Common Complaint ("FACC") are not premised on oral representations. Rather, the allegations are premised on the written misrepresentations identified in, and attached to, the FACC. In other words, this is a "paper case," not an oral case or even a hybrid case (written misrepresentations coupled with oral misrepresentations). The Court will hold Plaintiffs to these stipulations. Plaintiffs shall amend their Statement of Legal Claims and Elements [DE-151] to reflect this stipulation on or before **June 3, 2011**.

B. PLAINTIFFS AND DEFENDANTS - STIPULATION OF FACTS

Plaintiffs and Defendants shall again meet and confer to agree to a set of factual stipulations that will guide the class action determination. The stipulations shall be filed on or

before **June 22, 2011**.

C. THIRD PARTY DISCOVERY

The parties also discussed the allegations giving rise to the third-party claims (Brican paid each Third Party Defendant a referral fee of \$400 for each lease and marketing agreement that the Third Party Defendant convinced another health care professional to obtain)¹ and the status of discovery for those claims. With respect to discovery involving the third-party cases, Plaintiffs have stipulated that information (either from the referring health care professional or the recipient of the referral) relating to the referrals is not outside the scope of the FACC for the purposes of discovery. Plaintiffs' counsel have each agreed to produce any relevant document on or before **June 3, 2011**.

D. THIRD PARTY PLAINTIFFS AND THIRD PARTY DEFENDANTS - STIPULATION OF FACTS

In an effort to frame the issues and provide a platform for informed pretrial proceedings and discovery management (and potentially obviate the need for almost 300 depositions), Third Party Plaintiffs and Third Party Defendants shall meet and confer and agree to a set of factual stipulations that will guide the class action determination. These parties shall file their stipulation on or before **June 22, 2011**.

E. EXPERT WITNESSES

The Court will not extend the deadline for identifying expert witnesses related to class certification as no party has identified a need for such a witness for the purposes of class certification.

¹Counsel for Defendants acknowledged that one motivation for filing the Third Party action included their desire to obtain discovery related to Brican's compensatory referral program.

F. LEAD/LIAISON COUNSEL FOR PLAINTIFFS

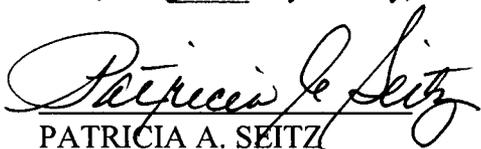
The Court expects counsel for Plaintiffs (including those who are representing Third Party Defendants) to coordinate their positions in the case (to the extent possible) so that information can be communicated by attorney Gossett to opposing counsel. Enabling attorney Gossett to speak on behalf of all Plaintiffs will facilitate the sharing of information and promote the cost efficient and timely resolution of pending matters.

Accordingly, and as stated on the record at the May 19, 2011, hearing, it is hereby

ORDERED THAT

- (1) Plaintiffs shall amend their Statement of Legal Claims and Elements [DE-151] to reflect this stipulation on or before **June 3, 2011**.
- (2) Plaintiffs and Defendants shall file their agreed set of factual stipulations on or before **June 22, 2011**.
- (3) Plaintiffs shall produce for Defendants no later than **June 3, 2011**, all documents relevant to the referrals discussed above.
- (4) Third Party Plaintiffs and Third Party Defendants shall meet and confer and file their agreed set of factual stipulations on or before **June 22, 2011**.
- (5) A Status Conference is set for **8:30 a.m. (EST) on July 22, 2011**.

DONE and ORDERED in Miami, Florida, this 20th day of May, 2011.



PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

cc:
Counsel of Record
Magistrate Judge Simonton
The Honorable Michael D. Huppert