

## Exhibit B

**From:** [Brown, Laura J.S. \(ENRD\)](#)  
**To:** [Cox, Alexander K.; lkogan@koganlawgroup.com; Uholik, Brian \(ENRD\); Buckley, Sarah \(ENRD\); Kolman, Chloe \(ENRD\)](#)  
**Cc:** [Devlin, Neal](#)  
**Subject:** RE: Next week"s depositions  
**Date:** Friday, January 05, 2018 11:25:55 AM

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Alex and Larry:

We do not understand the basis for your objection to our scheduled depositions – your suggestion that the United States is trying to run up costs for your client makes no sense given that the total deposition hours, and thus the cost, will be the same whether depositions are simultaneous or not. To clarify the history: we had originally noticed five depositions in the only two days Defendants provided their availability. All were scheduled to run simultaneously: Mr. Brace on Nov. 17 at 9 am, Randall Brace on Nov. 17 at 9 am, Ronald Brace on Nov. 18 at 9 am, Mrs. Brace on Nov. 18 at 9 am and Rhonda McAtee on Nov. 18 at 1. Only Mrs. Brace and Mrs. McAtee were scheduled for half days, but to run simultaneously with Ronald's deposition. Our revised notices are consistent with our previous notices, with the exception that we did not schedule simultaneous depositions for the day of Mr. Brace's deposition. The overlapping room numbers on the notices were an oversight, but we have reserved two rooms and can re-notice the depositions with the correct room numbers if you insist. The reason we had simultaneously scheduled depositions was to complete the depositions as efficiently as possible and have the third party depositions you sought to take completed in Erie in one week. In fact, on December 14th, you requested that we conduct all five of our depositions on January 11th and 12th, which would have necessitated running at least four of those depositions simultaneously, the same thing about which you now object.

Although you have not provided any basis for your objection, we will offer the following compromise (provided that we can reschedule the court reporters): move Mr. Brace's deposition to Tuesday, move Randall Brace's deposition to Wednesday, Ronald's deposition will remain on Thursday and Beverly and Rhonda will remain on Friday (simultaneously).

As to your request for an extension of discovery, the United States will not agree. Defendants have been well aware that the United States had identified three experts since the Site visits in mid-October. We had proposed on multiple occasions a staggered schedule for expert reports, and you agreed to December 18, 2017 for affirmative experts and January 12, 2018 for rebuttal. Although we won't agree to extend discovery, we would be willing to agree to an additional week for rebuttal reports (or until January 19<sup>th</sup>). We do agree that we should get the experts' depositions on the calendar between 1/22 and 1/31. We have inquired of our experts about their availability and will provide the dates as soon as we have them. We ask that you do the same for Mr. Johnson.

Laura

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**From:** Cox, Alexander K. [mailto:[acox@kmgslaw.com](mailto:acox@kmgslaw.com)]  
**Sent:** Friday, January 05, 2018 8:56 AM  
**To:** Brown, Laura J.S. (ENRD) <[LBrown@ENRD.USDOJ.GOV](mailto:LBrown@ENRD.USDOJ.GOV)>; lkogan@koganlawgroup.com; Uholik, Brian (ENRD) <[BUholik@ENRD.USDOJ.GOV](mailto:BUholik@ENRD.USDOJ.GOV)>; Buckley, Sarah (ENRD) <[SBuckley@ENRD.USDOJ.GOV](mailto:SBuckley@ENRD.USDOJ.GOV)>; Kolman, Chloe (ENRD) <[CKolman@ENRD.USDOJ.GOV](mailto:CKolman@ENRD.USDOJ.GOV)>

**Cc:** Devlin, Neal <ndevlin@kmgslaw.com>

**Subject:** RE: Next week's depositions

Laura,

You're misstating history here. The initially scheduled depositions were slated for two days, not three. And although some were slated simultaneously, Rhonda and Beverly's depositions were scheduled for half days (one at 9am and one at 1pm in the same conference room). Moreover, the deposition notices identified **different** conference rooms for simultaneously scheduled depositions. For the rescheduled depositions, however, what you deem "simultaneous" depositions were noticed for the **same** conference room. You also have an additional day to conduct these depositions. In fact, it was the Government's choice, not the Braces, to schedule these depositions for this three day time span. In your initial response to my email you said "[the government] made this decision based on the limited availability Defendants' provided for their depositions." This is demonstrably false. We requested to move the depositions to January and gave you **no** limitations on dates in January. It was you, in a November 30<sup>th</sup> email, that requested Defendants' availability for depositions "between 1/10-1/12 or 1/18-1/19." You then selected the 1/10-1/12 option you had proposed, which gave you an **additional** day beyond what you had initially scheduled for last year. You could have chosen to conduct these over additional days, but elected not to. Now you insist that what can and should be successive, half-day depositions be conducted simultaneously. Indeed, you initially scheduled Rhonda and Beverly for successive, half-day depositions, but now insist that they be conducted simultaneously, ostensibly as full day depositions. In sum, the government has consciously chosen to run depositions simultaneously, has misrepresented its reason for doing so, and has been far from clear in informing us of your intent to do so. The only rationale we could possibly see is to harass and run up the cost of this litigation for our clients. If there is some other rationale, please enlighten us.

Alex

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**From:** Brown, Laura J.S. (ENRD) [<mailto:Laura.J.S.Brown@usdoj.gov>]

**Sent:** Thursday, January 4, 2018 5:52 PM

**To:** [lkogan@koganlawgroup.com](mailto:lkogan@koganlawgroup.com); Cox, Alexander K. <[acox@kmgslaw.com](mailto:acox@kmgslaw.com)>; Uholik, Brian (ENRD) <[Brian.Uholik@usdoj.gov](mailto:Brian.Uholik@usdoj.gov)>; Buckley, Sarah (ENRD) <[Sarah.Buckley@usdoj.gov](mailto:Sarah.Buckley@usdoj.gov)>; Kolman, Chloe (ENRD) <[Chloe.Kolman@usdoj.gov](mailto:Chloe.Kolman@usdoj.gov)>

**Cc:** Devlin, Neal <[ndevlin@kmgslaw.com](mailto:ndevlin@kmgslaw.com)>

**Subject:** RE: Next week's depositions

Larry,

The United States' depositions will go forward on the dates and times provided in each witnesses' deposition notice, as required under Federal Rule of Civil Procedure 30(b)(1). If the witnesses fail to appear on the dates and times noticed, the United States will be well within its rights to move the Court for the appropriate relief under Federal Rule of Civil Procedure 37(d). The times and dates of those depositions have been noticed since 12/15/17 (and, as I previously noted, the depositions as initially scheduled were also noticed to occur simultaneously) and Defendants have never objected.

Laura

**From:** [lkogan@koganlawgroup.com](mailto:lkogan@koganlawgroup.com) [<mailto:lkogan@koganlawgroup.com>]  
**Sent:** Thursday, January 04, 2018 4:37 PM  
**To:** Brown, Laura J.S. (ENRD) <[LBrown@ENRD.USDOJ.GOV](mailto:LBrown@ENRD.USDOJ.GOV)>; Cox, Alexander K. <[acox@kmgslaw.com](mailto:acox@kmgslaw.com)>; Uholik, Brian (ENRD) <[BUholik@ENRD.USDOJ.GOV](mailto:BUholik@ENRD.USDOJ.GOV)>; Buckley, Sarah (ENRD) <[SBuckley@ENRD.USDOJ.GOV](mailto:SBuckley@ENRD.USDOJ.GOV)>; Kolman, Chloe (ENRD) <[CKolman@ENRD.USDOJ.GOV](mailto:CKolman@ENRD.USDOJ.GOV)>  
**Cc:** Devlin, Neal <[ndevlin@kmgslaw.com](mailto:ndevlin@kmgslaw.com)>  
**Subject:** RE: Next week's depositions

Laura,

They won't occur simultaneously. They will occur successively.

Just something to place in your hat.

Larry

----- Original Message -----

**Subject:** RE: Next week's depositions  
**From:** "Brown, Laura J.S. (ENRD)" <[Laura.J.S.Brown@usdoj.gov](mailto:Laura.J.S.Brown@usdoj.gov)>  
**Date:** 1/4/18 4:13 pm  
**To:** "Cox, Alexander K." <[acox@kmgslaw.com](mailto:acox@kmgslaw.com)>, "Uholik, Brian (ENRD)" <[Brian.Uholik@usdoj.gov](mailto:Brian.Uholik@usdoj.gov)>, "Buckley, Sarah (ENRD)" <[Sarah.Buckley@usdoj.gov](mailto:Sarah.Buckley@usdoj.gov)>, "Kolman, Chloe (ENRD)" <[Chloe.Kolman@usdoj.gov](mailto:Chloe.Kolman@usdoj.gov)>  
**Cc:** "Devlin, Neal" <[ndevlin@kmgslaw.com](mailto:ndevlin@kmgslaw.com)>, "'lkogan@koganlawgroup.com'" <[lkogan@koganlawgroup.com](mailto:lkogan@koganlawgroup.com)>

Alex:

Thank you for you letting us know about the status of the Tuesday depositions. Randall and Ronald's depositions and Rhonda and Beverly's depositions will occur simultaneously. We made this decision based on the limited availability Defendants' provided for their depositions. We have reserved two rooms and two court reporters and will be dividing our attorneys among each. This is how we had noticed the previously scheduled depositions that were rescheduled to next week.

Laura

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**From:** Cox, Alexander K. [<mailto:acox@kmgslaw.com>]  
**Sent:** Thursday, January 04, 2018 4:07 PM  
**To:** Brown, Laura J.S. (ENRD) <[LBrown@ENRD.USDOJ.GOV](mailto:LBrown@ENRD.USDOJ.GOV)>; Uholik, Brian (ENRD) <[BUholik@ENRD.USDOJ.GOV](mailto:BUholik@ENRD.USDOJ.GOV)>; Buckley, Sarah (ENRD) <[SBuckley@ENRD.USDOJ.GOV](mailto:SBuckley@ENRD.USDOJ.GOV)>; Kolman, Chloe (ENRD) <[CKolman@ENRD.USDOJ.GOV](mailto:CKolman@ENRD.USDOJ.GOV)>  
**Cc:** Devlin, Neal <[ndevlin@kmgslaw.com](mailto:ndevlin@kmgslaw.com)>; 'lkogan@koganlawgroup.com' <[lkogan@koganlawgroup.com](mailto:lkogan@koganlawgroup.com)>

**Subject:** Next week's depositions

All:

I wanted to touch base with you about some scheduling issues regarding next week's depositions:

• We were unable to serve Karl Gross, whose deposition we had noticed for Tuesday. So that deposition will not occur as scheduled.

• Although we had successfully served Scott Dudzik, we were recently informed that he is not available next Tuesday for a deposition. We are working with his office to reschedule that deposition (and to schedule the deposition of Mr. Gross), and we will let you know once we have dates for those. As a result, there will be no depositions next Tuesday.

• As for the depositions of the Braces, your notices concurrently scheduled the depositions of multiple witnesses on the same days, beginning at the same time (Randall and Ronald on Thursday, and Beverly and Rhonda on Friday). Can you please confirm that you do not intend to conduct these depositions simultaneously, but instead plan to conduct them successively—i.e., after one witness concludes, you will begin the deposition of the other witness scheduled for that day). Assuming you plan to conduct them successively, can you please let us know which witnesses you plan to begin with each day so that we can plan accordingly. We need to make sure we not only have sufficient lawyers present, but also have the witnesses present at the correct time.

Regards,  
Alex

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**Alexander K. Cox**

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