

# Exhibit 4

**From:** [Cox, Alexander K.](#)  
**To:** [Brown, Laura J.S. \(ENRD\)](#); [Buckley, Sarah \(ENRD\)](#); [Uholik, Brian \(ENRD\)](#); [Kolman, Chloe \(ENRD\)](#)  
**Cc:** [Devlin, Neal](#); "[lkogan@koganlawgroup.com](mailto:lkogan@koganlawgroup.com)"  
**Subject:** RE: Brace - Additional Depositions  
**Date:** Tuesday, December 05, 2017 3:10:26 PM

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Laura,

Thank you for your response.

As to the depositions of the Braces, we expect that either of those date ranges will work, but we are waiting for confirmation from the Braces. We will let you know once we confirm, but in the meantime, please hold those dates open.

As to expert disclosures, we are in agreement with your proposed expert disclosure schedule.

As to additional depositions, we appreciate your willingness to compromise on this issue and avoid the unnecessary expense of seeking leave of Court. After reviewing your response and the testimony and evidence received to date, we would like to take the depositions of the following individuals, in addition to the ten depositions we are permitted without leave of Court:

- (1) David Putnam (DOW-FWS)
- (2) James Smolki (PA Fish & Boat Comm'n)
- (3) Andrew Martin (PA Game Comm'n)
- (4) Karl Gross (PA DEP)
- (5) Barry Frantz (USDA)

This list is designed to avoid the issue raised in your email—regarding multiple witnesses from the same agency—while at the same time providing us with a reasonable number of additional depositions.

That being said, we reserve our right to seek leave for additional depositions should these depositions reveal that additional witnesses possess relevant information, as had occurred during the Steckler deposition with the disclosure of his prior consultation with Mr. Frantz about the Brace commenced conversion determination.

We'd would like to conduct these depositions in the days immediately preceding or immediately following the depositions of the Braces so as to minimize travel for all and make sure they get completed by the close of discovery.

Thank you,  
Alex

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**From:** Brown, Laura J.S. (ENRD) [mailto:Laura.J.S.Brown@usdoj.gov]  
**Sent:** Thursday, November 30, 2017 4:53 PM  
**To:** Cox, Alexander K. <acox@kmgslaw.com>; Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>;

Uholik, Brian (ENRD) <Brian.Uholik@usdoj.gov>; Kolman, Chloe (ENRD) <Chloe.Kolman@usdoj.gov>  
**Cc:** Devlin, Neal <ndevlin@kmgslaw.com>; 'lkogan@koganlawgroup.com'  
<lkogan@koganlawgroup.com>  
**Subject:** RE: Brace - Additional Depositions

Hi Alex:

Since you state that the Braces are unavailable the week of December 18th, we will accommodate them and move their depositions into January. By December 6, 2017, please provide us with the dates between 1/10-1/12 or 1/18-1/19 that Robert, Beverly, Randall, Ronald, and Rhonda are available and we will send revised notices. We will need at least two consecutive days within that period. Additionally, your suggestion that you and your clients would be able to appear for deposition in December *only if* we were willing to consent to your request for additional depositions is improper.

Also, I have repeatedly requested that we establish an expert disclosure schedule for both actions. I have yet to receive any response. Given the extended discovery schedules in the '17 and '90 actions, I propose the following dates for both matters: initial expert disclosures due on December 18, 2017, and rebuttal expert disclosures due on January 12, 2018. Please respond to this proposal.

As you know, we have agreed to hold off on noticing Mr. Johnson's deposition based on Defendants' representation that he will be designated as an expert. If he is not ultimately designated as an expert we will still need to depose him before the close of discovery.

Finally, in regards to your request for our consent to take additional deposition beyond the 10 allowed under the Federal Rules. We disagree with your assertion that you are allowed 20 depositions, given that you have noticed each of the depositions taken so far under both captions. However, we are willing to consent to Mr. Dudzic's, Mr. Smolko's, and Mr. Nestor's depositions to the extent they exceed the limit (those are the three individuals you identified in your list that were on our initial disclosures in the '17 action). With respect to the remaining PADEP and DOI individuals on your list, you have identified multiple witnesses from the each agency, whose testimony would likely be cumulative and where one witness from each agency would suffice. The third-party depositions taken to date bear this out. We will consent to one witness from each agency, i.e., Perry OR Putman, Nelville OR Gross. Finally, with respect to Mr. Martin, we have consented to Mr. Smolko's and Mr. Nestor's depositions, we see no reason why an additional PAFBC officer's deposition is necessary.

In sum, we will consent to five more depositions (Dudzic, Smolko, Nestor, one PADEP employee, and one DOI employee). Please let us know the dates ranges in which you would like to schedule these five depositions, and we will check our calendars. Because of travel costs, we would appreciate scheduling on consecutive days.

Thank you,  
Laura

**From:** Cox, Alexander K. [<mailto:acox@kmgslaw.com>]  
**Sent:** Wednesday, November 29, 2017 4:42 PM  
**To:** Buckley, Sarah (ENRD) <[SBuckley@ENRD.USDOJ.GOV](mailto:SBuckley@ENRD.USDOJ.GOV)>; Uholik, Brian (ENRD) <[BUholik@ENRD.USDOJ.GOV](mailto:BUholik@ENRD.USDOJ.GOV)>; Brown, Laura J.S. (ENRD) <[LBrown@ENRD.USDOJ.GOV](mailto:LBrown@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:** Brace - Additional Depositions

All:

We would to schedule the depositions of the following individuals:

Edward Perry (DOI)  
David Putnam (DOI)  
James Smolko (PA Fish & Boat Comm'n)  
Robert Nestor (PA Fish & Boat Comm'n)  
Andrew Martin (PA Game Comm'n)  
Richard Nelville (PA DEP)  
Scott Dudzic (PA DEP)  
Karl Gross (PA DEP)

Can you please let us know when you have days available for these depositions prior to the close of discovery? The depositions of the DOI folks would be in or around State College, and the others would be in or around Erie.

As you can see, this will bring the grand total for Defendants' depositions to 18 (by our calculation, nine prior depositions have been conducted or are scheduled). We are therefore requesting your consent to conduct the eight additional depositions that exceed the limit permitted without leave of Court. If you do not consent, please let us know ASAP so that we can seek leave of Court. Given that the combined number of individuals deposed will not exceed 20 (the total number of depositions we are permitted for both cases), and that several of these individuals are listed on your initial disclosures, we anticipate that the Court will grant us this leave.

As for the depositions of the Braces, it will be difficult for them all to be available the week of the 18<sup>th</sup>, as you had proposed. With it being the week before Christmas, it is difficult to find days that work for all of them (and us), without moving preexisting commitments. However, if you are willing to consent to the additional depositions above so that we can avoid spending time and resources seeking leave of Court, we can figure out a way to squeeze in the Braces' depositions that week. If not, they will need to be deposed after the first of the year.

Please let us know.

Thanks,  
Alex

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**Alexander K. Cox**

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