

In the event that SCN shall within a period commencing on the closing date and ending December 31, 1999 close a transaction with an Affiliated Practice which is substantially similar to the restructure transaction contemplated by this Agreement ("a Restructuring Transaction") and, taken as a whole, the financial terms of such other Restructuring Transaction are materially more favorable to any Affiliated Practice (and its Physician Owners) than the financial terms, taken as a whole, of the restructuring transaction contemplated by this Agreement, then in such event SCN shall modify the financial terms of this Agreement in such manner as SCN shall reasonably determine so that the financial terms of the restructuring transaction contemplated by this Agreement for ROA[] . . . shall be no less favorable, when taken as a whole, than the Restructure Transaction undertaken with respect to any other Affiliated Practice.

Restructure Agreement § 10.15. By its terms, the MFNC could potentially apply to any number of agreements entered into by SCN. ROA believes that, at most, twenty of SCN's agreements implicate the MFNC.

SCN opposed broad discovery in this case because, in part, of the undue prejudice that would result if it had to produce documents concerning twenty agreements. In order to balance the unknown merits of such discovery against the burden on SCN, the Court initially expanded the scope of discovery to include the 3B agreement only. If such discovery revealed information that warranted expanding or limiting the scope of discovery, the Court allowed the parties to file an appropriate motion at such time. The Court selected the 3B agreement because ROA claimed to have evidence tending to show that the 3B agreement breached the MFNC,

and because 3B, ROA's local competitors, had been the motivation behind the MFNC in the first place.

After conducting discovery of the 3B agreement, ROA filed the instant Motion to Extend the Scope of Discovery. ROA contends that the evidence revealed clearly demonstrates a breach of the MFNC and justifies allowing discovery of SCN's other similar agreements. SCN argues that the 3B agreement is so dissimilar to ROA's Restructuring Agreement that it would not trigger the MFNC at all, even if it were more favorable to 3B. SCN therefore concludes that the evidence regarding the 3B agreement does not justify allowing additional discovery in this case.

While it may be that the 3B settlement agreement itself does not trigger the MFNC, it does not necessarily follow that all discovery concerning the alleged breach of the MFNC should be precluded. At the hearing held on this matter, the parties focused on the specific issue of whether the 3B agreement triggered the MFNC, while ignoring the broader issue of whether, irrespective of the 3B agreement, discovery should be expanded.

Before the Court can rule on this matter, it must know which agreements, assuming they were more favorable than ROA's Restructuring Agreement, would trigger the MFNC. Because only those agreements would support a breach of contract claim, discovery beyond those specific contracts would be clearly

irrelevant and prejudicial to SCN. While the parties have intimated that only nine of the twenty other agreements would trigger the MFNC, neither party has provided the Court with a clear explanation as to which agreement would, or why. If the Court decides to expand the scope of discovery, which it does not hold today, it must know which agreements, if any, would be suitable for discovery. Accordingly, the Court requires additional briefing on this motion. It is therefore **ORDERED** that:

1. On or before February 20, 2001, each party shall submit to the Court a brief that lists the other agreements that the party believes would clearly trigger the MFNC if more favorable than ROA's Restructuring Agreement. The parties shall consider, and include in their briefs to the extent possible, the following factors: (a) whether the third party was an "affiliated practice" as defined in the ROA Restructuring Agreement; (b) whether the agreement was closed before December 31, 1999; (c) whether the agreement was a settlement of litigation; (d) whether the agreement terminated the existing business relationship or restructured it; (e) whether the agreement contained a similar MFNC clause; (f) whether the agreement required the third party to repurchase its assets from SCN; and (g) any other factor the party considers relevant. The brief should also discuss whether, irrespective of the 3B settlement agreement, the Court should

allow discovery of any agreements that would clearly trigger the MFNC.

BY THE COURT:

JAMES MCGIRR KELLY, J.