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S.C. SUPREME COURT

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NUMBER 2021-CP-26-07488
DR. SCOTT F. DUNCAN, M.D., Plaintiff,	)	
vs.	)	
ORTHOSC, LLC, a South Carolina limited liability company; DR. GENE M. MASSEY, M.D.; GRAND STRAND SURGICAL SPECIALISTS, LLC, a South Carolina limited liability company; HCA PHYSICIAN SERVICES, INC., a Tennessee corporation; GRAND STRAND REGIONAL MEDICAL CENTER, LLC, a Delaware limited liability company; and HCA HEALTHCARE, INC., a Delaware corporation, Defendants.	)	**ORDER DENYING MOTION FOR STAY OF CLAIMS AND DEFERRING MOTION TO DISMISS**

This matter came before the Court on March 29, 2022 for a hearing conducted via WebEx involving a Motion to Stay and/or Motion to Dismiss pursuant to S.C. R. CIV. PRO. 12(b)(6) filed on January 20, 2022 by Defendants OrthoSC, LLC ("OrthoSC") and Dr. Gene M. Massey, M.D. ("Massey").

Participating at the hearing were Daniel F. Blanchard, III, Esquire of Rosen Hagood, LLC, as counsel for Plaintiff Dr. Scott F. Duncan, M.D.; Charles E. Ipock, Esquire of Haynsworth Sinkler Boyd, PA, as counsel for Defendants OrthoSC, LLC and Dr. Gene M. Massey, M.D.; and William R. Thomas, Esquire of Parker Poe Adams & Bernstein, LLP, as counsel for Defendants Grand Strand Surgical Specialists, LLC; Grand Strand Regional Medical Center, LLC; HCA Physician Services, Inc.; and HCA Healthcare, Inc.

On November 11, 2021, Plaintiff filed the Summons and Complaint in this action against the

above-named Defendants. On January 20, 2022, Defendants OrthoSC and Massey filed the instant motion arguing that the Court should stay the Plaintiff's causes of action asserted against them until such time as the Plaintiff's claims against Defendants Grand Strand Surgical Specialists, LLC; Grand Strand Regional Medical Center, LLC; and HCA Physician Services, Inc. have been arbitrated pursuant to an arbitration provision contained in a Physician Employment Agreement dated May 2, 2017. Alternatively, in the event Plaintiff's claims are not stayed, Defendants OrthoSC's and Massey's motion further requests that Plaintiff's claims against them for intentional interference with contract, intentional interference with prospective economic advantage, violation of the South Carolina Unfair Trade Practices Act, S.C. CODE ANN. § 39-5-10 *et seq.*, and civil conspiracy should be dismissed pursuant to Rule 12(b)(6) for failure to state a cause of action.

By Consent Order filed on April 1, 2022, Plaintiff agreed to submit his claims against Defendants Grand Strand Surgical Specialists, LLC; Grand Strand Regional Medical Center, LLC; and HCA Physician Services, Inc. to arbitration pursuant to the arbitration rules and procedures as called for in the Physician Employment Agreement. Defendants OrthoSC and Massey do not assert they are parties to or "privy to" the Physician Employment Agreement or to the arbitration provision contained therein.[1] Defendants OrthoSC and Massey further assert that an award in the arbitration between Plaintiff and the other Defendants in this action "will not be binding as to" them.

Defendants OrthoSC and Massey nevertheless ask the Court to stay Plaintiff's nonarbitrable

[1] Because the Physician Employment Agreement contains a confidentiality provision, Plaintiff's counsel previously submitted a copy of that document to the Court in a sealed envelope for *in camera* review. Counsel for Defendants OrthoSC and Massey advised at the hearing that he has not yet had an opportunity to see or review the document. Counsel for the parties further advised the Court that they would cooperate to try to agree upon a proposed Consent Confidentiality Order that would allow for the document to be produced to the parties' counsel subject to restrictions governing

claims against them until such time as an arbitration award is rendered involving Plaintiff's separate claims against the other Defendants in this case. Defendants OrthoSC and Massey argue that staying the Plaintiff's claims until the arbitration against the other Defendants is held "will provide clarity to the issues, avoid the risk of simultaneous conflicting results, conserve judicial economies, and in the interim, the clarity may be means to a resolution." See Defs' Memo. in Support of Motion p.8.

After carefully considering the pleadings, documents of record, motions, memoranda, and arguments of counsel, the Court denies Defendants OrthoSC's and Massey's motion to the extent it seeks or requests a stay of the Plaintiff's claims against them pending the outcome of the arbitration against the other Defendants. Defendant OrthoSC's and Massey's request for a stay of Plaintiff's claims against them is denied. Plaintiff's claims against Defendants OrthoSC and Massey will proceed in this Court in their normal course.

This Order does not rule on or dispose of that portion(s) of Defendants OrthoSC's and Massey's motion seeking or requesting the dismissal of Plaintiff's claims against them based on the alleged failure to state a cause of action under S.C. R. CIV. PRO. 12(b)(6). That portion(s) of Defendants OrthoSC's and Massey's motion will be rescheduled for another hearing in this Court on a date and time to be noticed in the future and will be taken up by the Court at that time.

In Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1 (1983), the United States Supreme Court held that when an arbitration agreement exists between some, but not all parties to a case, litigation between arbitrating parties must be stayed, but proceedings against parties not subject to the agreement may continue. Id. at 20. Where some claims are arbitrable and others are not, "courts generally refuse to stay proceedings of nonarbitrable claims when it is feasible to

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its dissemination.

proceed with the litigation." Saldanha v. Pediatrix Med. Grp. of S.C., P.A., No. CA 6:07-4001-HMH-WMC, 2008 WL 4542872, at *5-6 (D.S.C. Oct. 3, 2008) (citing Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 217 (1985)). There is a "heavy presumption" that "the arbitration and the lawsuit will each proceed in its normal course." Id. Courts "note a preference for proceeding with the non-arbitrable claims when feasible." United Commc'ns Hub, Inc. v. Qwest Commc'ns, Inc., 46 F. App'x 412, 415 (9th Cir. 2002).

The trial court's discretion to stay entire cases, including nonarbitrable claims, "should not be exercised lightly." Spartech CMD, LLC v. Int'l Auto. Components Grp. N. Am., Inc., No. 08-13234, 2009 WL 440905, at *12 (E.D. Mich. Feb. 23, 2009). "Crucial to this determination [of whether to stay the nonarbitrable claims while the arbitrable claims are arbitrated] is whether arbitrable claims predominate or whether the outcome of the nonarbitrable claims will depend upon the arbitrator's decision." Id. (citing Genesco, Inc. v. T. Kakiuchi & Co., Ltd., 815 F.2d 840 (2nd Cir. 1987) and Klay v. All Defendants, 389 F.3d 1191 (11th Cir. 2004)); see also Simitar Ent., Inc. v. Silva Ent., Inc., 44 F. Supp. 2d 986, 997 (D. Minn. 1999) ("Expanding the stay, so as to encompass all of the nonarbitrable claims in the case, is appropriate where the arbitrable claims predominate, or where the outcome of the nonarbitrable claims will depend upon the arbitrator's decision.").

In the present case, Defendants OrthoSC and Massey have not shown that Plaintiff's arbitrable claims against the other Defendants predominate over Plaintiff's claims against Defendants OrthoSC and Massey. Indeed, Plaintiff maintains the opposite—that his claims against Defendants OrthoSC and Massey predominate over his claims against the other Defendants. Moreover, Defendants OrthoSC and Massey have not shown that the outcome of Plaintiff's nonarbitrable claims Defendants OrthoSC and Massey will depend upon the arbitrator's decision

involving Plaintiff's claims against the other Defendants or that the arbitrators' resolution of Plaintiff's claims against the other Defendants will have any effect on the outcome of Plaintiff's claims against Defendants OrthoSC and Massey in this Court. Defendants OrthoSC and Massey have not shown that the outcome of the arbitration will have a preclusive effect involving Plaintiff's claims against them.

In view of the forgoing, the Court finds it feasible to proceed with Plaintiff's claims against Defendants OrthoSC and Massey in this Court and that it would prejudice the Plaintiff to have to wait until his arbitration with the other Defendants is concluded to litigate his claims against Defendants OrthoSC and Massey. This finding is supported by decisions from other jurisdictions confronting similar circumstances. See Seth v. Rajagopalan, No. 12-CIV-61040, 2013 WL 11927712, at *11 (S.D. Fla. Jan. 25, 2013) ("[T]he Court finds it feasible to proceed with Seth's nonarbitrable claims. The Court is not convinced that arbitration proceedings concerning the cross-claims, arising out of the SSA, would lead to inconsistent or duplicative proceedings regarding Seth's claims, arising out of the Note. The Court thus … allow[s] Seth's claims to proceed while simultaneously compelling arbitration of the cross-claims."); Neely v. Bechtel Corp., No. 1:07-CV-0907-WKWWO, 2008 WL 2120085, at *5 (M.D. Ala. May 20, 2008) (After concluding that plaintiff's arbitrable claims did not predominate and plaintiff's nonarbitrable claims did not depend upon the outcome of the arbitrable claim, court held that "the interest of resolving the dispute in a timely manner outweighs any concern about parallel proceedings and the motion to stay proceedings is denied."); Klay, 389 F.3d at 1204 (refusing to stay nonarbitrable claims despite compelling arbitration of arbitrable claims when doing so would not result in duplicative proceedings and a decision in either proceeding would not have preclusive effect in the other); Simitar Ent., 44 F. Supp.

2d at 998.

Accordingly,

IT IS ORDERED that Defendants OrthoSC's and Massey's Motion to Stay and/or Motion to Dismiss pursuant to SCRCP 12(b)(6) filed on January 20, 2022 is hereby denied to the extent it seeks or requests a stay of the Plaintiff's claims against those Defendants pending the arbitration of Plaintiff's claims against the other Defendants in this case. Defendant OrthoSC's and Massey's request for a stay of Plaintiff's claims against them is denied. Plaintiff's claims against Defendants OrthoSC and Massey will proceed in this Court in their normal course; and

IT IS FURTHER ORDERED that this Order does not rule on or dispose of that portion(s) of Defendants OrthoSC's and Massey's motion seeking the dismissal of Plaintiff's claims against them based on the alleged failure to state a cause of action under S.C. R. CIV. PRO. 12(b)(6). The portion(s) of Defendants OrthoSC's and Massey's motion seeking the dismissal of Plaintiff's claims based on the alleged failure to state a cause of action under Rule 12(b)(6) will be rescheduled for another hearing in this Court on a date and time to be noticed in the future and will be taken up by the Court at that time;

AND IT IS SO ORDERED!

_____
J. Cordell Maddox, Jr.
Presiding Circuit Court Judge
Court of Common Pleas
Fifteenth Judicial Circuit

This ___ day of _____, 2022.

_____, South Carolina.

Horry Common Pleas

Case Caption: Scott F Duncan VS ORTHOSC LLC , defendant, et al

Case Number: 2021CP2607488

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

EXHIBIT B

ROSEN | HAGOOD

Daniel F. Blanchard, III
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843-266-8123

July 20, 2023

The Honorable Kristi Fisher Curtis
Circuit Court Judge
215 N. Harvin Street
Sumter, SC 29150

Re: Dr. Scott F. Duncan v. OrthoSC, LLC, a South Carolina limited liability company, Dr. Gene M. Massey, M.D.; and HCA Healthcare, Inc., a Delaware corporation
Case No. 2021-CP-26-07488

Dear Judge Curtis:

As you may recall, we represent the Plaintiff Dr. Scott F. Duncan in the above case. We received your email to the parties' counsel from this past Tuesday conveying your preliminarily ruling that you will be denying our client's Motion to Alter or Amend, which seeks an order of the Circuit Court enforcing two subpoenas *duces tecum* the Arbitrator issued to OrthoSC, LLC and Dr. Gene Massey in the separate arbitration proceeding.

Your email explains that you are persuaded by the rationale of those federal courts applying the Federal Arbitration Act (FAA) § 7 which have held that arbitrators do not have authority to compel a nonparty to produce documents *pre-hearing*. Your email cites to Hay Grp., Inc. v. EBS Acquisition Corp., 360 F.3d 404 (3rd Cir. 2004) and Life Receivables Trust v. Syndicate 102, 549 F.3d 210 (2nd Cir. 2008). We understand Mr. Ipock will be preparing and offering a proposed order based on the instructions in your email.

While we are reticent to contact Your Honor about this matter once again as we do not wish for you to think we are trying to argue with your ruling once a ruling has been made, we nevertheless felt it necessary and proper to contact you in this particular instance because of the unusual circumstances. As Your Honor is aware, counsel for OrthoSC and Dr. Massey never raised any argument that FAA § 7 is applicable or even pertinent to the resolution of our client's motion. It appears the Court raised this argument *sua sponte* for the first time while deliberating on the pending motion after the hearing was held. Consequently, we did not address this new argument in our prior filings or during our arguments to you at the hearing and we did not previously have an opportunity to respond to this new argument.

For these reasons, we respectfully request that Your Honor consider this letter as a supplementation of our prior submissions in support of the pending motion before Your Honor makes a final ruling thereon. Of course, until a written order is entered, a binding ruling has not been issued. Bayne v. Bass, 302 S.C. 208, 210, 394 S.E.2d 726, 727 (Ct. App. 1990); Bowman v. Richland Mem'l Hosp., 335 S.C. 88, 91, 515 S.E.2d 259, 260 (Ct. App. 1999).

For the reasons discussed below, we respectfully submit it would be erroneous as a matter of law to rely upon federal case law applying FAA § 7 to decide the present motion. Section 7 of the FAA provides in pertinent part as follows:

> The arbitrators … ***may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document or paper which may be deemed material as evidence in the case….*** Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas ***to appear and testify before the court;*** if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition to the United States district court for the district in which such arbitrators, or a majority of them, are sitting ***may compel the attendance of such person or persons before said arbitrator or arbitrators,*** or punish said person or persons for contempt in the same manner as provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.

9 U.S.C. § 7 (emphasis added).

As Your Honor's email indicates, relying upon the "plain meaning" rule in construing the text of this statute, the federal courts in Hay Grp. and Life Receivables held that under FAA § 7 a nonparty witness may be compelled to bring documents with them to an arbitration hearing but may not simply be subpoenaed to produce or deliver documents pre-hearing. Hay Grp., 360 F.3d at 407 ("The only power conferred on arbitrators with respect to the production of documents by a non-party is the power to summon a non-party 'to attend before them or any of them as a witness *and* in a proper case *to bring with him or them* any book, record, document or paper which may be deemed material as evidence in the case.' The power to require a non-party 'to bring' items 'with him' clearly applies only to situations in which the non-party accompanies the items to the arbitration proceeding, not to situations in which the items are simply sent or brought by a courier. "); Life Receivables, 549 F.3d at 216-17 ("[W]e join the Third Circuit [in Hay Grp.] in holding that section 7 of the FAA does not authorize arbitrators to compel pre-hearing document discovery from entities not party to the arbitration proceedings.").

Notably, there is a substantial split among the federal courts on this question. Other federal courts have rejected the rationale of Hay Grp. These courts eschewed a constrictive reading of FAA § 7 and held that arbitrators can issue subpoenas to nonparties for the pre-hearing production of documents and information. See, e.g., Stanton v. Pain Webber Jackson & Curtis, Inc., 685 F. Supp. 1241 (S.D. Fla. 1988) (holding that FAA § 7 permits the arbitrators to compel pre-hearing discovery); In re Sec. Life Ins. Co. of Am., 228 F.3d 865, 870-71 (8th Cir. 2000) (holding "that implicit in an arbitration panel's power [under FAA § 7] to subpoena relevant documents for production at a hearing is the power to order the production of relevant documents for review by a party prior to the hearing"); Am. Fed'n of Television & Radio Artists v. WJBK–TV, 164 F.3d

1004, 1009 (6th Cir. 1999) (stating that "the FAA's provision authorizing an arbitrator to compel the production of documents from third parties for purposes of an arbitration hearing has been held to implicitly include the authority to compel the production of documents for inspection by a party prior to the hearing"); Int'l Seaway Trading Corp. v. Target Corp., No. 020MC00086NEBKMM, 2021 WL 672990, at *4 (D. Minn. Feb. 22, 2021) (holding arbitrator had the power under FAA § 7 to issue a subpoena for a nonparty's pre-hearing deposition).

More importantly for purposes of the present motion, even those federal courts adhering to the constrictive construction applied in Hay Grp. have explicitly acknowledged that a contrary result will obtain when applying state statutes based on the Uniform Arbitration Act (UAA) § 7. In fact, in the Hay Grp. case itself, then-Circuit Judge Alito remarked in a footnote as follows:

> ***Some states have recently adopted versions of the Uniform Arbitration Act, which differs from the Federal Arbitration Act. Some of these state statutes explicitly grant arbitrators the power to issue pre-hearing document production subpoenas on third parties.*** See, e.g., 10 Del. Code § 5708(a) (2003)("The arbitrators may compel the attendance of witnesses and the production of books, records, contracts, papers, accounts, and all other documents and evidence, and shall have the power to administer oaths."); 42 Pa. C.S.A. § 7309 ("The arbitrators may issue subpoenas in the form prescribed by general rules for the attendance of witnesses and for the production of books, records, documents and other evidence."). ***The language of these state statutes clearly shows how a law can give authority to an arbitrator to issue pre-hearing document-production orders on third parties.***

Hay Grp., 360 F.3d at 407 n.1 (emphasis added).

It is precisely because of this important difference in statutory language that state courts applying versions of UAA § 7 have ruled that arbitrators *can* issue pre-hearing subpoenas *duces tecum* to nonparties and that circuit courts may enforce those subpoenas in the event of noncompliance. An especially illuminating case is Loc. 447 of Int'l Union of Painters & Allied Trades v. Feaker Painting, Inc., 788 N.W.2d 398 (Iowa Ct. App. 2010), where the Court responded to an argument premised on Hay Grp. in applying a state statute modeled on UAA § 7. In that case, the primary issue on appeal was whether an arbitrator had authority to issue a pre-hearing subpoena *duces tecum* to a nonparty under Iowa's version of UAA § 7. The Iowa statute provided as follows:

> The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence, and may administer oaths. Subpoenas shall be served, and upon application to the district court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

IOWA CODE ANN. § 679A.7(1) (West 2023).

The arbitrator in Loc. 447 had issued a subpoena *duces tecum* to Feaker Painting, a nonparty, for the pre-hearing production of certain documents. When Feaker Painting failed to produce the documents, the claimant in the arbitration then filed an application in the circuit court to enforce the arbitrator's subpoena. On appeal from a circuit court order enforcing the subpoena against the nonparty, Feaker Painting cited to the federal court's holding in Hay Grp. and argued the arbitrator lacked the authority to issue a pre-hearing subpoena *duces tecum* to a nonparty.

The Iowa Court of Appeals rejected the nonparty's argument. The Court held that "based on a plain reading of the statute, we are convinced the arbitrator had the authority to issue a subpoena to Feaker Painting." Id. at *3. The Court pointed out that Judge Alito's footnote 1 in Hay Grp. had listed several state statutes that "explicitly grant arbitrators the power to issue pre-hearing document production subpoenas on third parties." Id. The Court further observed that while Judge Alito "did not list" Iowa's statute in his footnote, "a comparison of section 679A.7(1) with the language of the state statutes cited by [Judge Alito] reveals that Iowa's language is virtually identical." Id. at *3 n.2. Consequently, based on the language of IOWA CODE ANN. § 679A.7(1), which is fundamentally different from the language of FAA § 7, the Court in Loc. 447 "conclude[d] the arbitrator had authority to compel a nonparty to the arbitration proceeding ... to produce documents for use in the arbitration proceedings." Id. at *4.

As we've consistently pointed out, South Carolina's version of UAA § 7 is taken verbatim from the uniform statute. It provides:

> The arbitrators may issue (cause to be issued) subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

S.C. CODE ANN. § 15-48-80(a). Our state statute is indistinguishable from the Iowa statute the Court applied in Loc. 447 as well as the Delaware and Pennsylvania statutes which Judge Alito highlighted in his footnote in Hay Grp. Those other state statutes were specifically held out as exemplars of laws giving authority to an arbitrator to issue a pre-hearing subpoena *duces tecum* to a nonparty.

Unlike Section 7 of the FAA, § 15-48-80(a) *does* authorize an arbitrator to compel a nonparty to produce documents pre-hearing. It would be erroneous for this Court to rely upon federal case law applying FAA § 7 in deciding the present motion. As cited in our client's prior filings, numerous state courts applying versions of UAA § 7, which is the model on § 15-48-80(a), have held that arbitrators are authorized to issue pre-hearing subpoenas to nonparties and the courts have authority to enforce them. See, e.g., Loc. 447, 788 N.W.2d at 398; City of Philadelphia v. Fraternal Ord. of Police Lodge No. 5, 932 A.2d 274 (Pa. Commw. Ct. 2007); May Const. Co. v. Thompson, 20 S.W.3d 345, 352 (Ark. 2000); Drivers, Chauffeurs & Helpers Loc. Union No. 639

v. Seagram Sales Corp., 531 F. Supp. 364, 366 (D.D.C. 1981); Matahen v. Sehwail, No. PAS-L-895-19, 2019 WL 11729634, at *1 (N.J. Super. Ct. Apr. 17, 2019); Cotter v. Shearson Lehman Hutton, 546 N.Y.S.2d 319, 321 (N.Y. Sup. Ct. 1989); Superadio Ltd. P'ship v. Winstar Radio Prods., LLC, 844 N.E.2d 246, 254 (Mass. 2006) (Spina, J., concurrence).

We respectfully reiterate our position that the Arbitrator had proper authority to issue the subpoenas to OrthoSC and Massey in this case and those subpoenas should be enforced by the Court in accordance with § 15-48-80(a).

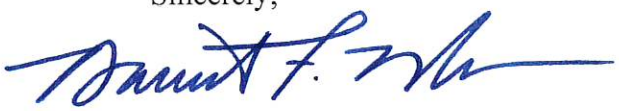
As a final point, even if Your Honor should still find that federal cases such as Hay Grp. and Life Receivables applying FAA § 7 should control, we would respectfully urge you to order OrthoSC and Massey to appear at a preliminary (or pre-merits) hearing before the Arbitrator to produce the documents which have been subpoenaed. In All. Healthcare Servs., Inc. v. Argonaut Priv. Equity, LLC, 804 F. Supp. 2d 808 (N.D. Ill. 2011), the federal judge embraced a "workaround" solution that will permit production of documents prior to a *final* arbitration hearing while remaining faithful to the holding of Hay Grp. that FAA § 7 does not authorize arbitrators to issue subpoenas to nonparties for the *pre-hearing production* of documents. In that case, the federal judge noted that FAA § 7 clearly authorizes an arbitrator to summon nonparty witnesses to produce documents before an arbitration panel. The judge followed the reasoning of other federal cases which held that "'[n]othing in the language of the FAA limits the point in time in the arbitration process when [the subpoena] power can be invoked or says that the arbitrators may only invoke this power under Section 7 at the time of the final hearing.'" Id. at 811 (citing Stolt-Nielsen SA v. Celanese AG, 430 F.3d 567, 578 (2nd Cir. 2005)). Instead, the court held that FAA § 7's reference to hearings "'before [the arbitrators] or any of them' suggests that the provision authorizes the use of subpoenas at preliminary proceedings even in front of a single arbitrator, before the full panel hears the more central issues." Id. The critical holding of Hay Grp. and Life Receivables is that the arbitrator's subpoena must involve the nonparty's appearance at a hearing before the arbitrator, but it is unnecessary that such a hearing be a *final* arbitration hearing.

In this case, even assuming Hay Grp. is controlling, nothing in FAA § 7 would preclude an order requiring OrthoSC and Massey to appear before the Arbitrator and to bring their documents with them to a preliminary hearing conducted for such purpose. The Arbitrator has already issued an Order stating he "intends for the subpoenas to be enforced in the manner provided by law …." See Plf's Motion to Alter or Amend Exh. B. If the problem in the Court's view is that the Arbitrator's subpoenas would involve *pre-hearing production* rather than production *at a hearing*, this problem can easily be rectified by ordering OrthoSC and Massey to appear before the Arbitrator at a preliminary arbitration hearing and to bring their documents with them to such a hearing. It is unnecessary to wait until the Arbitrator conducts a final hearing for the Plaintiff to obtain OrthoSC's and Massey's documents.

We thank you in advance for your consideration of this matter. Of course, please do not hesitate to contact us if we can provide any other information or assistance.

With best regards,

Sincerely,



Daniel F. Blanchard, III

DFB

Cc: Charles E. Ipock, Esquire
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Katon Dawson, Esquire
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James Werner, Esquire