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GARY SILVERMAN  
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VICTOR GRECO  
CODY K. M'CONNEL  
MARIANNA O'DWYER  
J. P. DELANEY  
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JOY K. MELE\*  
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September 17, 2013

PAUL O'DWYER (1907-1998)  
OSCAR BERNSTIEN (1885-1974)  
FRANK DURKAN (1930-2006)

OF COUNSEL:  
MICHAEL CARROLL  
THOMAS J. HUGHES, JR.

\* ALSO ADMITTED IN NJ  
^ ALSO ADMITTED IN PA  
\*\* ALSO ADMITTED IN DC

WRITER'S DIRECT DIAL

Via Email

Marty Harper, Esq.  
Polsinelli, PC  
One East Washington Street, Suite 1200  
Phoenix, AZ 85004

Re: Addington v. USAPA  
13 Civ. 0471- ROS

Dear Marty:

We are writing to notify you of USAPA's objection to Plaintiffs' notice of deposition of Pat Szymanski on various grounds.

First, plaintiffs have already noticed their limit of ten depositions.

Second, Mr. Szymanski is not a party and is not subject to notice.

Third, even if subpoenaed, it cannot be shown that Mr. Szymanski's deposition is appropriate or necessary; that it is the only means to obtain the information sought; that the information sought is relevant and non-privileged and is crucial to the preparation of plaintiffs' case.

Fourth, the attempt to take Mr. Szymanski's deposition is interposed to harass and interfere with defendant's trial preparation and presentation.

The foregoing is not a complete statement of all of the grounds upon which USAPA will rely to oppose the attempt to take Mr. Szymanski's deposition.

Thank you.

Very truly yours,

O'DWYER & BERNSTIEN, LLP

  
GARY SILVERMAN

## Andy Jacob

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**From:** Susan Martin <[smartin@martinbonnett.com](mailto:smartin@martinbonnett.com)>  
**Sent:** Friday, September 27, 2013 2:53 PM  
**To:** Jennifer Axel; Marty Harper; Andy Jacob  
**Cc:** Patrick Szymanski ([szymanski@msn.com](mailto:szymanski@msn.com)); [bodwyer@odblaw.com](mailto:bodwyer@odblaw.com); Silverman Gary; Joy Mele ([jmele@odblaw.com](mailto:jmele@odblaw.com)); Jennifer Kroll  
**Subject:** RE: Addington, et al., v. USAPA, et al., - Deposition of Pat Szymanski

Jennifer- We will get back to you on Monday. Pat is in transit now after having been in meetings all day . Thanks

## SUSAN MARTIN

[smartin@martinbonnett.com](mailto:smartin@martinbonnett.com)

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1850 N. Central Avenue, Suite 2010

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**From:** Jennifer Axel [<mailto:JAxel@Polsinelli.com>]  
**Sent:** Friday, September 27, 2013 2:10 PM  
**To:** Marty Harper; Susan Martin; Andy Jacob  
**Cc:** Patrick Szymanski ([szymanski@msn.com](mailto:szymanski@msn.com)); [bodwyer@odblaw.com](mailto:bodwyer@odblaw.com); Silverman Gary; Joy Mele ([jmele@odblaw.com](mailto:jmele@odblaw.com)); Jennifer Kroll  
**Subject:** RE: Addington, et al., v. USAPA, et al., - Deposition of Pat Szymanski

Susan – is USAPA in agreement with the proposal below?

Thanks,

Jen

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**From:** Marty Harper  
**Sent:** Thursday, September 26, 2013 3:32 PM  
**To:** Susan Martin; Jennifer Axel; Andy Jacob  
**Cc:** Patrick Szymanski ([szymanski@msn.com](mailto:szymanski@msn.com)); [bodwyer@odblaw.com](mailto:bodwyer@odblaw.com); Silverman Gary; Joy Mele ([jmele@odblaw.com](mailto:jmele@odblaw.com)); Jennifer Kroll  
**Subject:** RE: Addington, et al., v. USAPA, et al., - Deposition of Pat Szymanski

Thanks. This is helpful, but we need to first paragraph to read: The subject matter can include anything that relates to Pat's role as merger counsel after May, 2012 through ratification on February 8, 2013. Para's 2 and 3 are fine.

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**From:** Susan Martin [<mailto:smartin@martinbonnett.com>]  
**Sent:** Thursday, September 26, 2013 1:01 PM  
**To:** Marty Harper; Jennifer Axel; Andy Jacob  
**Cc:** Patrick Szymanski ([szymanski@msn.com](mailto:szymanski@msn.com)); [bodwyer@odblaw.com](mailto:bodwyer@odblaw.com); Silverman Gary; Joy Mele ([jmele@odblaw.com](mailto:jmele@odblaw.com)); Jennifer Kroll  
**Subject:** Addington, et al., v. USAPA, et al., - Deposition of Pat Szymanski

Marty:

Pursuant to our call yesterday, in an effort to resolve the dispute regarding Plaintiffs' desire to take Pat Szymanski's deposition and without waiving any right to object or oppose any matter related to that deposition or his testimony, ( and on the express condition that Plaintiffs agree that neither they nor any member of the Leonidas control group will at any time object, complain or challenge Pat Szymanski's continuing role as lead counsel in this matter or his participation in the same), USAPA will agree that Plaintiffs may take Pat's deposition on the following terms:

1. The subjects shall be limited to the road show meetings and the MOU negotiations which you indicated will focus principally on Paragraph 10.
2. The deposition shall not extend beyond three hours in length.
3. All attorney client work product and other privileges apply.

As we discussed the deposition will be in Washington, D.C. Pat has arranged for a conference room at the following location:

Caplin & Drysdale  
1 Thomas Cir NW  
Washington, DC 20005

We can agree to your request to take the deposition on October 10.

Providing these terms are acceptable, we will not proceed further with this discovery dispute. Please let me know today whether you agree and what start time you were planning. If you have any questions, please advise. Thanks

**SUSAN MARTIN**

[smartin@martinbonnett.com](mailto:smartin@martinbonnett.com)

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## Andy Jacob

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**From:** Marty Harper  
**Sent:** Wednesday, October 02, 2013 10:07 AM  
**To:** szymanski@msn.com; 'Susan Martin'; Jennifer Axel; Andy Jacob  
**Cc:** bodwyer@odblaw.com; 'Silverman Gary'; 'Joy Mele'; 'Jennifer Kroll'; Siegel, Bob; Hollinger, Chris  
**Subject:** RE: Addington, et al., v. USAPA, et al., - Deposition of Pat Szymanski

Sorry, discovery closed Monday. We did not hear back from Susan as she promised and she did not make herself available for a meet and confer on this point over the weekend as she also promised. Jen and Chris were both available to discuss this point before discovery closed. So, we are going to proceed in the manner suggested in our draft pretrial order, which is undoubtedly what prompted this current but tardy email.

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**From:** Patrick Szymanski [mailto:szymanski@msn.com]  
**Sent:** Wednesday, October 02, 2013 9:58 AM  
**To:** Marty Harper; 'Susan Martin'; Jennifer Axel; Andy Jacob  
**Cc:** bodwyer@odblaw.com; 'Silverman Gary'; 'Joy Mele'; 'Jennifer Kroll'; Siegel, Bob; Hollinger, Chris  
**Subject:** RE: Addington, et al., v. USAPA, et al., - Deposition of Pat Szymanski

Marty,

We are OK with addition and are willing to agree with the terms stated with the addition that the deposition will be treated as confidential under the Protective Order.

I am including Bob Siegel and Chris Hollinger on this message.

Pat Szymanski  
202.369.5889 (cell)  
[szymanski@msn.com](mailto:szymanski@msn.com)

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**From:** Marty Harper [mailto:MHarper@Polsinelli.com]  
**Sent:** Thursday, September 26, 2013 6:32 PM  
**To:** Susan Martin; Jennifer Axel; Andy Jacob  
**Cc:** Patrick Szymanski ([szymanski@msn.com](mailto:szymanski@msn.com)); [bodwyer@odblaw.com](mailto:bodwyer@odblaw.com); Silverman Gary; Joy Mele ([jmele@odblaw.com](mailto:jmele@odblaw.com)); Jennifer Kroll  
**Subject:** RE: Addington, et al., v. USAPA, et al., - Deposition of Pat Szymanski

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**Sent:** Thursday, September 26, 2013 1:01 PM  
**To:** Marty Harper; Jennifer Axel; Andy Jacob  
**Cc:** Patrick Szymanski ([szymanski@msn.com](mailto:szymanski@msn.com)); [bodwyer@odblaw.com](mailto:bodwyer@odblaw.com); Silverman Gary; Joy Mele ([jmele@odblaw.com](mailto:jmele@odblaw.com)); Jennifer Kroll  
**Subject:** Addington, et al., v. USAPA, et al., - Deposition of Pat Szymanski

Marty:

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**SUSAN MARTIN**

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