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**IN THE UNITED STATES DISTRICT COURT  
 FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

_____ )	Case No. 03-CV-05336
In re DVI, Inc. Securities Litigation )	
_____ )	Case No. 04-CV-3423
WM High Yield et al. v. O’Hanlon, et al. )	
_____ )	Case No. 04-CV-01277
Fleet National Bank, et al v. O’Hanlon, et al. )	
_____ )	Case No. 06-CV-1003-File
Buckley v. Clifford Chance LLP, et al. )	
_____ )	Judge Legrome D. Davis

**FILED**

DEC 28 2006

By MICHAEL E. KUNZ, Clerk  
 Dep. Clerk

**DEFENDANTS’ REPLY BRIEF IN SUPPORT OF  
 DEFENDANTS’ EMERGENCY MOTION FOR STAY**

**INTRODUCTION**

Stripped of its invective and hyperbole, Lead Plaintiffs’ Opposition to Defendants’ Joint Emergency Motion for Stay (“Lead Plaintiffs’ Opposition”) contains numerous misrepresentations and concedes several critical facts which warrant a 60 day stay in this matter.

Lead Plaintiffs’ misrepresentations include:

Lead Plaintiffs’ Misrepresentation	Correction
“In paragraph two of the ‘General Objections’ section of the Trustee’s Objections, DVI’s Liquidating Trustee affirmatively stated that it would be producing documents responsive to Lead Plaintiffs’ subpoena.” Lead Plaintiffs’ Opposition at 7.	The responses Lead Plaintiffs miscite relate to a subpoena served on non-party Arnold & Porter (DVI’s former counsel) in the District of Columbia. <i>See</i> Lead Plaintiffs’ Exhibit D; Defendants’ Exhibit G. <sup>1</sup> These objections were not responding to Lead Plaintiffs’ subpoenas to the Liquidating Trustee (“Buckley”) in the District of Delaware or in the District of Massachusetts. <i>See</i> Lead Plaintiffs’ Exhibits B and C; Defendants’ Exhibit A. Buckley’s objections to the single request for “[a]ll documents relating to DVI, Inc.” contained in the <u>actual</u> subpoena at issue did <u>not</u> state that documents would be produced. <i>See</i> Defendants’ Exhibit B. <sup>2</sup>

<sup>1</sup> Defendants’ Exhibits A-F referenced herein are the exhibits attached to Defendants’ Emergency Motion for Stay. Exhibits G through K are exhibits in support of Defendants’ Reply and are attached hereto.

<sup>2</sup> Arnold & Porter produced 3,744 pages of documents in response to the District of Columbia subpoena, which were affixed with an “AP” Bates-label. *See* Exhibit H. Despite Lead Plaintiffs’ attempted sleight of hand, the Arnold & Porter subpoena is not the source of the “millions of pages” at issue.

<p>“If they wanted copies of the DVI documents currently in the possession of the Liquidating Trustee, their counsel should have pursued them from the source...Or they should have followed up with Lead Counsel to determine the status of Lead Counsel’s efforts to gain access to the DVI documents...” Lead Plaintiffs’ Opposition at 4.</p> <p>“After receiving the Trustee’s objections, none of the Defendants made any inquiry to lead plaintiffs, or, apparently, to DVI’s Liquidating Trustee, about the production.” Lead Plaintiffs’ Opposition at 7.</p>	<p>The Liquidating Trustee “made copies of the DVI indices available to lawyers at the Krislov and Chimcles [sic] firms sometime during the first two weeks in July 2006. Starting in August, [Liquidating Trustee’s counsel] began sending the documents those lawyers requested during their document review.” See 12/12/06 email from Liquidating Trustee’s counsel to Deloitte &amp; Touche’s counsel, attached hereto as Exhibit I.</p> <p>On August 16, 2006, and August 18, 2006 respectively, defendants Clifford Chance and the Pritzkers specifically requested from Lead Plaintiffs “all documents or materials that you have received from third-parties via subpoena or informal request...” See Exhibits J and K, attached hereto.</p> <p>Lead Plaintiffs wrote to Clifford Chance and the Pritzkers on August 25, 2006 and provided “a chart summarizing the third party requests we issued and documents we received...” See 8/25/06 email and attachment from Lead Plaintiffs’ counsel to Clifford Chance and Pritzkers counsel, attached hereto as Exhibit H. This chart omitted both the Liquidating Trust and Gallagher productions, which they possessed at that time.</p>
<p>“Moreover, many of the so-called Buckley documents are duplicates of documents already produced by defendants in this litigation or were otherwise available as part of the Bankruptcy Examiner’s Report.” Lead Plaintiffs’ Opposition at 4.</p>	<p>Lead Plaintiffs concede that the Buckley documents number in the “millions of pages.” Lead Plaintiffs’ Opposition at 10.</p> <p>The total number of pages produced by all parties and 41 non-parties only totals approximately 1.4 million pages.</p>

In addition, Lead Plaintiffs’ Opposition does not dispute the following:

1. On June 9, 2006, Lead Plaintiffs served a subpoena on the Liquidating Trust (“Buckley”) for “[a]ll documents related to DVI.” Lead Plaintiffs’ Opposition at 6.
2. On June 12, 2006 Buckley objected. The response to Lead Plaintiffs’ single request for “[a]ll documents relating to DVI, Inc.” contained only objections and did not state that a single document would be produced. See Exhibit B.
3. Neither Lead Plaintiffs, nor Buckley, notified defendants that any documents were being produced in response to the subpoena.

4. “[D]uring the first two weeks in July 2006” Buckley gave Lead Plaintiffs an index in excess of 23,000 pages. *See* Exhibit I. No plaintiff notified defendants or gave defendants the index.

5. “Starting in August [of 2006]” Buckley produced documents to Lead Plaintiffs. *Id.* No plaintiff notified defendants or gave defendants copies of the documents produced.

6. On August 16, 2006 and August 18, 2006 respectively, counsel for Clifford Chance and the Pritzkers, both of which had just been added as parties, requested that Lead Plaintiffs, and other parties, produce “all documents or materials that you have received from third-parties via subpoena or informal request...” *See* Exhibit J and K.

7. On August 25, 2006, Lead Plaintiffs wrote to Clifford Chance and the Pritzkers and provided “a chart summarizing the third party requests we issued and documents we received...” *See* Exhibit H. This chart omitted the Liquidating Trust and Gallagher productions, which Lead Plaintiffs concede, and Gallagher and the Liquidating Trustee confirm, that plaintiffs possessed at the time of their false email. *See* Exhibits F and I.

8. Lead Plaintiffs acknowledge that review of the Buckley documents, which started in August, has taken them “months”, has required “numerous attorney hours” and “is ongoing.” *Lead Plaintiffs’ Opposition* at 7-8.

9. Plaintiffs revealed for the first time on December 7, 2006 that Buckley produced documents to Lead Plaintiffs, as depositions commenced in this matter, and used Buckley documents at the first three depositions over defendants’ objections.

10. Plaintiffs refuse to produce documents they obtained from Buckley and Buckley refuses to produce the documents Lead Plaintiffs obtained.

Plaintiffs' conduct of withholding documents and making misrepresentations to the Court is sanctionable and requires, at a minimum, a 60 day stay of all depositions of defendants and nonparties.

**I. THE MORE THAN 60,000 DOCUMENTS COPIED, BATES-LABELED AND PRODUCED TO LEAD PLAINTIFFS ARE NOT WORK PRODUCT**<sup>3</sup>

Defendants seek access to all of the Buckley documents made available to Lead Plaintiffs, not just those that were copied, Bates-labeled, and produced to Lead Plaintiffs. Defendants are entitled to review all of the documents Lead Plaintiffs had access to review. Despite Lead Plaintiffs' general unsubstantiated statements that these documents were made available to certain defendants, they do not claim, because they can not, that all of the Buckley documents were made available to several defendants including, Deloitte & Touche LLP, Merrill Lynch & Co., Inc., Clifford Chance and the Pritzker defendants. At a minimum, all Buckley documents should be made available to all Defendants. In addition, Defendants are entitled to the 60,000 plus documents that were Bates-labeled, copied and produced to Lead Plaintiffs with the "Buckley" Bates-label.

Lead Plaintiffs distort *Spork v. Peil*, 759 F.2d 312 (3d Cir. 1985). *Spork* addressed whether a party was entitled to documents counsel selected and showed to a witness during preparation for a deposition, not whether a party is entitled to withhold tens of thousands of factual documents merely because they reviewed them and had them Bates-labeled. Courts in the Eastern District of Pennsylvania have recognized that where the documents at issue have not already been turned over in discovery, compilations of such documents are not entitled to work

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<sup>3</sup> Defendants do not know how many documents were Bates-labeled and produced by Buckley to plaintiffs. Documents marked as exhibits at depositions have had Buckley Bates-label numbers as high as the 60,000 range.

product protection. See *In re Automotive Refinishing Paint Antitrust Litig.*, No. MDL 1426, 2006 WL 1479819 \* 7 (E.D. Pa. May 26, 2006) (distinguishing *Spork*, and refusing to apply the work product protection to documents selected by counsel from a larger set of documents that had not already been turned over in discovery); *Directory Dividends, Inc. v. SBC Communications, Inc.*, No. 01-CV-1974, 2006 WL 23208804 \* 2-3 (E.D. Pa. Dec. 31, 2003) (declining to apply *Spork* to documents that had not been produced to all parties in discovery). Courts have noted that compelling discovery of counsel's compilation of documents from a larger set of documents that have already been produced may provide insight into counsel's legal strategy. *Directory Dividends, Inc.*, 2006 WL 23208804 \* 2. By contrast, when the larger set of documents have not been made available, as in this case, refusing to compel discovery of counsel's compilations prohibits the parties from discovering "the factual basis for [p]laintiff's...claim, which is the purpose of discovery." *Id.* at \* 3.

In addition, the court in *Plant Genetic Systems, N.V. v. Northrup King Co.*, 174 F.R.D. 330 (D. Del. 1997), held that *Spork* does not apply in circumstances such as those presented here, where a large group of documents are assembled from a very large production as part of "a culling process." *Id.* at 332. In *Plant Genetics*, the court held that work product protection did not apply to 20,000 documents compiled from a larger set of 620,000 documents. *Id.* Here, Lead Plaintiffs culled tens of thousands of documents (at least 60,000 pages) from the millions of documents made available to them by the Liquidating Trustee. Following the rationale of *Plant Genetics*, discovery of the substantial number of documents plaintiffs culled from the Liquidating Trustee's "massive" document production, will not reveal "[plaintiffs'] understanding of the case, but...it will add some efficiency to the normally complex and inefficient discovery

process." *Id.* Accordingly, Lead Plaintiffs' argument that documents Bates-labeled "Buckley" constitute work product must be rejected.

**II. LEAD PLAINTIFFS' FAILURE TO NOTIFY DEFENDANTS THAT BUCKLEY PRODUCED DOCUMENTS VIOLATES RULE 45 AND REQUIRES AT A MINIMUM, A 60 DAY STAY**

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Regardless of the Court's decision about which set of Buckley documents Defendants are entitled to review, a stay is warranted because Lead Plaintiffs concealed from Defendants that Buckley was producing documents in response to Lead Plaintiffs' subpoena. Lead Plaintiffs failed to notify Defendants of the production by Buckley in violation of Rule 45. In addition, when Clifford Chance and the Pritzkers inquired about the existence of such documents after these documents were in Lead Plaintiffs' possession, *see* Exhibits I, J and K – Lead Plaintiffs concealed that a production had been made by Buckley. *See* Exhibit H.

Lead Plaintiffs argue, without citing any caselaw on point, that Rule 45 "requires only prior notice to Defendants that Lead Plaintiffs commanded production of documents from DVI's Liquidating Trustee" and does not require notice of the time of the actual production. Lead Plaintiffs' Opposition at 12-13. Despite Lead Plaintiffs' plea for an alteration of the Federal Rules of Civil Procedure to countenance secret productions, Rule 45 requires Lead Plaintiffs to give notice not only of a subpoena, but also of the "time and place" of the commanded production. *See* Defendants' Brief in Support of Emergency Motion for Stay at 5; *Anderson v. Virgin Islands*, 180 F.R.D. 284, 291 (D.V.I. 1998) ("a party is required to provide notice to all other parties in the litigation to allow them the equal opportunity to review and obtain the materials at the same time as the party who served the subpoena"). Lead Plaintiffs' argument not only runs counter to logic, but it would also render meaningless Rule 45(a)(1)(C)'s requirement that every subpoena set forth "a time and place" for the commanded production. Fed. R. Civ. P. 45(a)(1)(C). Under Lead Plaintiffs' interpretation of the Rules, every time a subpoena is served

by a party and objections are served with no agreement reached about production of documents, it would be the other party's obligation to continuously follow-up to determine if the objecting party changed their mind and later decided to produce documents. This is not the law. Lead Plaintiffs failed to provide Defendants with an "equal opportunity to review and obtain the materials at the same time" as Lead Plaintiffs by not notifying Defendants that Buckley had agreed to produce documents and by not notifying Defendants of the "time and place" of Buckley's production.

### **CONCLUSION**

WHEREFORE, Defendants respectfully request that this Honorable Court grant their Emergency Motion for Stay, thereby staying depositions of all Defendants and non-parties in the Coordinated Actions for sixty (60) days from the date Lead Plaintiffs produce to Defendants copies of all documents that were copied and stamped with the "Buckley" Bates-label and produced to Lead Plaintiffs by the DVI Liquidating Trust and any other documents Lead Plaintiffs received in response to their subpoenas to non-parties.

Respectfully submitted,

<p>DILWORTH PAXSON LLP 3200 Mellon Bank Center 1735 Market Street Philadelphia, PA 19103</p> <p>By: /s/ Maura E. Fay Maura E. Fay</p> <p>Date: <u>December 18, 2006</u></p> <p>KITTREDGE, DONELY, ELSON, FULLEM &amp; EMBICK LLP 400 Market Street, Suite 200 Philadelphia, PA 19106</p> <p>By: /s/ Michael J. Dolan Patrick W. Kittredge Michael J. Dolan</p> <p>Date: <u>December 18, 2006</u></p> <p><i>Attorneys for Defendant Steven R. Garfinkel</i></p>	<p>HARKINS CUNNINGHAM LLP 2800 One Commerce Square 2005 Market Street Philadelphia, PA 19103</p> <p>By: /s/ Marianne Consentino John G. Harkins, Jr. Marianne Consentino</p> <p>Date: <u>December 18, 2006</u></p> <p>COOLEY GODWARD KRONISH LLP 1114 Avenue of the Americas New York, NY 10036</p> <p>By: /s/ William J. Schwartz William J. Schwartz Celia Goldwag Barenholtz Rachel B. Kane</p> <p>Date: <u>December 18, 2006</u></p> <p><i>Attorneys for Defendants Clifford Chance LLP and Clifford Chance US LLP</i></p>
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<p>MONTGOMERY MCCrackEN WALKER &amp; RHOADS LLP 123 S. Broad Street Philadelphia, PA 19109</p> <p>By: /s/ Jeffrey S. Feldman Richard L. Scheff Jeffrey S. Feldman</p> <p>Date: <u>December 18, 2006</u></p> <p><i>Attorneys for Defendant Michael O'Hanlon</i></p>	<p>MILLER ALFANO &amp; RASPANTI, P.C. 1818 Market Street-Suite 3402 Philadelphia, PA 19103</p> <p>By: /s/ Stephen G. Stroup Gregory P. Miller Michael A. Morse Stephen G. Stroup</p> <p>Date: <u>December 18, 2006</u></p> <p><i>Attorneys for Defendant Harry T.J. Roberts</i></p>
<p>DUANE MORRIS LLP United Plaza 30 South 17<sup>th</sup> Street Philadelphia, PA 19103</p> <p>By: /s/ Matthew M. Ryan Patrick J. Loftus Robert E. Kelly Kelly D. Eckel Matthew M. Ryan</p> <p>Date: <u>December 18, 2006</u></p> <p><i>Attorneys for Defendant John P. Boyle and Raymond Fear</i></p>	<p>HANGLEY ARONCHICK SEGAL &amp; PUDLIN One Logan Square 27<sup>th</sup> Floor Philadelphia, PA 19103</p> <p>By: /s/ Matthew Hamermesh Daniel Segal Matthew Hamermesh</p> <p>Date: <u>December 18, 2006</u></p> <p><i>Attorneys for Defendants, Terry Cady, Matthew Goldenberg, Philip Jackson and Matthew Colasanti</i></p>

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<p>CONRAD O'BRIEN GELLMAN &amp; ROHN, P.C. 1515 Market Street, 16<sup>th</sup> Floor Philadelphia, PA 19102</p> <p>By: /s/ Vincent T. Cieslik Patricia M. Hamill Vincent T. Cieslik</p> <p>Date: <u>December 18, 2006</u></p> <p><i>Attorneys for Defendant Richard E. Miller</i></p>	<p>STILLMAN &amp; FRIEDMAN, P.C. 425 Park Avenue New York, NY 10022</p> <p>By: /s/ Julian W. Friedman Julian W. Friedman Mary Margulis-Ohnuma</p> <p>Date: <u>December 18, 2006</u></p> <p><i>Attorneys for Defendant Gerald Cohn</i></p>
<p>DURANT &amp; DURANT 325 Chestnut Street, Suite 1116 Philadelphia, PA 19106</p> <p>By: /s/ Shari Amster Marc Durant Shari Amster</p> <p>Date: <u>December 18, 2006</u></p> <p><i>Attorneys for Lisa Cruikshank</i></p>	<p>KELLOGG HUBER HANSEN TODD EVANS &amp; FIGEL 1615 M Street NW-Suite 400 Washington, DC 20036</p> <p>By: /s/ David E. Ross Mark C. Hansen Antonia Apps David E. Ross Andrew Shen</p> <p>Date: <u>December 18, 2006</u></p> <p><i>Attorneys for Defendants, Thomas J. Pritzker, And The Pritzker Organization LLC</i></p>

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By: JD1044

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David L. Comerford  
Jeffery A. Dailey  
R. Brendan Fee

Date: December 18, 2006

*Attorneys for Defendants  
Deloitte & Touche LLP and Harold Neas*

**CERTIFICATE OF SERVICE**

I, Jeffery A. Dailey, hereby certify that on the 18th of December, 2006, a true and correct copy of the foregoing Reply Brief in Support of Defendants' Joint Emergency Motion for Stay, was served upon the following via ECF or U.S. Mail:

**FILED**

DEC 28 2006

By MICHAEL E. KUNZ, Clerk  
Dep. Clerk

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<p>Patrick J. Loftus                  Robert E. Kelly                  Kelly D. Eckel                  Matthew M. Ryan                  Duane Morris LLP                  United Plaza                  30 South 17<sup>th</sup> Street                  Philadelphia, PA 19103</p> <p><i>Attorneys for Defendant                  John P. Boyle and Raymond Fear</i></p>	<p>Daniel Segal                  Matthew Hamermesh                  Hangley Aronchick Segal &amp; Pudlin                  One Logan Square                  27th Floor                  Philadelphia, PA 19103</p> <p><i>Attorneys for Defendant Terry Cady,                  Matthew Goldenberg, Philip Jackson and                  Matthew Colasanti</i></p>

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JD1044  
Jeffery A. Dailey



# **EXHIBIT “G”**

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*Attorneys at Law*

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CHICAGO, ILLINOIS 60606

FAX (312) 606-0207  
TELEPHONE (312) 606-0500

June 16, 2006

VIA OVERNIGHT DELIVERY

ARNOLD & PORTER, LLP

Attn: Scott B. Schreiber

555 Twelfth Street, NW

Washington, DC 20004

Re: In re DVL Inc. Securities Litigation  
Case No. 2:03-CV-05336-LDD

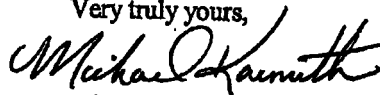
Dear Mr. Schreiber:

Enclosed is a subpoena directed to Arnold & Porter LLP requiring the production of certain documents in connection with the above-referenced action, which is currently pending in the United States District Court for the Eastern District of Pennsylvania.

Although the enclosed subpoena requires that the requested documents be produced on July 17, 2006 to Daniel J. Hurson at The Hurson Law Firm, 1912 Sunderland Place, Washington, DC 20036, we request, as a courtesy, that all documents responsive to this subpoena be copied and forwarded to the undersigned at 20 North Wacker Drive, Suite 1350, Chicago, Illinois 60606, before July 17, 2006. We will pay for reasonable copying and delivering costs. If you will not agree to have copies shipped to us at our expense, kindly contact me immediately.

We appreciate your cooperation in this regard.

Very truly yours,

  
Michael R. Karnuth

Enclosure

cc: All Counsel of Record (w/encl.)  
Mark Tepper  
James McEvilly

**IN THE  
United States District Court  
FOR THE DISTRICT OF COLUMBIA**

IN RE DVI, INC. )  
SHAREHOLDERS LITIGATION )  
)

**SUBPOENA IN A CIVIL CASE**

**SUBPOENA FOR DOCUMENTS**

C/A No.: 2:03-CV-5336

\*Pending in the United States District Court for the Eastern District of Pennsylvania


TO: **ARNOLD & PORTER, LLP**  
Attn: Scott B. Schreiber  
555 Twelfth Street, NW  
Washington, DC 20004

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

**See Exhibit "A" Attached Hereto.**

PLACE	DATE AND TIME
<b>THE HURSON LAW FIRM</b> Attn: Daniel J. Hurson 1912 Sunderland Place Washington, DC 20036	<b>July 17, 2006</b>

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

Issuing Officer Signature and Title (Indicate if attorney for Plaintiff or Defendant)	Date:
<b>Michael R. Karnuth,  Attorney for Plaintiff</b>	<b>June 16, 2006</b>

Issuing Officer's Name, Address, and Phone Number  
**Michael R. Karnuth, Krislov & Associates, Ltd. (312) 606-0500**  
**20 N. Wacker Dr., Suite 1350, Chicago, IL 60606**  
(See Rule 45; Federal Rules of Civil Procedure, Parts C and D on Reverse.)

\*If action is pending in district other than district of issuance, state district under case number.

AO 88 (Rev. 1/94) Subpoena in a Civil Case


**PROOF OF SERVICE**

	DATE	PLACE
SERVED	June 16, 2006	555 Twelfth Street, NW - Washington, DC 20004
SERVED ON (PRINT NAME)		MANNER OF SERVICE
Arnold & Porter, LLP		Overnight Federal Express
SERVED BY (PRINT NAME)		TITLE
Michael R. Karnuth		Attorney for Plaintiff

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on June 16, 2006  
DATE



SIGNATURE OF SERVER  
Krislov & Associates, Ltd., 20 N. Wacker Dr., Ste. 1350, Chicago,  
IL 60606  
ADDRESS OF SERVER

**Rule 17, Federal Rule of Civil Procedure, Cases C & D**

**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(2)(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection is made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**EXHIBIT "A"**

**LEAD PLAINTIFFS' DOCUMENT REQUESTS  
TO NON-PARTY ARNOLD & PORTER, LLP**

Pursuant to Rules 26, 34 and 45 of the Federal Rules of Civil Procedure, Lead Plaintiffs hereby request non-party Arnold & Porter, LLC ("Arnold & Porter") to produce the documents described in this request for inspection and copying below. Arnold & Porter is requested to produce responsive documents for inspection and copying in the time and manner prescribed by the Federal Rules of Civil Procedure and in accordance with the Definitions and Instructions set forth below, at The Hurson Law Firm, 1912 Sunderland Place, Washington, DC, 20036, within 30 days of receipt of this document.

**DEFINITIONS**

As used herein, the following terms shall have the meanings set forth below:

1. "DVT" means DVI, Inc. and/or any predecessors, successors, subsidiaries, divisions and affiliates thereof, including, but not limited to: DVI Financial Services, Inc.; DVI Business Credit Corporation; former officers, directors, agents, and/or employees, including, without limitation, attorneys, accountants, advisors and all other persons acting or purporting to act on behalf of DVI.
2. "Defendants" means the named defendants in the Fifth Amended Consolidated Class Action Complaint in In re DVI, Inc. Securities Litigation, 2:03-CV-5336, E.D. Pa., as well as any of Defendants' predecessors, successors, parents, subsidiaries, divisions, affiliates, or anyone acting or purporting to act on Defendants' behalf, including any respective directors, officers, managing agents, agents, employees, attorneys, accountants, or other representatives;

the Defendants named in this case specifically include Michael A. O'Hanlon ("O'Hanlon"), Steven R. Garfinkel ("Garfinkel"), John P. Boyle ("Boyle"), Terry Cady ("Cady"), Gerald Cohn ("Cohn"), Nathan Shapiro ("Shapiro"), William S. Goldberg ("Goldberg"), Harry T. J. Roberts ("Roberts"), John E. McHugh ("McHugh"), Richard E. Miller ("Miller"), Anthony J. Turek ("Turek"), Dolphin Medical, Inc. ("Dolphin"), OnCure Medical, Inc., f/k/a OnCure Technologies Corp. ("OnCure"), PresGar Imaging LC ("PresGar"), Radnet Management, Inc. ("Radnet"), Deloitte & Touche LLP ("Deloitte"), Merrill Lynch & Co., Inc. ("Merrill"), Thomas Pritzker, the Pritzker Organization LLC, and certain unnamed Pritzker family members (collectively "the Pritzker Defendants"), Clifford Chance LLP and Clifford Chance (US) LLP (collectively, "Clifford Chance").

3. The term "DVI Bankruptcy Cases" means the cases In re DVI Inc., 03-12656-MFW (Bankr. D. Del.), In re DVI Financial Services, Inc., 03-12657-MFW (Bankr. D. Del.), and In re DVI Business Credit Corporation, 03-12658-MFW (Bankr. D. Del.).

4. The term "Arnold & Porter, LLP" or "Arnold & Porter" or "you" or "your" means the person responding to this request, and its member firms and affiliates, subsidiaries, divisions, affiliated persons, predecessors or successors, and all present and former directors, officers, employees, investment bankers, representatives, agents, intermediaries and all other persons acting on its behalf.

5. "All" and "each" shall be construed as all and each.
6. "And" and "or" shall be construed as and/or.
7. "Agreement" means any oral or written understanding.

8. "Affiliate" means an "affiliate" of, or a person "affiliated" with, a specified person, a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

9. "All" and "each" shall be construed as all and each.

10. "Communicate" or "Communication" refers to every manner or means of disclosure, transfer or exchange of information (in the form of facts, ideas, inquiries, data bits or otherwise), regardless of whether the transmittal was initiated or received by an individual or system. Means of disclosure, transfer, transmittal or exchange, include but are not limited to, oral, by document, telecopier, mail, electronic, electronic mail, voice mail, telegram, personal delivery or otherwise.

11. "Concerning" means consisting of, relating to, referring to, reflecting, evidencing, constituting or otherwise having any logical or factual connection to the subject matter of the document request.

12. "Document" is defined to be synonymous in meaning and equal in scope to the usage of the term in the Federal Rules of Civil Procedure and includes, by way of example and not by way of limitation, regardless of whether the document is fixed in tangible medium or stored on, or in, computer tape, disk, memory, or other magnetic, optical, solid-state or digital storage device or media, all of the following: paper, correspondence, trade letter, envelope, memoranda, telegram, cable, note, message, e-mail, voice mail message, report, study, press release, comparison, book, account, check, audio and video recording, motion picture film, pleading, testimony, article, bulletin, pamphlet, brochure, magazine, questionnaire, survey, chart, newspaper, calendar, desk calendar, pocket calendar, list, log, publication, notice, diagram,

instruction, diary, minutes of meetings, corporate minutes, order, resolution, agenda, memorials or notes of oral Communications, whether by telephone or face-to-face, contract, agreement, drafts of or proposed contract or agreement, memoranda of understanding, letter of intent, deal memoranda, transcriptions of audio or video recording, electronic device memory, computer files, distributed databases, unclassified digital objects, photographs, charts, graphs, microfiche or any other tangible thing on which any handwriting, typing, printing, photostatic, digital form of communication or information is recorded, stored, or reproduced, together with all notations or meta-data on, or of, any of the foregoing, all originals, file copies, or other unique copies or duplications of the foregoing and all versions of drafts thereof, whether used or not and including "deleted" files on or in a computer or computer storage device or media whether located on-site or off-site. A draft or non-identical copy or a copy with handwritten notes is a separate document within the meaning of this term.

13. The terms "electronic," "computerized" and "digital" shall be construed to mean the same thing.

14. "Financial Statements" means, but is not limited to, the following, whether audited or unaudited, and whether final, interim, pro forma, complete or partial: consolidated and non-consolidated balance sheets, statements of earnings, statements of additional paid-in capital, statements of retained earnings, statements of source and application of funds, statements of cash flow projections, and notes that pertain to DVI's past or present financial condition, including accountant's and auditor's workpapers.

15. "Fiscal Year" means DVI's fiscal year which ended on June 30.



16. "Forecasts and Projections" means prospective Financial Statements that present to the best of the responsible person's knowledge and belief, an entity's expected financial position, results of operations and cash flows (and, if a Projection, given one or more hypothetical assumptions).

17. "Meeting" refers to the contemporaneous presence of any natural persons (including by telephone) for any purpose, whether or not such presence was prearranged, and whether or not the meeting was formal or informal or occurred in connection with some other activity.

18. "Person" or "Persons" refers to natural persons, proprietorships, governmental agencies, corporations, partnerships, trusts, joint ventures, groups, associations, organizations and all other forms of business entities.

19. "Property" means anything owned or possessed including, but not limited to: real property, tangible property, intangible property, property held for investment purposes, jointly held property, personal property held for enjoyment purposes and movable assets.

20. "Policy" refers to any rule, procedure, practice, or course of conduct, whether formal or informal, written or unwritten, recorded or unrecorded, which was recognized or followed explicitly or implicitly, by the named entity or the entity responding to the requests.

21. "Securitizations" refers to the process in which a pool of lease and/or loan contracts between DVI and healthcare providers were packaged and transferred to a special purpose financing entity ("SPE") created by DVI that issues notes to investors. The notes secured by the SPEs are secured by a pledge of the assets or other collateral transferred to it, and principal and interest on these notes are paid from the cash flows produced by the transferred

assets. The funds raised by the SPEs, also known as the Securitization Trusts, through the issuance of promissory notes to investors, are transferred to DVIFS to pay down DVIFS's bank lines of credit, and only a small portion are retained by the Securitization Trusts as reserves.

22. "SEC" refers to the United States Securities and Exchange Commission, including its regional and branch offices and its commissioners, employees, staff attorneys, and accountants.

23. "SEC Filings" means all documents filed or prepared for the purpose of filing with the SEC and/or any other state or federal regulatory agency, including, but not limited to, all registration statements, prospectuses, Form 10-Ks, Form 8-Ks, Form 10-Qs, 13-Ds, 14-A Solicitations and Schedules, 14D-1s and 14D-9s, and any drafts thereof.

24. "Workpapers" means all documents prepared by, sent to or maintained in the course of any and all professional services to DVI, including but not limited to all documents defined by Generally Accepted Auditing Standards in AU § 339 as workpapers:

Workpapers are records kept by the auditor of the procedures applied, the tests performed, the information obtained, and the pertinent conclusions reached in the engagement. Examples of working papers are the audit programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the auditor. Working papers also may be in the form of data stored on tapes, films or other media.

25. "DOJ" refers to the United States Department of Justice.

26. "Transaction" means the carrying on of business between two or more parties, including but not limited to any proposed or actual contractual relationship.

### INSTRUCTIONS

1. The singular of any term shall include the plural, and the plural of any term shall include the singular.
2. In responding to these requests, produce all responsive documents available at the time of production in your possession, custody or control. A document shall be deemed to be within your control if you have the right to secure the document or a copy of the document from another person having possession or custody of the document.
3. The producing party shall produce the original of each document described below or, if the original is not in the witness' possession, then a copy thereof. All non-identical copies that differ from the original or from the other copies produced for any reason, including, but not limited to, the making of notes thereon, are to be produced.
4. All documents shall be produced in the order they are kept in the usual course of business, and shall be produced in their original folders, binders, covers or containers, or photocopies thereof.
5. For documents that were created, or were at any time stored, digitally, Documents should be delivered in their native format on standard read-only digital media or as bit-stream duplications on standard read-only digital media, but not on paper and not as tiff, pdf or similar file types. For those paper documents which have been created digitally but executed with a hand-written signature or physical seal, then both the digital version and the signed paper copy should be produced.
6. Any document in its native format should include any and all of the document's associated meta-data (embedded digital data), embedded attachments, hyperlinks and any and all

other files or other digital objects (such as attachments and header data in the case of email or related usage logs from a file management system) or links (such as addresses), associated to that document. Where a claim of privilege is asserted in response to any document request, or subpart thereof, and the document is not provided on the basis of such assertion, for each document not provided, the party asserting the privilege shall, in the objection to the document request or subpart thereof, provide the following information in sufficient detail to permit the court to rule on your claim:

(a) Identify the nature of the privilege that is being claimed, and the facts upon which said claim of privilege is based; and

(b) For each purportedly privileged document, identify: its nature (e.g., agreement, letter, memoranda, tape, etc.), the subject matter and the substance of the document, the date it was prepared, the date it bears, the date it was sent, the date it was received, the identity of the person who prepared it, the identity of the person who sent it, the identity and address of each person to whom it was sent (including those to whom it was copied) or to whom it was to be sent (and copied), as well as who such person represented or purported to represent, where each copy of that document is kept (including the title or description of the file in which the document may be found and the location of such file), and all persons to whom its contents have been disclosed.

7. If a portion of any document responsive to these requests is withheld under claim of privilege pursuant to the preceding Instruction, any non-privileged portion of the document must be produced with the portion claimed to be privileged redacted.

8. This request is continuing and all documents responsive to this document request coming into your possession, custody or control after your initial production of Documents shall be produced forthwith. You are directed to supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any respect.

9. If any responsive document was, but is no longer in your possession or subject to your control, state whether the document is: (a) missing or lost; (b) destroyed; (c) transferred voluntarily or involuntarily to others; or (d) otherwise disposed of, and in each instance identify the name and address of its current or last known custodian, and the circumstances surrounding such disposition.

10. You are to produce each document requested herein in its entirety, without deletion or excision (except as qualified by the preceding Instructions concerning privilege) regardless whether you consider the entire document to be relevant or responsive to the requests.

11. Whether a document is produced in full or is produced in redacted form, so indicate on the document, state with particularity the reason or reasons that it is not being produced in full, and describe to the best of your knowledge, information and belief, and with as much particularity as possible, those portions of the document that are not being produced or are being redacted.

12. You are requested to provide an appropriate affidavit attesting to the authenticity of the Documents produced.

**RELEVANT TIME PERIOD**

The "Relevant Time Period" of the requests, set forth herein, for production of Documents shall be from January 1, 1999 through the present, and shall include all documents that relate to such period, even though prepared, dated, generated or published prior to or subsequent to that period.

**DOCUMENTS REQUESTED**

1. Documents sufficient to identify any policy of yours as to the retention, destruction, disposal, or preservation of documents concerning DVI.
2. All documents concerning misstatements in, errors in, and adjustments to DVI Financial Statements and SEC Filings, including but not limited to, reports, studies, investigations, correspondence and workpapers.
3. All documents concerning DVI's loan loss reserve policy and loan loss experience, and any misstatements, errors or adjustments in DVI's reported loan losses during the Relevant Period.
4. All documents concerning DVI's revenue recognition policy, gain on sale policy, and any misstatements, errors or adjustments in DVI's reported revenues for the Relevant Period.
5. All documents concerning to DVI's credit policies and practices, including but not limited to informal practices, written policies and drafts, correspondence, and loans made without Credit Committee or other appropriate approval.
6. All documents concerning DVI's use of ineligible collateral or double pledging collateral on DVI's various lines of credit and/or within its Securitization Transactions.

7. All workpapers related to any audits, reviews, agreed-upon procedures, analyses, and/or compilations you or someone else performed on DVI's Financial Statements during the Relevant Period, including the documents concerning the engagements Arnold & Porter had with DVI, DVI's Board of Directors, DVI's Audit Committee or any Special Committee of Directors of DVI.

8. All documents concerning all services you performed for DVI, or on behalf of a Defendant or third-party concerning DVI, including but not limited to, contracts, agreements, reports, time sheets, billing records, invoices, calendars, individual time sheets, correspondence and summaries concerning any and all professional services you provided.

9. All documents concerning any and all professional services you provided to any of the Defendants listed in this action concerning DVI, including but not limited to, documents identifying the service provided, the findings made, conclusions reached, the amount of fees received, and the reports issued.

10. All desk files, permanent files, work papers and other documents created or maintained by any of your employees or staff, past or present, concerning any professional services you provided to DVI or concerning services that DVI provided to you.

11. All documents concerning any report, study, analysis, recommendation, projection or forecast prepared by or for you concerning DVI.

12. All documents concerning any inquiries, investigations or correspondence with the SEC, the DOJ, the U.S. Attorney's office, the New York Stock Exchange, and/or any other state or federal law enforcement or regulatory agency regarding DVI, and/or any of the Defendants

named in this action concerning DVI, including but not limited to, transcripts of testimony, correspondence, memoranda, reports, and analyses.

13. All documents produced by you or anyone acting on your behalf to any party in the following cases: WM High Yield Fund v. O'Hanlon, Case No. 04-3423-LDD, E.D. Pa.; Fleet National Bank v. Boyle, Case No. 04-01277-LDD, E.D. Pa.; Suntrust v. Merrill Lynch & Co., Case No. 03-02466-WBH, N.D. Ga.; Official Committee of Unsecured Creditors of DVI, Inc. v. O'Hanlon, et al., C.A. No. 04-955 (GMS) (D. Del.); Dennis J. Buckley, as Trustee of the DVI Liquidating Trust v. Clifford Chance LLP, et al., Case No. 06-1003-LDD, E.D. Pa.; the DVI Bankruptcy Cases, or any other investigation, legal action, or administrative proceeding involving DVI.

14. All documents concerning offers to purchase DVI, DVI's assets, and/or DVI's property, by any entity, whether informal or formal, including but not limited to: executive management reports, Forecasts and Projections, Financial Statements, Workpapers, Audited Financial Statements, valuation reports, proposals, and/or summaries.

15. All documents concerning the series of letters written by the SEC to DVI beginning in February 2002, questioning certain DVI accounting policies and practices.

Dated: June 16, 2006

Respectfully submitted,  
KRISLOV & ASSOCIATES, Ltd.

By: 

Clinton A. Krislov, Esq.  
Michael R. Karnuth, Esq.  
20 North Wacker Drive  
Chicago, Illinois 60606



Phone: 312-606-0500  
Fax: 312-606-0207  
*Plaintiffs' Lead Counsel*

**CHIMICLES & TIKELLIS LLP**  
Steven A. Schwartz, Esq.  
Attorney I.D. No. 50579  
Kathy Meermans Esq.  
Attorney I.D. No. 37846  
361 W. Lancaster Avenue  
One Haverford Centre  
Haverford, PA 19041  
Phone: 610-642-8500  
Fax: 610-649-3633  
*Plaintiffs' Liaison Counsel*

# **EXHIBIT “H”**

**Dailey, Jeffery**

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**From:** Mike [Mike@krislovlaw.com]  
**Sent:** Friday, August 25, 2006 3:43 PM  
**To:** Apps, Antonia M.; Kane, Rachel B.; Shen, Andrew C.  
**Cc:** Mike; Tim; Clint; Steven A. Schwartz  
**Subject:** DVI - Third Party Document Requests and Production  
**Attachments:** Summary of third party productions received.xls

Dear Counsel:

Pursuant to your request and our conversations, attached is a chart summarizing the third party requests we issued and documents we received, and the format in which they were received.

Let us know which productions you would like us to copy and we can have our copier service do that for you and bill you directly. It's my understanding that copies of documents are at 12 to 15cents per page (depending on difficulty), and of CDs/DVDs, approximately \$35each.

Also, there are just two productions where we incurred additional (meaningful) costs in order to obtain the third party productions and get them into electronic form. Those are The Medical Shop Inc and Mackinac/Plante Moran productions. If you would like copies of those productions we would charge you an additional \$840.48 each.

Regards,

Mike.

Michael R. Kamuth

Krislov & Associates, Ltd.

20 N. Wacker Dr., Ste. 1350

Chicago, IL 60606

312-606-0500

**CONFIDENTIALITY NOTICE:** This Material is intended for the named recipient and, unless otherwise expressly indicated, is confidential and privileged information. Any dissemination, distribution or copying of this material is prohibited. If you received this message in error, please notify the sender by replying to this message and then delete it from your system. Your cooperation is appreciated

12/16/2006

**Summary of Third-Party Subpoenas Served and Documents Received by Plaintiffs**

	A	B	C	D	E
	ENTITY SERVED	BATES RANGE	FORMAT(S)	# OF HARD-COPY PAGES	# OF CD'S/DVD'S
1	Alliance Capital Management Corp.	ALLIANCE 0001 - 0005	hard copy	5	NA
2	American Stock & Transfer Company	AST 0001 - 0325	hard copy	325	NA
3	Arnold & Porter LLP	AP000000001 - 000003466	hard copy	3466	NA
4	Bank of Montreal	BOM 0001	hard copy	1	NA
5	BDO Seidman, LLP	NA	NA		
6	CIBC World Markets Delaware Investment Advisors	CIBC 0001 - 1361	hard copy and electronic	1359	2 CD's
7	Deltec Asset Management	DIA 0001 - 0084	hard copy	84	NA
8	Depository Trust Company	no prefix: 1 - 15	hard copy	15	NA
9	Deutsche Asset Management	DEPOSITORY 0001; DTC 1 - 39; DTC 1 - 366	hard copy	406	NA
10	Elliott Vernon	DEUTSCHE 0001 - 0003	hard copy	3	NA
11	Emil Cerullo	NA	NA	NA	NA
12	Fitch Ratings	NA	NA	NA	NA
13	FTI Ten Eyck i/k/a Ten Eyck Associates, P.C.	FTI0001 - 05640; FTI5641,001 - .196; FTI5642.001 - .096; CD's: FTI5641 and 5642	hard copy and electronic	5932	2 CD's
14	General Electric Capital Corporation	GECC0000001 - 0108294	electronic	NA	2 CD's and 1 DVD
15	GMAC-RFC	GMAC0001 - 0145	hard copy	145	NA
16	Goldman Sachs Asset Management	GOLDMAN SACHS 0001	hard copy	1	NA
17	Guggenheim Group	GUGGENHEIM001 - 003	hard copy	3	NA
18	HealthCare Integrated Services, Inc.	NA	NA	NA	NA
19	HSBC Bank USA N.A.	NA	NA	NA	NA
20	ING Funds	NA	NA	NA	NA
21	Ingalls & Snyder, LLP	NA	NA	NA	NA

**Summary of Third-Party Subpoenas Served and Documents Received by Plaintiffs**

A	B	C	D	E
ENTITY SERVED	BATES RANGE	FORMAT(S)	# OF HARD-COPY PAGES	# OF CD'S/DVD'S
1				
24	Jeffertes & Company, Inc.	NA	NA	NA
25	Lehman Brothers Holdings	NA	NA	NA
26	Mackinac Partners LLC	MP 0001 - 4487	NA	1 CD
	Mackinac Partners	electronic		
27	LLC/Plante & Moran	PM 0001 - 6211	NA	1 CD
	Miller Johnson Steichen	electronic		
28	Kinnard	MJSK 0001 - 0024	24	NA
29	Moody's Investor Service	Moody's 0001 - 0343	343	NA
		NASD 0001 - 0002; 0001: stamped page of corr.; 0002: CD containing Excel document for DVI Common and DVI Bonds, and Word document re "DVI data" - unstamped		
30	National Association of Securities Dealers, Inc.		1	1 CD
		hard copy and electronic		
		hard copy and electronic		
31	New York Stock Exchange, Inc.	NYSE 0001 - 0067 (produced unstamped on CD); NYSE0001 - 0002: production letter; 0003: CD; 0004 - 0046: contents of 0003; NYSE supplemented production on 1/27/06 (supplement unstamped and received via email); NYSE 0047: CD; 0048 - 0067: contents of 0047 - stamped hard copy of email attachment		
32	PricewaterhouseCoopers	PPM001 - 029	65	2 CD's
	LLP	hard copy	29	NA
33	Prime Capital Services, Inc. n/k/a Gilman Ciocia Tax & Financial Planning	NA	NA	NA
		hard copy	49	NA

**Summary of Third-Party Subpoenas Served and Documents Received by Plaintiffs**

A	B	C	D	E
ENTITY SERVED	BATES RANGE	FORMAT(S)	# OF HARD-COPY PAGES	# OF CD'S/DVD'S
1	RBC Capital Markets	hard copy	6	NA
35	Salomon Brothers Asset Management	NA	NA	NA
36	Smith Barney	NA	NA	NA
37	Standard & Poor's	hard copy	9	NA
38	The Medical Shop, Inc.	electronic	NA	1 CD
39	U.S. Bancorp Piper Jaffray Inc.	hard copy	97	NA
40	UBS Warburg LLC	NA	NA	NA
41	Wachovia Securities LLC f/k/a Prudential Securities, Inc.	NA	NA	NA
42				
<b>43</b>	<b>TOTAL</b>		<b>12368</b>	<b>12 CD's and 1 DVD</b>

# **EXHIBIT “I”**

---

**From:** Scott, John L. [Jscott@andersonkill.com]  
**Sent:** Tuesday, December 12, 2006 9:45 AM  
**To:** Dailey, Jeffery; Marlow, Danielle  
**Subject:** RE: DVI

Jeff:

We made copies of the DVI indices available to lawyers at the Krislov and Chimcles firms sometime during the first two weeks in July 2006. Starting in August, we began sending the documents those lawyers requested during their document review.

Regards,  
John



# **EXHIBIT “J”**

KRONISH LIEB **KI**  
WEINER & HELLMAN LLP **WH**

WILLIAM J. SCHWARTZ  
Direct Dial: (212) 479-6290  
E-mail: wschwartz@kronishlieb.com

August 16, 2006

VIA E-MAIL

Counsel on the Attached Service List

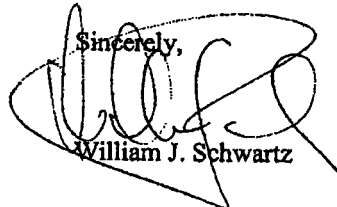
Re: In re DVI, Inc. Sec. Litig., 2:03-cv-05336 (LDD)

Dear Counsel:

I write to request copies, in electronic format wherever possible, of all documents or materials that you have produced in this action and all documents or materials that you have received from third-parties via subpoena or informal request in connection with this action. Given the timing set forth in the Judge's decision on the stay, I ask that documents be produced to us as expeditiously as possible and no later than August 31, 2006. I enclose a copy of the Confidentiality Stipulation and Order, as executed by the Clifford Chance defendants.

If you have any questions concerning this request, please contact Rachel Kane at (212) 479-6188.

Sincerely,



William J. Schwartz

WJS:rbk

Enclosure

# **EXHIBIT “K”**

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.

SUMNER SQUARE  
1615 M STREET, N.W.  
SUITE 400  
WASHINGTON, D.C. 20036-3209

(202) 326-7900

FACSIMILE:

(202) 326-7999

August 18, 2006

VIA E-MAIL

Counsel on the Attached Service List

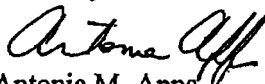
Re: *In re DVI, Inc. Sec. Litig.*, 2:03-CV-05366 (LDD)

Dear Counsel:

I write to request copies, in electronic format wherever possible, of all documents or materials that you have produced in this action and all documents or materials that you have received from third-parties via subpoena or informal request in connection with this action. In addition, please provide all document requests, subpoenas, interrogatories, and requests for admission served in this action, along with any responses thereto. Given the timing set forth in the Judge's decision on the stay, I ask that documents be produced to us as expeditiously as possible and no later than August 31, 2006. I enclose a copy of the Confidentiality Stipulation and Order as executed by Defendants Thomas J. Pritzker and The Pritzker Organization.

If you have any questions concerning this request, please contact me at (202) 326-7938 or Andrew Shen at (202) 326-7963.

Sincerely,

  
Antonia M. Apps

Enclosure