UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

SEP 19 2 49 PM '96

LIFEMARK HOSPITALS, INC.	*	CIVIL ACTION
VERSUS	*	NO. 93-1794 c/w 94-3993 94-4249 94-2922
LILJEBERG ENTERPRISES, INC.	*	
* * * * * * *		SECTION "T"

EX PARTE MOTION OF LILJEBERG ENTERPRISES, INC.
TO SUBSTITUTE COUNSEL

NOW INTO COURT comes Liljeberg Enterprises, Inc., ("LEI") Jacob Amato, Leonard Levenson, William P. Connick and Stephen Wimberly, who moves this Honorable Court to allow William P. Connick and Stephen Wimberly to withdraw as attorneys of record for LEI herein, and to allow Jacob Amato and Leonard Levenson to be substituted as attorneys of record for LEI herein. LEI has consented to such substitution.

Respectfully submitted

William Peter Connick (#14158)
Stephen Wimberly (#10985)
CONNICK, LENTINI, WIMBERLY & deLAUP
2551 Metairie Road
Metairie, Louisiana 70001
Telephone: (504) 838-8777

SEP 25 1996

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DOCUMENT No.

HP Exhibit 51(a)

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Jacob Amato
AMATO & CREELY, P.C.
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Gretna, Louisiana 70054-0441
Telephone: (504) 367-8181

Leonard Levenson (#8675)
Attorney at Law
427 Graver Street
New Orleans, Louisiana
Telephone: (504) 586-0066

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing pleading upon Joseph N. Mole at 3600 Energy Center, 1100 Poydras Street, New Orleans, Louisiana, 70163, by ~~placing the~~ hand same in the United States Mail, postage prepaid, on this 19th day of September, 1996.

JACOB J. AMATO, JR.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS, INC.	*	CIVIL ACTION
VERSUS	*	NO. 93-1794 c/w 94-3993 94-4249 94-2922
LILJEBERG ENTERPRISES, INC.	*	
* * * * * * *		SECTION "T"

ORDER

Considering the foregoing Ex Parte Motion to Substitute Counsel of Record of Liljeberg Enterprises, Inc.:

IT IS HEREBY ORDERED that William P. Connick and Stephen Wimberly be hereby permitted to withdraw; and that Jacob Amato and Leonard Levenson be enrolled as additional counsel of record, for Liljeberg Enterprises Inc. herein.

New Orleans, Louisiana, this 23rd day of September, 1996.

UNITED STATES DISTRICT JUDGE

006358

HP Exhibit 51(b)

FILE COPY

Notice sent to:

Don M. Richard, Esq.
Douglas Scott Draper, Esq.
Kenneth Charles Fonte, Esq.
Stephen T. Wimberly, Esq.
Jacob J. Amato Jr., Esq.
Leonard Louis Levenson, Esq.
Hans Joseph Liljeberg, Esq.
John Flowers, Esq.
Gary Ruff, Esq.
Joseph Nicholas Mole, Esq.
Jan Marie Hayden, Esq.
Brent Bennett Barriere, Esq.
Mack E. Barham, Esq.
William F. Wessel, Esq.
William Kearney Christovich, Esq.
Charles Louis Stern Jr., Esq.
Moise S. Steeg Jr., Esq.

SC EXHIBIT - 00019

DC 30
(Rev. 1/82)

CERTIFIED COPY

May 30, 2007 United States of America

Civil Action 93-1794 "T" Mag. 2

EASTERN DISTRICT OF LOUISIANA } SS:

Lifemark Hospitals of Louisiana, Inc., ET AL
v
Liljeberg Enterprises, Inc.

I, Loretta G. Whyte, Clerk of the United States District Court for the Eastern District of Louisiana, do hereby certify that the annexed and foregoing is a true and full copy of the original document numbers 277, 288, 297, 305 and 306 of U.S. District, Eastern District of Louisiana, Civil Action 93-1794, Section T, Magistrate 2.

now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at New Orleans, Louisiana this 30th day of May, A.D. 2007

LORETTA G. WHYTE, CLERK

By Erin McNamara
Erin McNamara, Deputy Clerk

SC00552

HP Exhibit 52

10/16/96

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
OCT 2 10 35 AM '96
LORETTA G. WHYTE
CLERK

LIFEMARK HOSPITALS OF LOUISIANA, INC., ET AL.	*	CIVIL ACTION
	*	NO. 93-1794
	*	C/W 93-4249
VERSUS	*	C/W 95-2922
	*	C/W 95-3993
LILJEBERG ENTERPRISES, INC.	*	SECTION "T"

* *

MOTION TO RECUSE

NOW INTO COURT, through undersigned counsel, comes Lifemark Hospitals of Louisiana, Inc. ("Lifemark"), who respectfully submits that Liljeberg Enterprises, Inc.'s ("LEI") last minute enrollment of Jacob Amato and Leonard Levenson as trial counsel in this matter creates an appearance of impropriety prohibited under 28 U.S.C. §455(a).

Lifemark is in no way suggesting that this Court could not be impartial in determining this matter. But, as set forth fully in the Memorandum in Support attached hereto, the mere appearance of impropriety requires recusal. Thus, for the foregoing reasons and the reasons set forth in the memorandum, Lifemark respectfully requests that this Court recuse itself from this matter prusuant to 28 U.S.C. §455(a).

DOCUMENT

Respectfully submitted,

Miles P. Clements (La. #4184)
Joseph N. Mole, T.A. (La. #09538)
Michael R. Phillips (La. #21020)
Stephanie A. May (La. #24166)
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Telecopy: (504) 599-8100
ATTORNEYS FOR PLAINTIFF,
LIFEMARK HOSPITALS OF
LOUISIANA, INC.

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing pleading on this 1st day of October, 1996 by hand delivery on all counsel of record.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC., ET AL.	*	CIVIL ACTION
	*	NO. 93-1794
	*	C/W 93-4249
VERSUS	*	C/W 95-2922
	*	C/W 95-3993
LILJEBERG ENTERPRISES, INC.	*	SECTION "T"

* *

MEMORANDUM IN SUPPORT OF MOTION TO RECUSE

With great reluctance, Lifemark Hospitals of Louisiana, Inc. ("Lifemark") finds it necessary to request that this Court exercise the discretion granted it under 28 U.S.C. §455 and recuse itself from further handling of this matter.

QUESTION PRESENTED

The question presented by this motion is as follows. The standard of recusal under 28 U.S.C. §455(a) is this: Does the situation at hand create an appearance of impropriety "to the well-informed, thoughtful and objective observer, rather than the hypersensitive,cynical and suspicious person?" United States v. Jordan, 49 F.3d 152, 156 (5th Cir. 1995). This is an objective test - the Court's actual bias is not at issue. Id. The facts of this case that create a §455(a) appearance are these: (1) this litigation has a decade-long history; (2) trial in this matter, without a jury is set for November 4, 1996; (3) the Liljebergs already had five long-standing counsel of record when, on September 12, 1996 they added Jacob Amato and Leonard Levenson, two of the Court's closest friends, as additional counsel; (4) the Liljebergs seek at least $110 million as damages in this extremely complex case, and they gave Messrs.

Levenson and Amato an 11% contingency fee for less than three months involvement; and (5) the Liljebergs have a documented and clear history of attempting to use political influence and they have accused others of attempting to acquire improper influence over the judiciary. Given these facts, Lifemark believes that the answer to the §455(a) question as posed by the Fifth Circuit in United States v. Jordan is a clear yes.

BACKGROUND

This lawsuit had its genesis in a lawsuit filed in the Civil District Court in New Orleans in 1987 by Liljeberg Enterprises, Inc. ("LEI") against Lifemark concerning the interpretation of a contract between Lifemark and LEI. When LEI filed bankruptcy in January 1993, it also filed a motion to force assumption of this contract pursuant to 11 U.S.C. §365. Thereafter, Lifemark counterclaimed, removed the CDC litigation to the Bankruptcy Court, and successfully moved for withdrawal of the reference so that the entire controversy concerning LEI and Lifemark moved to the District Court. LEI's original pleading in this case in this Court was filed in May 1993. Thus, if the history of this litigation is measured by the Civil District Court filings, it is almost ten years old. If it is measured by the original pleading filed in Federal Court, it is over three years old. Trial without a jury is scheduled to begin on November 4, 1996. The Liljebergs seek over $110 million in damages from Lifemark and its parent AMI.

LEI has had numerous lawyers during the history of this controversy. As of one month ago, it had five lawyers signed on to this case, most of whom have been involved for years in the specific controversy that is set to go to trial before this Court on November 4, 1996. Nonetheless, on September 12, 1996, LEI sought and was

granted leave to add two more attorneys, Jacob J. Amato, Jr. and Leonard L. Levenson. Messrs. Levenson and Amato were given an 11% contingency fee. The Liljebergs have given none of their other lawyers a contingency fee. The Liljebergs also apparently have asked one of their other lawyers, William Connick, to withdraw, leaving six counsel of record. This is an extremely complicated lawsuit involving numerous issues that have been in discovery and litigation for almost ten years. The addition at the very last minute of two lawyers who are unfamiliar with the file is of questionable value as to potential contribution to the preparation and presentation of the evidence. The circumstances of their addition as counsel create concern because of their personal relationship with Your Honor.

Your Honor's relationship with Messrs. Amato and Levenson is well known to the legal community. It needs no elaboration in this memorandum. This would be of no concern were it not for the timing of their addition, and the fact that the Liljebergs and LEI clearly believe that influence with governmental bodies, including judges, can be bought. Attached hereto as Exhibit "A" is the Fifth Circuit's unpublished opinion in the controversy between Travelers and LEI. In that litigation, following an adverse result, LEI accused Judge Mentz of being influenced by his membership in social organizations whose membership included attorneys for Travelers. The Fifth Circuit characterized the Liljebergs' accusations as "lengthy, unsworn, and extremely intemperate (if not contemptuous) . . . ." They alleged that Judge Mentz' membership in the Boston Club along with "several attorneys" from law firms representing Travelers

supposedly created "a situation in which a reasonable person would question the judge's impartiality, mandating disqualification and vacation of the judgments." See Exhibit A at pp. 7-8. The Liljebergs further attacked Judge Mentz by alleging that "two of the partners of the law firm representing Travelers 'had a reputation in the New Orleans area community as being . . . influential Republican Party patron[s] who had significant contact with party officials responsible for making recommendations for federal appointments.'" Id. at note 5.

Attached as Exhibit "B" is an Affidavit signed by J. Larry Lidell. In 1986, Mr. Lidell was terminated by Lifemark as its director of public relations of the St. Jude Hospital after four months employment. In 1995 he signed the Affidavit attached as Exhibit B while in the offices of the Liljebergs' attorney and before a court reporter. At his deposition, it became obvious that the Affidavit was framed by the Liljebergs and their counsel. Significantly, on the second page of the Affidavit, Mr. Lidell recited the following: "Mr. Scott Athens [an executive of Lifemark's parent, AMI] also bragged repeatedly how well-connected their attorneys, Mr. Harry Hardin and his associate, Mr. Dirk Wegman, both with Jones, Walker, were with the courts and how strong they were with certain judges. Lifemark/AMI was confident they could get a favorable ruling for Lifemark/AMI against the Liljebergs."

Finally, attached as Exhibit "C" is a memorandum authored by John McDaniel, who was employed by Lifemark as the chief executive officer of the hospital from 1985 to 1990. On May 24, 1988 he wrote this memo to Donna Erb, an in-house lawyer at

AMI, concerning the never-ending controversy with the Liljebergs and their multifarious demands, most of which are still part of this litigation. Mr. McDaniel identified the document at his deposition. On page 5 he recited the following:

> Donna, Mr. Liljeberg was adamant about negatively impacting AMI if these issues could not be resolved through settlement efforts and indicated his intentions to cause a "public movement" against AMI involving both mayorial and city council resolutions, key community leader and physician support against AMI. He indicated that he would enlist civic organizations, federal, state and parish politicians, and even the Catholic Church in his effort to discredit AMI.

Clearly, the Liljebergs believe that public officials, including judges, can be influenced through social contact. They have accused others of doing it, and they have threatened to do it themselves.

ARGUMENT

Neither Mr. Amato nor Mr. Levenson have any particular expertise in cases of this sort. Both are primarily personal injury lawyers. The case has a long and complicated history, and it is unlikely that they can be of significant assistance at trial. It is respectfully submitted that the Liljebergs ostensibly believe, albeit mistakenly, that they can influence Your Honor by hiring two of Your Honor's closest social, political and professional friends immediately before trial. They seek to gain the Court's favor and achieve partiality, a tactic not foreign to their personal concepts of achieving results by that means. Indeed, they have been the subject of two Fifth Circuit opinions on the subject, one of which has reached the Supreme Court. Travelers Insurance Company v. St. Jude Hospital of Kenner, La., Inc., attached as Exhibit A;

Liljeberg v. Health Service Acquisition Corp., 486 U.S. 847; 108 S.Ct. 2194 (1988). As observed by the Fifth Circuit in Travelers, their litigation tactics are intemperate and they have only contempt for the judicial system. Their cynicism is again on display in this case.

While Lifemark does not suggest that Your Honor could or would be influenced through the last minute hiring of two apparently unnecessary lawyers who are both extremely close to the Court, it is clear, based upon their own incredible record of litigation tactics, that the Liljebergs believe the opposite to be true. Under the circumstances, it is respectfully submitted that Your Honor is duty bound to remove any appearance of impropriety. In spite of Your Honor's attempts to be fair, the obviousness of the Liljebergs' intentions, coupled with the timing of the hiring of these lawyers, will always leave questions in the eyes of any objective observer, the "man in the street", who is aware of the Court's relationships with Messrs. Amato and Levenson and the Liljebergs' attitudes toward the political and judicial systems. See Potashnick v. Port City Constr. Co., 609 F.2d 1101, 1111 (5th Cir. 1980). Under such circumstances, Lifemark suggests that Your Honor, the federal courts, and the litigants in this case (including the Liljebergs) are all best served by Your Honor's recusal.

The legal standard for recusal under these circumstances is set forth in 28 U.S.C. §455:

§455. Disqualification of justice, judge, or magistrate

> (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

As the Fifth Circuit has recently held, the appropriate inquiry under Section 455 "is an objective inquiry." The question is "how things appear to the well informed, thoughtful and objective observer, rather than the hypersensitive, cynical and suspicious person." United States v. Jordan, 49 F.3d 152, 156 (5th Cir. 1995). The Fifth Circuit noted that it has established a body of case law applying the Section 455(a) standard, but that "no case is precisely on point; after all, each Section 455(a) case is extremely fact intensive and fact bound, and must be judged on its unique facts and circumstances more than by comparison to situations considered in prior jurisprudence." As in this case, United States v. Jordan involved a close personal relationship between the judge and a lawyer involved in the case. The Court noted that there was absolutely no question of the judge's bias, but that nonetheless, an objective observer, fully informed of the relationships and facts involved in that case might harbor some suspicion of impropriety. As the Fifth Circuit has noted in another case on this subject:

> Because 28 U.S.C. §455(a) focuses on the appearance of impartiality, as opposed to the existence in fact of any bias or prejudice, a judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks to the average person on the street. Use of the word "might" in the statute was intended to indicate that disqualification should follow if the reasonable man, were he to know all

> of the circumstances, would harbor doubts about the judge's impartiality. (Emphasis Added)

Potashnick v. Port City Constr. Co., 609 F.2d 1101, 1111 (5th Cir. 1980). In United States v. Jordan, the Fifth Circuit relied heavily upon Liljeberg v. Health Services Acquisition Corp. In that case, the Supreme Court noted that a judge does not even have to have knowledge of the facts that create an appearance of impropriety "so long as the public might reasonably believe that he or she knew." 108 S.Ct. at 2194.

In this case, Your Honor's relationships with Mr. Levenson and Mr. Amato are very well known. It is unfortunate that the Liljebergs have attempted to capitalize on those personal relationships in an apparent attempt to achieve an unfair advantage. An impartial observer aware of the nature of the Court's relationships with these gentlemen, and aware of the implications of the timing of LEI's enrollment of them as counsel in this long and complicated litigation, would understandably believe that the Liljebergs were attempting to acquire influence over the Court. This would be reinforced by the knowledge that the Liljebergs have accused others of using, and have themselves threatened to use, improper judicial and political influence.

One of the reasons cited by the Fifth Circuit for denying the Liljebergs' request for recusal of Judge Mentz in the Travelers litigation was the Liljebergs' timing. "Only after being unsuccessful [in a jury trial in one of three cases they lost] did they seek recusal in all three." The cynicism of the timing of their attack on Judge Mentz reinforced the Fifth Circuit's result. See Exhibit A at pp. 11 and 13. The Fifth Circuit

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noted that "a party feeling there is a basis for disqualification must make that known to the Court at the earliest possible moment." Id. at pp. 13-14. The Fifth Circuit specifically refused to "reward the Liljebergs" for their calculated timing. Once again, the Liljebergs' "calculated" timing, in this case in hiring two unneeded lawyers at the last minute, has revealed their intent. That timing should not be rewarded. In Travelers, the Liljebergs simply waited too late to alert the judge of their alleged concerns. "Had the Liljebergs acted promptly, the district judge could have considered disqualification before entering judgment . . ." Id. Unlike the Liljebergs, Lifemark has filed this motion as soon as practicable, before the Court has taken any substantive action of which either party could complain.

CONCLUSION

Lifemark regrets that this has occurred, and in the event this motion is granted, believes that the parties have been deprived of a competent judge who is well suited to try this case:

> [Our] stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way "justice must satisfy the appearance of justice."

United States v. Jordan, supra, 49 F.3d at 157. Lifemark finds it offensive that because LEI has put Your Honor in this position, it has been forced to file this motion. However, given the standards set forth by the Fifth Circuit and Supreme Court under 28 U.S.C. §455, and given the risk that the result of this case would be questioned by

the "average person on the street" regardless of the Court's unbiased decisions, it is necessary that Lifemark ask Your Honor to recuse himself.

Respectfully submitted,

Miles P. Clements (La. #4184)
Joseph N. Mole, T.A. (La. #09538)
Michael R. Phillips (La. #21020)
Stephanie A. May (La. #24166)
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ATTORNEYS FOR PLAINTIFF, LIFEMARK HOSPITALS OF LOUISIANA, INC.

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing pleading on this 1st day of October, 1996 by hand delivery on all counsel of record.

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
Oct 9 4 24 PM '96
LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC., ET AL	*	CIVIL ACTION
	*	NO. 93-1794
VERSUS		C/W 93-4249
	*	C/W 94-3993
LILJEBERG ENTERPRISES, INC.		C/W 95-2922
	*	
		SECTION "T" (3)

* * * * * * * *

MEMORANDUM IN OPPOSITION TO LIFEMARK'S MOTION TO RECUSE

NOW INTO COURT, through undersigned counsel, comes the defendants, Liljeberg Enterprises, Inc. ("LEI") and St. Jude Hospital of Kenner La., Inc. ("St. Jude"), which oppose the Motion to Recuse of Lifemark Hospitals of Louisiana, Inc. ("Lifemark") for the following reasons:

> "[i]n today's legal culture friendships among judges and lawyers are common. They are more than common; they are desirable. A judge need not cut himself off from the rest of the legal community. Social as well as official communications among judges and lawyers may improve the quality of legal decisions. Social interactions also make service on the bench, quite isolated as a rule, more tolerable to judges. Many well-qualified people would hesitate to become judge if they knew that wearing the robe meant either discharging one's friends or risking disqualifications in substantial numbers of cases. Many courts therefore have held that a judge need not disqualify himself just because a friend -- even a close friend -- appears as a lawyer." United States v. Murphy, 768 F.2d 1518, 1537 (7th Cir. 1985), cert. denied, 475 U.S. 1012 (1986). [Quoted with approval in Travelers Insurance Company v. Liljeberg Enterprises, Inc., 38 F.3d 1404, 1411-1412 at footnote 13 (5th Cir. 1994)].

While Lifemark has made the opinion issued by the Fifth Circuit in Travelers Insurance Company v. Liljeberg Enterprises, Inc., 38 F.3d 1404 (5th Cir. 1994), an exhibit to its recusal motion (see Exhibit "A"), the failure to abide by the legal principles set forth therein demonstrates the bad faith with which it now proceeds. Alleging only five "facts" to support its claim that the Court would violate 28 USC 455(a) in the absence of disqualification, only one of those allegations has any bearing

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whatsoever upon the Court's duty under the statute: the indefinite and conclusory charge that Jacob J. Amato, Jr. and Leonard Levenson are "two of the Court's closest friends". Even assuming that the Court considers Messrs. Amato and Levenson to be friends; in the absence of proof that the Court's attitude about those attorneys would demonstrate bias favoring their clients, the jurisprudence does not mandate disqualification under 28 USC 455(a). ["Partiality for or against an attorney, who is not a party, is not enough to require disqualification unless it can be shown that such a controversy would demonstrate bias for or against the party itself." Travelers Insurance Company v. Liljeberg Enterprises, Inc., 38 F.3d 1404, 1412 (5th Cir. 1994) (see: Lifemark Exhibit "A")]; Henderson v. Dept. of Public Safety and Corrections, 901 F.2d 1288, 1296 (5th Cir. 1990). Lifemark's motion includes no evidence whatsoever pertaining to the Court's alleged affinity for Messrs. Amato and Levenson, and absolutely none suggesting that any such friendship would extend to sacrificing the Court's impartiality for the benefit of a party represented by those lawyers. Instead, Lifemark merely sprinkles obtuse references to friendship throughout the memorandum as a talisman of innuendo. However, one of the obvious lessons of Travelers Insurance Company v. Liljeberg Enterprises, Inc., 38 F.3d 1404 (5th Cir. 1994), is that reliance upon innuendo to support a motion for disqualification under 28 USC 455(a) results not only in rejection and disfavor, but also invites sanctions.

A party proceeding under 28 USC 455(a) "must show that, if a reasonable man **knew of all of the circumstances**, he would harbor doubts about the judge's impartiality." Chitimacha Tribe v. Harry L. Laws Co., 690 F.2d 1157, 1165 (5th Cir. 1982); Matter of Billedeaux, 972 F.2d 104, 105 (5th Cir. 1992). In deciding this issue the Court need not view the facts from the perspective of a hypersensitive, cynical and suspicious person. U.S. v. Jordan, 49 F.3d 152, 156 (5th Cir. 1995).

Instead, the Court should "ask how things appear to the well-informed, thoughtful and objective observer." U.S. v. Jordan, 49 F.3d 152, 156 (5th Cir. 1995).

If, as alleged without substantiation by Lifemark, the Court's "relationship with Messrs. Amato and Levenson is well known to the legal community" (Lifemark memo at p. 3), then it has no excuse for failing to identify the allegedly "well known" circumstances which would lead a reasonable man to question the impartiality of the Court in dealing with the parties to this dispute. Whatever those "well known" circumstances may be, they apparently do not cause Lifemark to question the Court's impartiality: "Lifemark is in no way suggesting that this Court could not be impartial in determining this matter." (Lifemark Motion to Recuse). If Lifemark believes that the Court can be impartial notwithstanding any friendship with Messrs. Amato and Levenson; then it is hard to imagine that an objective third party, aware of Lifemark's confidence in the impartiality of the Court, could reasonably conclude otherwise.

Henderson v. Dept. of Public Safety and Corrections, 901 F.2d 1288 (5th Cir. 1990) provides a close analogy to Lifemark's argument in the present recusal motion. A concise summary of the Henderson opinion is set forth at footnote 15 of Travelers Insurance Company v. Liljeberg Enterprises, Inc., 38 F.3d 1404, 1412 (5th Cir. 1994) as follows:

> "A party alleged that the trial judge was required to recuse himself because, inter alia, "the judge presiding over this case . . . has known the opposing counsel since he was a kid and that the judge presiding over this case was friends of opposing counsel and opposing counsel's father . . ." *Henderson*, 901 F.2d at 1295. **We recognized that these circumstances did not require disqualification under § 455 and that "even the most superficial research would have put [counsel] on notice that the factual circumstances he alleged were not grounds for recusal . . .. The trial judge was well within his discretion in finding that the motion for recusal was not well founded, either in fact or in law." Id. at 1296."** (Emphasis supplied).

On the other hand, the facts underlying the decision in U.S. v. Jordan, 49 F.3d 152 (5th Cir. 1995) are easily distinguishable from the contentions raised herein by Lifemark. The Jordan opinion, supra, does not consider whether friendship between a judge and counsel of record for a party in a civil proceeding constitutes grounds for disqualification under 28 USC 455(a). Jordan, supra, is a criminal case, and the judge's friend, although a lawyer, plays no role therein as a prosecutor or defense counsel. Instead, the criminal defendant and the judge's close personal friend had been embroiled in a series of vindictive legal actions resulting in a great deal of publicity, potentially besmirching the judge's friend's name. U.S. v. Jordan, supra, at p. 157. Additionally, Jordan had acted in concert with her daughter to cause the judge's friend to be incarcerated and charged with criminal assault. U.S. v. Jordan, supra, at p. 157. Thus, personal hostility between the judge's friend and the criminal defendant, resulting in extensive negative publicity and incarceration of the judge's friend, are the outcome determinative circumstances of U.S. v. Jordan, supra, at p. 157-158. In explanation of its view about how a reasonable man might react to those circumstances, the Court in U.S. v. Jordan, supra at p. 157 at footnote 8, comments:

> "How many times has one heard the following statement: "He can say anything he wants about me, but he can't talk about my friend." Michael Wood [the judge's friend] may not care what Appellant said about him, but a good friend may forever harbor animosity against someone who has taken a prominent lawyer and put him through unwarranted criminal proceedings and negative publicity."

Unlike Jordan, supra, Lifemark had not personally engaged Messrs. Amato and Levenson in vindictive litigation, resulting in negative publicity, and Lifemark has not caused them to be incarcerated or charged with a crime. Messrs. Amato and Levenson are not parties to the present litigation; and the dispute between Lifemark and Liljeberg Enterprises, Inc. offers no opportunity to reflect negatively upon their respective personal reputations.

The other jurisprudence upon which Lifemark relies, Potashnick v. Port City Const. Co., 609 F.2d 1101 (5th Cir. 1980), is also factually distinct from the present recusal motion. In Potashnick, supra, counsel of record for one party to a civil action is the judge's: a) former law partner; b) business partner in real estate investments; and c) personal attorney. Potashnick, supra, at p.1107 and p. 1111. Lifemark offers no evidence suggesting Messrs. Amato and Levenson, or either of them, share any such business relationships with the Court. Although the Potashnick opinion, supra, comments about the friendship between the judge and counsel, the outcome determinative circumstances concern their ongoing business relationship: "The judge's business dealings with Paul Brock constituted a ground for disqualification under section 455(a)." Potashnick v. Port City Const. Co., supra, at p. 1114.

It is also noteworthy that a more recent decision of the Fifth Circuit, Matter of Billadeaux, 972 F.2d 104 (5th Cir. 1992), adopts a more narrow interpretation of 28 USC 455 than Potashnick, supra, at least on the application of the statute to circumstances in which a relative of the judge is a partner in a law firm representing a party before the Court. Potashnick, supra, holds that 28 USC 455(b)(5)(iii) requires disqualification when a judge's relative within the third degree is a partner in a law firm representing a party before the Court, even though the relative has no involvement in the representation. However, the opinion in Matter of Billedeaux, supra, rejects a similar argument relying upon 28 USC 455(a). The analytical differences between the respective opinions on that common subject calls into question whether the Fifth Circuit would now consider Potashnick, supra, as binding precedent.

Lifemark claims that the Court's alleged relationship with Messrs. Amato and Levenson "would be of no concern were it not for the timing of their addition" (Lifemark memo, at p. 3).

According to Lifemark, Jacob J. Amato, Jr. and Leonard Levenson are either pawns or co-conspirators in a scheme by Liljeberg Enterprises, Inc. to peddle influence with the Court. The sole basis for drawing such a scurrilous conclusion is Lifemark's unsubstantiated innuendo concerning the "timing" of hiring Messrs. Amato and Levenson. Lifemark offers no proof that, prior to filing this motion, it inquired about the reason for recently hiring Messrs. Amato and Levenson for a contingency fee. Had such an inquiry (as required by Rule 11) been undertaken, Lifemark would have discovered that:

a) Neither Liljeberg Enterprises, Inc. nor St. Jude Hospital of Kenner La., Inc. have sufficient financial resources to fund the legal manpower necessary to complete trial preparation and conduct the trial on a time billing basis;

b) Lead counsel for St. Jude Hospital of Kenner La., Inc., Kenneth C. Fonte, does not have available the resources necessary to fund the additional lawyers needed to complete trial preparation and conduct the trial in the absence of a substantial likelihood that the client had the ability to promptly pay time billing invoices for such additional work;

c) Lead counsel for Liljeberg Enterprises, Inc., Douglas Draper, does not have available the resources necessary to fund the additional lawyers needed to complete trial preparation and conduct the trial in the absence of a substantial likelihood that the client has the ability to promptly pay time billing invoices for such additional work;

d) Liljeberg Enterprises, Inc. did not have sufficient financial resources to maintain the involvement of the Connick firm on a time billing basis;

e) Lifemark recently informed lead counsel for St. Jude Hospital of Kenner La., Inc. and assistant trial counsel for Liljeberg Enterprises, Inc., Kenneth C. Fonte, that it intended to call him to testify as a material witness at the trial of the case;

f) Lifemark recently informed lead counsel for Liljeberg Enterprises, Inc., Douglas Draper, that it intended to call him to testify as a material witness at the trial of the case.

None of the exhibits accompanying Lifemark's motion support its false charge that Liljeberg Enterprises, Inc. has a propensity for attempting to manipulate the judicial system by buying influence. For example, Exhibit "A" concerns an unsuccessful effort by Liljeberg Enterprises, Inc. to disqualify Judge Henry Mentz from a case on the same grounds urged by Lifemark herein. While the Fifth Circuit's opinion rebukes those efforts, none of the criticism suggests that Liljeberg Enterprises, Inc. ever attempted to purchase judicial influence. Furthermore, the Fifth Circuit opinion set forth by Exhibit "A" does not find, or otherwise remark, that Liljeberg Enterprises, Inc. accused Travelers of purchasing judicial influence.

Exhibit "B" also sheds no light upon Lifemark's ridiculous claim that Liljeberg Enterprises, Inc. believes this Court can be corrupted by hiring Messrs. Amato and Levenson. Exhibit "B" is an affidavit of a former Lifemark (AMI) employee reporting that other Lifemark representatives had bragged about their influence with certain judges. The affidavit does not say anything whatsoever about Liljeberg Enterprises, Inc. attempting to buy judicial influence.

Likewise, Exhibit "C" does not prove that Liljeberg Enterprises, Inc. hired Messrs. Amato and Levenson with the intent of purchasing the partiality of this Court. The portion of Exhibit "C" cited by Lifemark does not state that Liljeberg Enterprises, Inc. threatened Lifemark with purchasing

judicial influence. In fact, those remarks in Exhibit "C" do not even mention judges or judicial influence.

Liljeberg Enterprises, Inc. has NEVER attempted to purchase judicial influence; and there is no evidence to the contrary.

Lifemark makes numerous unsubstantiated claims about the qualifications of Messrs. Amato and Levenson to meaningfully contribute to the preparation, and trial, of this dispute on behalf of Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc.. Lifemark presents the Court with no evidence whatsoever in support of these claims concerning the abilities of these attorneys.

While full of innuendo, Lifemark's recusal motion is not supported by proof, as required by FED. R. CIV. P. 43(e) and ULLR 2.05.

FED. R. CIV. P. 43(e) provides in pertinent part, "When a motion is based on facts not appearing of record **the court may hear the matter on affidavits presented by the respective parties**, but the court may direct that the matter be heard wholly or partly on oral testimony or deposition."

Likewise, ULLR 2.05 states in relevant part, ". . . if the motion requires the consideration of facts not appearing of record, **the movant shall also file with the clerk and serve upon opposing counsel a copy of all documentary evidence he or she intends to submit in support of the motion.**"

For the reasons set forth hereinabove, Lifemark's Motion to Recuse should be denied.

Respectfully submitted,

LEONARD L. LEVENSON #8675
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all counsel of record by hand delivery this 9 day of October, 1996.

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
OCT 11 4 19 PM '96
LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC., ET AL.	*	CIVIL ACTION
	*	NO. 93-1794
	*	C/W 93-4249
VERSUS	*	C/W 95-2922
	*	C/W 95-3993
LILJEBERG ENTERPRISES, INC.	*	SECTION "T"

* * * * * * * * * * * * * * * * *

MOTION FOR LEAVE TO FILE
LIFEMARK'S REPLY MEMORANDUM TO LILJEBERG'S
ENTERPRISES, INC.'S OPPOSITION TO MOTION TO RECUSE

NOW INTO COURT, through undersigned counsel, comes Lifemark Hospitals of Louisiana, Inc. ("Lifemark") and respectfully moves this Court for leave to file the attached Reply Memorandum addressing points raised in Liljeberg Enterprises, Inc.'s ("LEI") Memorandum in Opposition to Lifemark's Motion to Recuse.

Respectfully submitted,

MILES P. CLEMENTS, (La #4184)
JOSEPH N. MOLE, (La #09538)
KENNETH A. MAYEAUX, (La #17674)
MICHAEL R. PHILLIPS (#La 21020)
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DOCUMENT NO. 290

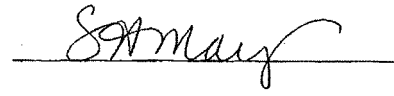
007004 DATE OF ENTRY OCT 17 1996
(17)

HP Exhibit 54

ATTORNEYS FOR LIFEMARK
HOSPITALS OF LOUISIANA, INC.

CERTIFICATE OF SERVICE

I hereby certify that I have on this 11th day of October, 1996 served a copy of the foregoing on all counsel of record via the United States Postal Service properly addressed and postage prepaid.



203-960142

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC., ET AL.	*	CIVIL ACTION
	*	
	*	NO. 93-1794
	*	C/W 93-4249
VERSUS	*	C/W 95-2922
	*	C/W 95-3993
	*	
LILJEBERG ENTERPRISES, INC.	*	SECTION "T"

* * * * * * * * * * * * * * * *

ORDER

Considering the foregoing Motion for Leave to File Lifemark's Reply Memorandum to Liljeberg's Enterprises, Inc.'s Opposition to Motion to Recuse;

IT IS ORDERED that Lifemark Hospitals of Louisiana, Inc. ("Lifemark") be and is hereby GRANTED leave to file the attached Lifemark's Reply Memorandum to Liljeberg's Enterprises, Inc.'s Opposition to Motion to Recuse.

New Orleans, Louisiana this 15th day of October, 1996.

UNITED STATES MAGISTRATE JUDGE

FILE COPY

Notice sent to:

Don M. Richard, Esq.
Douglas Scott Draper, Esq.
Kenneth Charles Fonte, Esq.
Stephen T. Wimberly, Esq.
Jacob J. Amato Jr., Esq.
Leonard Louis Levenson, Esq.
Hans Joseph Liljeberg, Esq.
John Flowers, Esq.
Gary Ruff, Esq.
Joseph Nicholas Mole, Esq.
Jan Marie Hayden, Esq.
Brent Bennett Barriere, Esq.
Mack E. Barham, Esq.
William F. Wessel, Esq.
William Kearney Christovich, Esq.
Charles Louis Stern Jr., Esq.
Moise S. Steeg Jr., Esq.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

OCT 3 12 PM '96

LIFEMARK HOSPITALS OF LOUISIANA, INC., ET AL.	*	CIVIL ACTION
	*	NO. 93-1794
VERSUS	*	C/W 93-4249
	*	C/W 95-2922
	*	C/W 95-3993
LILJEBERG ENTERPRISES, INC.	*	SECTION "T"

* *

LIFEMARK'S REPLY MEMORANDUM TO LILJEBERG ENTERPRISES, INC.'S OPPOSITION TO MOTION TO RECUSE

This memorandum is submitted on behalf of Lifemark Hospitals of Louisiana,Inc. ("Lifemark") in response to the opposition filed by Liljeberg Enterprises, Inc. ("LEI") to Lifemark's Motion to Recuse.

Lifemark does not believe that LEI's opposition has addressed the central point of Lifemark's motion. Rather, it makes two irrelevant points; first, that Lifemark has not challenged the Court's actual bias and second, that Lifemark has submitted "no evidence whatsoever pertaining to the Court's alleged affinity for Messrs. Amato and Levenson . . ."

In response to LEI's first point, that Lifemark has not proven actual bias, Lifemark can only refer the Court to its original brief on this matter. Under applicable Fifth Circuit and Supreme Court jurisprudence, actual bias is not an issue under 28 U.S.C. §455. Rather, it is whether or not, given all the circumstances, there would be an appearance of impropriety to the "average person on the street." Lifemark believes

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that it is obvious that the Liljebergs have hired Messrs. Levenson and Amato in order to achieve a forbidden result. There is no other explanation for the addition of two lawyers at the very last minute to a ten-year old case that is already staffed by five separate counsel from five separate firms. Messrs. Levenson and Amato are not members of the same firm, they do not practice law together, they have not previously been involved in this case, and all they have in common is that they are indeed very close friends of Your Honor's. The impropriety in this case resides in what the Liljebergs have attempted to do, not in whether or not they have achieved their goal.

With respect to LEI's accusation that Lifemark has failed to list every item of which it may be aware concerning the relationship between Your Honor and Messrs. Levenson and Amato, Lifemark would only point out that the best parties to address the details of these relationships are Messrs. Levenson and Amato. Lifemark has merely stated what is true, and it has not indulged in innuendo. It has stated that it is well known that Your Honor is very close to both of these gentlemen. LEI has not denied that because it is obviously true. It is not Lifemark's place to make the Court aware of what it already knows, nor to supplement LEI's disingenuous statement that Lifemark has not come forward with the details of Mr. Levenson's and Mr. Amato's relationship.

On pages 6 and 7 of its brief, LEI lists the alleged reasons for its hiring of two lawyers at the very last minute. These points are addressed in the order in which they are presented:

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a) LEI states that it does not have the financial resources to fund the completion of trial preparation and conduct the trial itself. This is untrue. As evidenced by the Motion to Dismiss LEI's Chapter 11 bankruptcy filed herein by Lifemark, LEI has ample resources. It is earning approximately $1.8 million per year in operating profits; it has been spending over $600,000 per year on attorneys; and it is has had no problem in pursuing this litigation for the last ten years with lawyers retained solely on an hourly basis.

b) In support of its statement that Kenneth Fonte, formerly lead counsel for LEI, has insufficient resources to fund additional legal work, LEI submits no affidavit or other proof. Mr. Fonte has earned ample funds over the years representing LEI and its affiliated companies. His bills have been routinely approved by the Bankruptcy Court, which has the sole authority to perform that task, and he has made no complaint. There is no evidence that he was offered, but refused, a contingency fee arrangement.

c) LEI makes the same unsupported allegations with respect to Douglas Draper. Mr. Draper has represented LEI and its affiliated companies since at least 1993 in their bankruptcy proceedings, and he has earned substantial funds in doing so. He has made no complaint about being untimely paid. In fact, he is the counsel in charge of having his own bills routinely approved by the Bankruptcy Court. There is no evidence in the record of the bankruptcy that there has been an objection to Mr. Draper's applications for fees.

d) LEI alleges that it had insufficient resources to maintain the involvement of the Connick law firm on a time billing basis. However, it has submitted no evidence to contradict the overwhelming record of LEI's profitable operations. Since the beginning of this fiscal year, LEI has continued to spend exorbitant sums on lawyers for numerous litigations. It has continued to pay $150,000 per year in rent to its affiliates. It has continued to pay the Liljeberg brothers' lavish salaries and to provide them with automobiles, insurance, personal staffs, and other amenities that have no relationship to the production of revenue. In any event, the Connick firm never participated actively in this case; the absence of the Connick firm would still leave LEI and St. Jude with four lawyers who have adequately managed this case for years.

e) & f) LEI's argument that Lifemark's listing of Doug Draper and Ken Fonte as possible witnesses is hollow. Both Mr. Fonte and Mr. Draper have been informed that the sole reason for listing them as witnesses is to confirm their testimony in Bankruptcy Court concerning the cause for the filing of LEI's and St. Jude's Chapter 11 proceedings. They have also been informed that if they are willing to stipulate to sworn and transcribed testimony, there will be no need for their appearance as witnesses. In any event, it is Lifemark's and not LEI's role to object to their appearance as both counsel and as possible witnesses, and it has not done so. It has no intention of objecting. There is no need to add two lawyers inexperienced in this case solely to cover for those gentlemen in the unlikely event they opt to take the

stand rather than to acknowledge or stipulate to their testimony given in Bankruptcy Court.

In conclusion, Lifemark would note that contrary to LEI's accusations, it has not engaged in innuendo. It has stated what is obvious and well known; namely, that Messrs. Levenson and Amato have nothing in common with each other or with this case other than that they are the Court's closest friends. LEI has not denied this, rather it has challenged Lifemark to present proof of what Your Honor knows to be true. As noted by the Fifth Circuit in Travelers Insurance Co. v. St. Jude Hospital of Kenner, La., Inc., (attached to Lifemark's original brief as Exhibit A): "A §455(a) recusal is self-executing . . . no affidavit (or in this case, "opinion poll"), is necessary to present the claimed basis for disqualification to the court." Travelers, at page 14. (emphasis added). In Travelers, the Liljebergs had engaged in just the sort of innuendo that they now challenge Lifemark to reproduce. The Fifth Circuit found that distasteful, and condemned the Liljebergs for their cynical timing in waiting until they had lost three separate matters in front of Judge Mentz before raising the issue of recusal by way of a Rule 60 motion. Moreover, the lawyers who were alleged by the Liljebergs to be the source of the Judge Mentz' bias in the Travelers litigation had been in that case from its very beginning, obvious to the Liljebergs and the entire world. In this case, there is no need for innuendo. If Mr. Amato and Mr. Levenson had come with the case in 1987 or 1993, when it was filed in state or federal court, respectively, Lifemark would have no complaint. The Liljebergs, by cynically hiring not

one but two of the Court's closest friends immediately before trial, have made their intentions obvious. The relevant test is the whether this creates the appearance of impropriety. Lifemark respectfully suggests that the answer is yes and that the impropriety is not the Court's but rather that of the Liljebergs, and that it ought not be rewarded by creating even the appearance that they might be successful.

Respectfully submitted,

Miles P. Clements (La. #4184)
Joseph N. Mole, T.A. (La. #09538)
Michael R. Phillips (La. #21020)
Stephanie A. May (La. #24166)
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ATTORNEYS FOR PLAINTIFF, LIFEMARK HOSPITALS OF LOUISIANA, INC.

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing pleading on this 11th day of October, 1996 by United States mail, properly addressed, and first class postage prepaid on all counsel of record.

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA.
OCT 15 3 55 PM '96
LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC.	*	CIVIL ACTION
	*	
VERSUS		NO. 93-1794 c/w
	*	93-4249
LILJEBERG ENTERPRISES, INC.		94-3993
	*	95-2922
* * * * * * * *		SECTION "T" (3)

MOTION FOR LEAVE OF COURT TO FILE RESPONSE TO LIFEMARK'S REPLY MEMORANDUM ON MOTION TO RECUSE

NOW INTO COURT, through undersigned counsel, comes Liljeberg Enterprises, Inc. ("LEI") and St. Jude Hospital of Kenner La., Inc. ("St. Jude"), which respectfully moves for leave of Court to file the attached response to the Reply Memorandum filed by Lifemark, for the reasons set forth in the accompanying Memorandum in Support of Motion for Leave of Court.

Respectfully submitted,

LEONARD L. LEVENSON #8675
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(504) 455-0039

Attorneys for Liljeberg Enterprises, Inc. and
St. Jude Hospital of Kenner La., Inc.

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DATE OF ENTRY OCT 21 1996
006982

HP Exhibit 55

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been hand delivered to Joseph N. Mole, Esq., 3600 Energy Centre, 1100 Poydras Street, New Orleans, Louisiana, 70163-3600 this 15th day of October, 1996.

LEONARD L. LEVENSON

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC.	*	CIVIL ACTION
	*	
VERSUS		NO. 93-1794 c/w
	*	93-4249
LILJEBERG ENTERPRISES, INC.		94-3993
	*	95-2922
* * * * * * * *		SECTION "T" (3)

MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE OF COURT TO FILE RESPONSE TO LIFEMARK'S REPLY MEMORANDUM ON MOTION TO RECUSE

NOW INTO COURT, through undersigned counsel, comes Liljeberg Enterprises, Inc. ("LEI") and St. Jude Hospital of Kenner La., Inc. ("St. Jude"), which submit that the Court should grant leave to file a response to Lifemark's Reply Memorandum concerning the Motion to Recuse for the following reasons:

A fair application of ULLR 2.07E presupposes that the opponent to a motion has been given prior notice of all reasons advanced in support of a motion. Obviously, an opponent to a motion cannot be expected to respond to an argument not presented through the mover's supporting memorandum. ULLR 2.05, which governs memorandums in support of a motion, does not grant the proponent of a motion a right to file a "reply" memorandum. Consequently, when the Court grants the proponent of a motion leave to file a "reply"; it should be treated as supplementing the original memorandum, and the opponent should be given an opportunity to respond thereto.

As a matter of practice, counsel in this case previously have called each other in advance of filing "reply" memorandums to determine the existence of any opposition to such relief; and a statement of "no opposition" has routinely been authorized with the condition that there would be no opposition to the filing of a response to the reply memorandum. This time, however, Lifemark

has not contacted undersigned counsel concerning the "reply" memorandum, and has not offered Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc. an opportunity with "no opposition" to respond thereto. As a result, leave of court is hereby sought to obtain such relief.

Respectfully submitted,

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Attorneys for Liljeberg Enterprises, Inc. and
St. Jude Hospital of Kenner La., Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been hand delivered to Joseph N. Mole, Esq., 3600 Energy Centre, 1100 Poydras Street, New Orleans, Louisiana, 70163-3600 this 15th day of October, 1996.

LEONARD L. LEVENSON

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC.	*	CIVIL ACTION
	*	
VERSUS		NO. 93-1794 c/w
	*	93-4249
LILJEBERG ENTERPRISES, INC.		94-3993
	*	95-2922
* * * * * * * *		SECTION "T" (3)

ORDER

Considering the Motion of Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc. for leave of Court to file an opposition to the Reply Memorandum of Lifemark on the Motion to Recuse,

IT IS ORDERED that Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc. are hereby granted leave of Court to file a response memorandum in opposition to Lifemark's Reply Memorandum concerning the Motion to Recuse.

New Orleans, Louisiana, this 17th day of October, 1996.

JUDGE

FILE COPY

Notice sent to:

Don M. Richard, Esq.
Douglas Scott Draper, Esq.
Kenneth Charles Fonte, Esq.
Stephen T. Wimberly, Esq.
Jacob J. Amato Jr., Esq.
Leonard Louis Levenson, Esq.
Hans Joseph Liljeberg, Esq.
John Flowers, Esq.
Gary Ruff, Esq.
Joseph Nicholas Mole, Esq.
Jan Marie Hayden, Esq.
Brent Bennett Barriere, Esq.
Mack E. Barham, Esq.
William F. Wessel, Esq.
William Kearney Christovich, Esq.
Charles Louis Stern Jr., Esq.
Moise S. Steeg Jr., Esq.

May Wilkinson

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
OCT 17 4 20 PM '96
LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC.	*	CIVIL ACTION
	*	
VERSUS	*	NO. 93-1794 c/w 93-4249
LILJEBERG ENTERPRISES, INC.	*	94-3993 95-2922
* * * * * * * *		SECTION "T" (3)

MEMORANDUM OF LILJEBERG ENTERPRISES, INC. AND ST. JUDE HOSPITAL OF KENNER LA., INC. IN OPPOSITION TO REPLY MEMORANDUM OF LIFEMARK ON MOTION TO RECUSE

NOW INTO COURT, through undersigned counsel, comes Liljeberg Enterprises, Inc. ("LEI") and St. Jude Hospital of Kenner La., Inc. ("St. Jude"), which submit the following opposition to the Reply Memorandum of Lifemark concerning the Motion to Recuse:

Lifemark argues in its reply memorandum that "[t]he impropriety in this case resides in what the Liljeberg's have attempted to do". However, Lifemark has not submitted a single scrap of evidence concerning the "intent" of Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc. in hiring Messrs. Amato and Levenson as additional counsel. Furthermore, Lifemark cites no jurisprudence in support of its contention that the hiring of an attorney who may be a friend of the judge manifests an intent by the employer to enlist the aid of such attorney to cause the judge to violate his duty of impartiality. Lifemark's unsubstantiated and cynical innuendos focusing upon the alleged motives of Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc. completely miss the benchmark for analysis applicable to this motion: "We ask how things appear to the well-informed, thoughtful and objective observer, rather than the hypersensitive, cynical, and suspicious person". U.S. v. Jordan, 49 F.3d 152, 156 (5th Cir. 1995). Lifemark's wild speculation about the

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expectations of Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc. with regard to the work of Messrs. Amato and Levenson on this case simply does not answer the foregoing question.

According to Lifemark's reply memorandum, it is relieved of the burden of proving the particular circumstances that would lead a reasonable person to question the Court's impartiality; because Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc. have not denied that Messrs. Amato and Levenson have a friendly relationship with the Court. Such reasoning assumes, without basis in fact or law, that the mere existence of a friendly relationship between a lawyer and a judge mandates disqualification under 28 USC 455(a).[1]

In its original supporting memorandum, Lifemark uses terms such as "close", "extremely close" and "closest" to characterize the relationship between the Court and Messrs. Amato and Levenson. The reply memorandum calls the relationship "very close". However, such vague superlatives provide absolutely no information upon which an objective, thoughtful and well-informed person could reasonably rely in determining whether grounds exist to question the Court's impartiality.

Lifemark presents no evidence that a reasonable person would attribute to the mere existence of a friendly relationship a significant likelihood that a judge would violate federal law and subordinate his oath of office just to help a lawyer earn a fee.

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[1]Despite the fact that it appears in Exhibit "A" of Lifemark's original memorandum, and notwithstanding that the opposition memorandum directly quotes it; Lifemark persists in closing its eyes to footnote 13 of Travelers Insurance Company v. Liljeberg Enterprises, Inc., 38 F.3d 1404, 1411-1412 (5th Cir. 1994); in which the Fifth Circuit clearly rejects the argument that friendship, even close friendship, between a counsel of record and a judge necessarily requires disqualification. Amazingly, Lifemark's reply memorandum [as well as its original memorandum] also completely ignores the plainly analogous decision in Henderson v. Dept. of Public Safety and Corrections, 901 F.2d 1288 (5th Cir. 1990); which also addresses the issue of friendship between a lawyer and a judge as it pertains to the application of 28 USC 455(a).

The reply memorandum contains an oblique acknowledgement by Lifemark that the circumstances of the relationship between the Court and Messrs. Amato and Levenson do not support disqualification under 28 USC 455(a), to-wit: "If Mr. Amato and Mr. Levenson had come with the case in 1987 or 1993, when it was filed in state or federal court, respectively, Lifemark would have no complaint." If the nature of the friendly relationship between the Court and Messrs. Amato and Levenson is such that a reasonable person would question the Court's impartiality for purposes of 28 USC 455(a); then it should make no difference whether Messrs. Amato and Levenson have been involved in the case for ten minutes or ten years. Nevertheless, Lifemark, without citing any supporting authority, claims that if Messrs. Amato and Levenson had been involved in the case for at least three years, then 28 USC 455(a) would not require disqualification.

Both Lifemark's reply memorandum and the original memorandum cast innuendos about the role of Messrs. Amato and Levenson based upon their alleged brief tenure as counsel in this case. Although they have only recently enrolled as counsel of record, Messrs. Amato and Levenson have spent a significant portion of the past summer educating themselves about the case before agreeing to serve as trial counsel. In fact, their involvement in the case postdates that of Frilot, Partridge, Kohnke & Clements, L.C. by only a few months. The record shows that Frilot, Partridge, Kohnke & Clements, L.C. enrolled as counsel of record on April 15, 1996. Considering the Frilot's firm equally brief tenure in this case, the audacious aspersions cast by Lifemark upon the abilities of Messrs. Amato and Levenson to meaningfully prepare for, and participate in, the trial of this case manifest insincerity.

Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc. believe that Lifemark's sniping at the competency and role of Messrs. Amato and Levenson is a tactic designed to provoke the application of the factual predicate of U.S. v. Jordan, 49 F.3d 152 (5th Cir. 1995) to the circumstances of this case. In U.S. v. Jordan, supra, it is the vicious personal attack against the judge's friend by the party seeking recusal, and not the existence of the friendship, which proves to

be outcome determinative. However, Messrs. Amato and Levenson take comfort, and not offense, from Lifemark's underestimation of their abilities. Discounting the strengths of your opponent is a serious mistake in litigation.

For the reasons set forth hereinabove, together with those provided in their first opposition memorandum, Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc. seek dismissal of the Motion to Recuse and the imposition of sanctions against Lifemark.

Respectfully submitted,

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427 Gravier Street, Third Floor
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Attorneys for Liljeberg Enterprises, Inc. and
St. Jude Hospital of Kenner La., Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been hand delivered to Joseph N. Mole, Esq., 3600 Energy Centre, 1100 Poydras Street, New Orleans, Louisiana, 70163-3600 this 15th day of October, 1996.

LEONARD L. LEVENSON

1 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
2 NEW ORLEANS, LOUISIANA

3

4 LIFEMARK HOSPITALS, INC. Docket No. 93-179-4-"T"

5 Plaintiff,

6 v. New Orleans, Louisiana
Wednesday, October 16, 1996
7 LILJEBERG ENTERPRISES, INC. 10:17 a.m.

8 Defendant.

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10 PLAINTIFF'S MOTION TO RECUSE
BEFORE THE HONORABLE G. THOMAS PORTEOUS, JR.
11 UNITED STATES DISTRICT JUDGE

12

APPEARANCES:
13
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5 Proceedings recorded by mechanical stenography;
transcript produced by dictation.
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1 P R O C E E D I N G S
2 MORNING SESSION
3 (Wednesday, October 16, 1996)
4 THE COURT: Let's take up this next matter, which is
5 93-1794 and all consolidated cases also. This is the motion
6 filed with respect to all of the particular cases to recuse.
7 Let me dictate one thing into the record before everybody
8 commences so that everybody is not necessarily on edge as
9 they might think. Bernard v. Coyne, which is 31 F.3d 842
10 involved the request to disqualify a circuit court judge of
11 the 9th circuit. In that decision that Judge wrote, and I
12 cite and "this" (reading) with full acquiescence counsel for
13 a party who believes Judge's impartiality is reasonably
14 subject to question has not only a professional duty to his
15 client to raise the matter but an independent responsibility
16 as an officer of the court. Judges are not omniscient, and
17 despite safeguards overlook a conflict of interest. A
18 lawyer who reasonably believes that the Judge before whom he
19 is appearing should not sit must raise the issue so that it
20 may be confronted and put to rest. Any other course would
21 risk undermining public confidence in our judicial system."
22 I cite that so that everyone understands that I recognize my
23 duty and obligations, and I am fully prepared to listen.
24 All right, go ahead.
25 MR. MOLE: I appreciate your remarks. It is not a very

1 easy thing to confront the federal judge with the suspicion
2 that he probably doesn't want to hear. I am sure that in
3 the course of trying -- I don't know you very well, Judge,
4 and I have gotten to learn about you only through this
5 case --
6 THE COURT: You told me the last time we graduated from
7 Cor Jesu.
8 MR. MOLE: That's about all we have in common. What I
9 learned about you from trying to investigate what I should
10 do about what I have raised that you probably did read
11 briefs and gave it some intelligent thought. So I don't
12 want to go back through everything I have said.
13 What I would like to emphasize is mainly by what has
14 been established in response to my motion to recuse. I have
15 gotten to know Mr. Levenson and Mr. Amato.
16 THE COURT: Let me make also one other statement for
17 the record if anyone wants to decide whether I am a friend
18 with Mr. Amato and Mr. Levenson, I will put that to rest for
19 the answer is affirmative, yes. Mr. Amato and I practiced
20 the law together probably 20-plus years ago. Is that
21 sufficient?
22 MR. MOLE: Yes.
23 THE COURT: 20-plus is sufficient. So if that is an
24 issue at all, it is a non-issue.
25 MR. MOLE: What prompted us to file the motion is the

1 timing of what happened. This case is 10 years old, the
2 oldest part is 10 years old. The lawyers who are in the
3 case now are these previous to September 12th when you
4 granted leave to add Mr. Amato and Mr. Levenson, who has
5 been in for years. The case was set for trial, and you had
6 an emphasis about keeping the trial date. They were added
7 within two months of the trial date. And the case with that
8 length I don't know Mr. Levenson or Mr. Amato very well. I
9 know they are fun to practice against; they have a sense of
10 humor, and they have given me by doing this quite literally
11 none to my knowledge other than they are your friends. They
12 have been given 11 percent contingency fee in a case that
13 the Liljebergs, everybody -- I disagreed -- value at $140
14 million, at least part of this we have a percentage of. And
15 I think that bears even more weight when you consider Mr.
16 Liljeberg has taken the position that he doesn't give
17 contingency fees. Jim Cobb has sued him in Bankruptcy Court
18 for a fee claiming he had continued standing of plaintiff
19 Liljeberg as a matter of the plaintiff doesn't give those
20 away. This is like how we do it at the last minute. Mr.
21 Levenson in his response to my reply brief says he has been
22 in the case for a lot longer than the time when he showed
23 up. It raises additional questions. Mr. Levenson is also,
24 indeed, your friend: Has he discussed the case with us
25 before at that time he appeared when he was investigating

1 it? Did he wait to see when you would hold on to the case
2 rather than pass it on to Judge Lemmon? Those are the sort
3 of questions that are going to be in the case no matter what
4 happens forever if you be the Judge.
5 Mr. Levenson has accused me and my client of engaging
6 innuendo. I looked up the word. Innuendo is a generally
7 derogatory and witty way of making accusations indirectly.
8 I don't think I have done that. I have been very direct.
9 Mr. Levenson, and I think it is a good tactic, has tried to
10 dare me to say what I think is the nature of the
11 relationship between you and him and you and Mr. Amato, that
12 are the two gentlemen behind me. And if they have something
13 to contradict the statement that I made, which is that you
14 all are indeed very, very close friends, I would have
15 assumed that he would have made it. I am happy to tell the
16 Judge what the public perception is of the relationship.
17 THE COURT: Well, the case you cite by the way involved
18 the judge's wife. So I assume they were fairly close
19 friends, too.
20 MR. MOLE: Probably. You don't have to stipulate.
21 THE COURT: Well, it could be a question sometimes.
22 MR. MOLE: I understand, Your Honor. I don't know what
23 the Court wants to do with that issue, whether or not the
24 Court wants to make a statement or accept the statement.
25 THE COURT: No, I have made the statement. Yes, Mr.

1 Amato and Mr. Levenson are friends of mine. Have I ever
2 been to either one of them's house? The answer is a
3 definitive no. Have I gone along to lunch with them? The
4 answer is a definitive answer yes. Have I been going to
5 lunch with all of the members of the bar? The answer is
6 yes.
7 MR. MOLE: I understand.
8 THE COURT: Has, in fact, at the last status conference
9 I had I saw Mr. Lane here I think in reality aligned with
10 your side who spoke with me, and Mr. Lane and I have been to
11 lunch together. I mean there is not a hell of a lot of
12 lawyers in this city I haven't maintained a very open,
13 friendly relationship with. So if you want to explore in
14 detail, feel free to explore it. I don't have a problem
15 with exploring it. But I don't know what you want to make
16 with it.
17 MR. MOLE: Well, Your Honor --
18 THE COURT: And I also must say something for the
19 record I think other than connecting the dots that the last
20 status conference I had I virtually told everyone I was
21 continuing this case. So this rush to trial that you
22 suggest I am maintaining, I did all but connect the dots the
23 last time.
24 MR. MOLE: Well, I understand.
25 THE COURT: The lawyers have come to this case like a

1 storm cloud through Louisiana. Look at the list. I ran a
2 chaser sheet. Up until I think maybe Mr. Steeg and Mr.
3 O'Connor. Mr. O'Connor were attorneys and they are out for
4 whatever reason. They had a conflict situation. I have no
5 idea what it was. Then you all got in it. Welcome, jump
6 in. I mean I tried to make it clear at the last conference
7 I don't care how many people are on the side or "X" amount
8 of people are talking. Did I not say that?
9 MR. MOLE: It was pretty clear, Your Honor. Well, I
10 would emphasize, Your Honor, that the standard is what a
11 reasonable person would perceive if they knew all the facts.
12 I think the timing of the appearance of Mr. Amato and Mr.
13 Levenson creates the biggest concern along with the fact
14 that they did not practice law together. All they have in
15 common is that they are your close friends. The public
16 perception is that they do dine with you, travel with you,
17 that they have contributed to your campaigns.
18 THE COURT: Well, luckily I didn't have any campaigns.
19 So I'm interested to find out how you know that. I never
20 had any campaigns, counsel. I have never had an opponent.
21 One time I had an opponent --
22 MR. MOLE: I had a campaign return from the --
23 THE COURT: The first time I ran, 1984, I think is the
24 only time when they gave me money.
25 MR. MOLE: 1990 is what I have.

1 THE COURT: 1990 that was the Justice for All Program
2 where they gave to every judge probably, but I could be
3 wrong there.
4 MR. MOLE: I'm sorry if I'm wrong.
5 THE COURT: I don't know. You got the record. What
6 did it say? Let me see them. Don't hide them if there is
7 something in there that's deeply devious, tell me about it.
8 MR. MOLE: May I approach the bench?
9 THE COURT: Sure.
10 (Counsel Mole hands document to the Court.)
11 THE COURT: Yeah, I think if you look at this, you will
12 find that whatever those numbers total, and I'm not a
13 mathematician, but I think those numbers on these pages
14 total more than $6,794. I am fairly certain adding that up.
15 Did you?
16 MR. MOLE: I did not, Your Honor.
17 THE COURT: Well, let's go to the, pick a page at
18 random starting with the firm of Anderson Tranthene and
19 Mateern. There is over $200 on that page, one page out of I
20 don't know how many it is. I think you will find that that
21 was a function that was thrown by the entire judiciary of
22 Jefferson Parish for which I received I forget whatever my
23 portion was, but I reported it, which was $6,794 is what it
24 looks like what it says here. And that's what it was. So,
25 yes, I don't doubt that they contributed. I mean I don't

1 know. Maybe it is pertinent. Maybe microscopes and maybe
2 that's why we shouldn't have it. But, yeah, okay, it's
3 there.
4 MR. MOLE: Your Honor, I appreciate the Court's remarks
5 at the beginning. What I have done again is in an effort to
6 represent my client at the risk of offending the Court --
7 THE COURT: You haven't offended me. But don't
8 misstate, don't come up with a document that clearly shows
9 well in excess of $6700 with some innuendo that that means
10 that they gave that money to me. If you would have checked
11 your homework, you would have found that that was a Justice
12 for all Program for all judges in Jefferson Parish. But go
13 ahead. I don't dispute that I received funding from
14 lawyers.
15 MR. MOLE: Right, Your Honor.
16 THE COURT: No question.
17 MR. MOLE: If the perception is that my client, and I
18 have it that Mr. Levenson and Mr. Amato are not any more
19 sinister than any other member of the bar, then we would be
20 happy to have them or you dispel that. I think you have
21 been honest with us. There is not much more I can say.
22 THE COURT: I understand. Let me tell you, no, it is a
23 uncomfortable position you find yourself in, counselor. You
24 know, I have been doing this for awhile. With all candor I
25 must admit this is the first time a motion for my recusal

1 has ever been filed. Did it get my attention? Yeah, I
2 guess it got my attention. But does that mean that any time
3 a person I perceive to be friends who I have dinner with or
4 whatever that I must disqualify myself? I don't think
5 that's what the rule suggests. I, likewise, don't think
6 that's what the Court had in mind. And even in your own
7 pleadings and even in the case, it is the Travelers case
8 from the Fifth Circuit published opinion which you gave, me
9 that courts even recognized in citing from Murphy in its
10 cite, and I think it is important to state (reading) "In
11 today's legal culture friendship among judges and lawyers
12 are common. They are more than common, they are desirable.
13 A judge need not cut himself off from the rest of the legal
14 community. Social as well as official communications among
15 judges and lawyers may improve the quality of the legal
16 decisions. Social interaction also makes some on the bench
17 quite isolated and as a rule more tolerable to judges. Well
18 qualified people would hesitate to become judges if they
19 knew that wearing the robe meant either discharging one's
20 friends or risking disqualification in a substantial number
21 of cases. Courts have held that a judge need not disqualify
22 himself just because a friend, even a close friend, appears
23 as a lawyer." And that is a Seventh Circuit case but was
24 cited in the Fifth Circuit decision.
25 Now that's a predicament all of us find ourselves in.

1 Mr. Amato and Mr. Levenson have both appeared before me and
2 they have both won and both lost.
3 MR. MOLE: Your Honor, it is again it is not the fact
4 of the friendship, it is the timing. Anyone who you would
5 describe the situation to I think would generally be
6 concerned that the timing is odd that a case of this length
7 amply lawyered when other lawyers appear within the
8 contingency fee in the way they have and that's why we made
9 the motion.
10 THE COURT: I understand it, and it is a perception,
11 clearly it is perception. I agree with you, but again even
12 before this motion was even urged because I believe the
13 status I had before you filed the motion, in fact, I know it
14 was I made it plain that this November 4th date was probably
15 fixed in everybody's mind. I mean I don't know what else to
16 tell you. That was a near fix. We will see what we have
17 got, but I understand, counselor and appreciate your
18 position. And you have to urge these things, and I
19 understand that. I take no animus toward you on that. If
20 you did that, I don't need to repeat that.
21 MR. MOLE: Judge, what you said -- it is the first time
22 I have had to do this myself. I would think one of the
23 lawyers opposing me asked me how many times did you sit
24 around discussing this with your client or your partners,
25 and his answer was to a political extent easy to do. But we

1 convinced ourselves we had to do it.
2 THE COURT: All right.
3 MR. MOLE: Only after great deliberation.
4 THE COURT: All right.
5 MR. LEVENSON: Judge, I feel a little peculiar in this
6 situation as well. I don't recall in the twenty years I
7 have practiced law being in this situation. I think that
8 you must take into consideration the admission by Lifemark
9 in their pleading that they do not question your
10 impartiality. And if they had done any investigation in
11 connection with this matter, they could come up with no
12 other result but that. And that is the test in this type
13 of situation. It is the appearance to a well-informed,
14 thoughtful, objective observer as stated in Jordan. And
15 I think the key point there is well informed. Both well
16 informed about our friendship, well informed about our
17 reputation, well informed about the reputation and
18 experience of Mr. Amato as well as that of myself.
19 Mr. Mole stated that the timing is odd. Well, I
20 think it is correct that from the time that I was
21 originally contacted by the Liljeberg attorneys in
22 connection with this matter the Frilot firm has been
23 involved in this case a very short period of time longer
24 than I.
25 Mr. Mole brought up that when he first learned of that

1 yesterday he questioned why I waited so long to get into the
2 case. Well, when I saw file cabinet upon file cabinet upon
3 file cabinet of the paper, it wasn't candidly a very easy
4 thing to assess for myself nor for Mr. Amato to take and
5 became quite a bit of work to determine whether or not I
6 wanted to dedicate a substantial portion of my future effort
7 to this case which would deprive me of other income and
8 other work as well. Mr. Mole didn't know that because he
9 didn't ask me.
10 The next point Mr. Mole made was that there is nothing
11 in common between Mr. Amato and myself except your
12 friendship. That is incorrect. Another question Mr. Mole
13 should have perhaps inquired into.
14 In Mr. Mole's brief he somewhat criticized my
15 experience or perhaps the lack thereof in his mind in
16 matters of this sort. Mr. Amato and myself have acted as
17 primarily personal injury lawyers. That, of course, is not
18 true. Mr. Amato and myself have tried hundreds if not
19 thousands of cases and rules before juries, judges, state
20 and federal, bankruptcy and federal court and just about
21 every other court I can think of. In fact, at the risk of
22 blowing my own horn, I think that I am probably the only
23 lawyer in this room and maybe the only lawyer with all of
24 the firms combined who has been written up in the WALL
25 STREET JOURNAL in connection with litigation I had handled,

1 and it was not personal injury cases. My experience
2 involves personal injury admittedly in recent years due to
3 the change in the economy this year but also involved
4 commercial litigation, bankruptcy, real estate and title law
5 expertise which I think will become very important in this
6 litigation.
7 Mr. Mole has alluded that in his pleadings that Mr.
8 Amato and myself are your two closest friends. I find it
9 interesting that Mr. Amato and myself are your closest
10 friends that we were not contacted in connection with the
11 background check which must be performed in connection with
12 your appointment. Maybe other people don't think our
13 friendship is viewed the same as Mr. Mole.
14 Finally, Mr. Mole says that we have contributed money
15 to your campaign. Your Honor, as you know I didn't even
16 know you when you ran for office. I only met you in the
17 course of litigating cases in your court. To the best of my
18 knowledge I have never given a campaign contribution to you.
19 To the best of my knowledge you have never had a campaign to
20 which to contribute to. The Justice for All Ball was
21 something that was put together so that all of the judges of
22 the 24th Judicial District Court could have a single fund-
23 raiser, and I think the intent of that was to make it easier
24 on lawyers who contributed to judge's campaigns, and there
25 was some particular form as to how those proceeds were

1 divided up. I don't think they were divided up equally,
2 although how they were distributed I wasn't part of.
3 THE COURT: I don't remember the breakdown, but I do
4 know I was the smallest for what that's worth.
5 MR. LEVENSON: Judge, I think that the rule under
6 Section 455 in the cases make it clear that whether or not
7 we are your friend or even your close friend that is not
8 ground for recusation, and I think that the motion should
9 properly be denied.
10 THE COURT: Mr. Mole anything else you would like to
11 add again?
12 MR. MOLE: Yes, Your Honor. One of the difficult
13 decisions to make is how much of a record should I try to
14 make on this without a balance of the fact that I have to
15 practice law with these gentlemen and before you the rest of
16 my life but that I have a duty to my client. But I think
17 that the record that is made here today is enough, because I
18 don't think Mr. Levenson and Mr. Amato, they have said that
19 they dared me to say what I think are rumors. I don't want
20 to do that. They have not denied what I have said about the
21 relationship between you and them.
22 THE COURT: I have not denied it, and I don't think
23 they deny it.
24 MR. MOLE: Then the fact of the matter is Mr. Levenson
25 could very well deny it if he wanted to, and he has chosen

1 not to do that. That speaks more loudly than anything I
2 could say.
3 THE COURT: Well, you know the issue becomes one of, I
4 guess the confidence of the parties, not the attorneys.
5 Because when it is all said and done you all have been but
6 the spokesperson for the true people in interest and that's
7 the litigants. My concern is not with whether or not
8 lawyers are friends and for whatever value that contribution
9 is to a group as a whole. My concern is that the parties
10 are given a day in court which they can through you present
11 their case, and they can be adjudicated thoroughly without
12 bias, favor, prejudice, public opinion, sympathy, anything
13 else, just on law and facts. That's basically the charge we
14 give juries. We are no longer the juries, but if it was a
15 non-jury trial, we are the trier of fact. And there is a
16 ton of case law that says that I should charge myself
17 according to the same way I would charge a jury.
18 I have always taken the position that if there was ever
19 any question in my mind that this Court should recuse itself
20 that I would notify counsel and give them the opportunity if
21 they wanted to ask me to get off. That includes a case
22 wherein my cousin, Billy, Billy Porteous tries a case in
23 front of me in Gretna, and the plaintiff's lawyer is
24 absolutely delited. And I have got to go fully explain to
25 the jury that I never practiced with him and that they are

1 not to read anything into it. I don't fault you for your
2 filing. I think it is a situation where because of this
3 upward ongoing quick activity of this case because of dates
4 approaching that on its face it appears to be evil or bad or
5 improper. The reality is that none of the above are true.
6 The reality is that if anyone thinks they gain favor from me
7 because someone is in a case need only basically look at
8 what I have done in the past to know that that is a fiction.
9 The question is again in that Bernard case the court
10 said Section 450 requires not only that a Judge be
11 subjectively confident of his ability to be even handed but
12 there is a informed, rational objective observer would not
13 doubt his impartiality. Well, everything we do in the
14 judiciary is under a microscope anyhow. But if the rules
15 were such that every time a contributor and you take a case
16 with current contributions have been made, not 1990
17 contributions, have allowed the Judge to sit where
18 friendship, even "Close friendships are not to be
19 considered," I don't have any difficulty trying this case.
20 Now, after I rule can a party feel that they were
21 wronged? I can't stop that feeling. There is no tie:
22 somebody wins, somebody loses. Are they then upset?
23 Possibly. But that's not for me to concern myself with
24 because again whichever side wins by the evidence and the
25 law will win by the evidence and the law. And as I have

1 told plaintiff lawyers in the past, if 40 percent of zero is
2 zero, I assure you eleven percent of zero is still zero.
3 Now, does that ease your client's mind? I don't know. I
4 can't help you there. Does that make the informed observer
5 satisfied? I don't know. But in my mind I am satisfied
6 because if I had any question as to my ability, I would have
7 called and said, "Look, you're right." Do not think for one
8 moment that this Court went out and solicited this case.
9 This case this Court drew because some other members of the
10 bench couldn't hear it. The pool of judges was very small,
11 and I drew it.
12 Now, I ran the chaser sheet on this, and the reason I
13 talk about a flurry of activity up until the time I drew
14 this case, which was on January 16, 1996, document No. 190
15 or entry 190 in the case re-alloted Judge G.T. Porteous,
16 Jr., since that day when only 190 over a 3-year period
17 entries had been made we have to date, now we have had 102
18 entries made. It always happens that when we get close to
19 trial people get real, real interested. I can't explain it.
20 It just happens. I don't read anything devious or bad about
21 it. In fact, since the time you have come into the case or
22 your firm which was entry No. 210, we have had 82 of them.
23 So there has been a lot of activity, and I will attend to
24 it.
25 I received a multitude of pleadings to find out in

1 taking up other issues today, and I had issued an order and
2 I am hoping everyone got a copy of it. And if they didn't,
3 I don't know what happened. But entry no. 278 says, "Having
4 received the plaintiff's Motion to Recuse, the Court finds
5 it is in the best interest of justice that all motions are
6 deferred pending resolution of the motion to recuse.
7 MR. MOLE: I got that.
8 THE COURT: So I don't know what to tell you all other
9 than I do not believe this is a case where 28 USC 455 is
10 applicable. I don't think a well-informed individual can
11 question my impartiality in this case. Part of me has to
12 sit here and make sure that I don't over help or hurt either
13 one of you. That's always going to be a problem if you know
14 somebody on one side. I'm human, but I assure you I have
15 done this long enough that it won't bother me at all.
16 Saying no is the easiest thing. Saying zero is just a
17 number. Whether it is worth $140 million as you suggest, I
18 don't know. I don't know enough about this case. I don't
19 even know if you all know enough about this case given the
20 rash of pleadings that go back and forth. I'm not even sure
21 it is that complex, but it is sure being made fairly
22 complex.
23 Now, having said all of the above, I tell you now that
24 there is no way on this earth that I can get through any of
25 the motions pending and have a trial date by November 4th.

1 You all can forget it. It is actually impossible, which is
2 exactly what I virtually said when we had the status. I
3 won't be pushing anybody to trial on November 4th. I do
4 want, however, that these things remain in effect. The
5 requirements, those witness lists are cast in stone. I
6 think you all both submitted them. That much is a finished
7 deal. We are not going to be adding witnesses absent a
8 hearing for good cause shown why they should be added. Now,
9 I am not going to say that, I guess something could come up.
10 But that's cast in stone. Both Magistrate Wilkinson and I
11 have told you all that we are available for whatever
12 assistance you need because this is a non-jury trial. I
13 don't intend to enter into any discussions with you all on
14 that. I told you that I believe that Magistrate Wilkinson
15 did. My input is over at that point then. He acts as an
16 arbitrator or mediator if that ever gets to that. If it
17 doesn't, we try your case.
18 Because I know this is an important issue for you and
19 an important issue for your client, I am, in fact, going to
20 issue a judgment denying your motion to recuse myself. It
21 is significant, it is important. If you think it deserves
22 attention by the Fifth Circuit, that's why I am giving you
23 the judgment. If you go there, you do it with no offense to
24 me. And if they disagree with me, then they disagree with
25 me. I don't have a problem with that, counselor. I don't

1 want the issue to be left that you didn't have a mechanism,
2 and I don't think any of you want to do this thing twice.
3 So if you choose to go there, go there. Would I
4 conceive of any grant of a stay? Yes. Would I ask that
5 they expedite it? Probably, yes. And I would hope that you
6 would ask that they expedite it because that does not innure
7 to either side's benefit in this case.
8 MR. MOLE: One of the things that occurred to us and
9 that is that we have a remedy for a writ of mandamus, and we
10 haven't decided to do that.
11 THE COURT: That's why I thought a judgment was
12 necessary, and I don't know if an order would have given you
13 that ability. I am issuing it as a judgment denying your
14 motion to recuse for the reasons I stated on the record,
15 which you can get a transcript of it, of course. But, yes,
16 I told you now that's what I am going to do is give you the
17 guidance to do that.
18 MR. MOLE: One of my concerns is that we have a
19 November 4th trial date. I would have to try to get
20 discovery before then.
21 THE COURT: Does anyone here really believe I can
22 dispose of all of your motions before November 4th? I'm not
23 super human. I have continued all your motions because of
24 this motion to recuse myself.
25 MR. MOLE: We didn't file them to delay things. But I

1 understand Your Honor.
2 THE COURT: I didn't take it for that, but I'm saying I
3 did that on my own motion. Nobody asked me to stay it. I
4 could have done it, but I think whenever somebody asks for a
5 judge to recuse themselves, although technically I can
6 continue a proceeding and particularly in the ruling I had
7 made I think they are entitled for me not to do anything
8 more until we take up the issue. We took the issue up. If
9 you want to go across and do that, I am giving you the
10 procedural tool to do it.
11 MR. MOLE: I appreciate that.
12 THE COURT: Okay, anything else I can dispose of?
13 MR. LEVINSON: On October the 23rd it is scheduled to
14 appear for a pretrial conference.
15 THE COURT: Ignore it. Ignore it. There is no way on
16 earth I am going to do your pretrial. You have got too many
17 motions especially that you would have in the pretrial that
18 the motions are open.
19 MR. LEVENSON: I understand that, Judge. But would you
20 consider making it as a status conference so we can proceed?
21 THE COURT: I will do that as a status conference with
22 you all.
23 MR. MOLE: And no pretrial order?
24 THE COURT: No, obviously not. They will issue an
25 order that the pretrial order is hereby converted to a

1 status conference for whatever time I had it set. Just
2 whatever if that time is blocked out, we keep it at that
3 time.
4 MR. LEVENSON: That's fine, Judge.
5 THE COURT: Discovery I suggest that I believe should
6 be closed at this point in time.
7 MR. MOLE: I think we have everything scheduled that
8 needs to be scheduled, but we still have depositions going
9 on through the last one is October 28th.
10 THE COURT: That's fine. But that's by agreement?
11 MR. MOLE: That's by agreement.
12 THE COURT: That's by agreement. And then as I
13 understand it discovery will be closed?
14 MR. MOLE: Yes, Your Honor. We are cooperating pretty
15 much.
16 THE COURT: Depending on what you do, whether you will
17 be going to go forward and whether there is a stay over
18 there or request for expedited hearing, will depend on when
19 I give you a trial date. Maybe by the 23rd I would ask you
20 and if you are not in position to do it, counselor, I
21 understand. But on the 23rd it is a status conference. If
22 it is your client's desire to proceed with a mandamus or
23 appeal or whatever procedural remedy that is at his disposal
24 with the Fifth Circuit, if you will simply notify me to that
25 effect whether I would or would not set a date. I'm going

1 to set a date with that pending, I am not going to pass on
2 this case while the ruling of mine which may have some
3 impact on whether to recuse myself on this case. So if you
4 could let me know by that date.
5 MR. MOLE: We will do that, Judge.
6 THE COURT: Okay, all right. Thank you all.
7 MR. MOLE: Thank you, Judge.
8 (Hearing concludes.)
9 REPORTER'S CERTIFICATE
10
11 The undersigned certifies, in his capacity of Official
12 Court Reporter, United States District Court, Eastern
13 District of Louisiana, the foregoing to be a true and
14 accurate transcription of his Stenograph notes taken
15 Wednesday, October 16, 1996.
16 New Orleans, Louisiana, this 21st day of October, 1996.
17
18
19 David A. Zarek
20 David A. Zarek
Official Reporter, Section "A"
21
22
23
24
25

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

Oct 21 9 29 AM '96

LIFEMARK HOSPITALS, INC.

VERSUS

LILJEBERG ENTERPRISES, INC.

CIVIL ACTION

NO. 93-1794 c/w
94-3993,
93-4249,
95-2922

SECTION "T"

JUDGMENT

On Wednesday, October 16, 1996, the court heard oral argument on Lifemark Hospitals, Inc.'s Motion to Recuse. The Court, having reviewed the motion to recuse, the opposition, the reply, and the response to the reply and having heard oral argument, for reasons stated in open court denies the Motion to Recuse. Accordingly,

IT IS ORDERED, ADJUDGED, AND DECREED that there be judgment entered denying Lifemark Hospitals, Inc.'s Motion to Recuse.

New Orleans, Louisiana, this 17th day of October, 1996.

G. Thomas Porteous, Jr.
United States District Judge

cc: Magistrate Judge Wilkinson
Clerk to Notify all Counsel

OCT 21 1996

007500

DOCUMENT No.

HP Exhibit 57

FILE COPY

Notice sent to:

Don M. Richard, Esq.
Douglas Scott Draper, Esq.
Kenneth Charles Fonte, Esq.
Stephen T. Wimberly, Esq.
Jacob J. Amato Jr., Esq.
Leonard Louis Levenson, Esq.
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John Flowers, Esq.
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Mack E. Barham, Esq.
William F. Wessel, Esq.
William Kearney Christovich, Esq.
Charles Louis Stern Jr., Esq.
Moise S. Steeg Jr., Esq.

Mary Wilkinson
Judge

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. _____

LIFEMARK HOSPITALS OF LOUISIANA, INC. ET AL.
VERSUS
LILJEBERG ENTERPRISES, INC.
C.A. NO. 93-1794 C/W
93-4249
95-2922
95-3993

IN RE: LIFEMARK HOSPITALS OF LOUISIANA, INC.
PETITIONER

PETITION FOR WRIT OF MANDAMUS
BRIEF OF PETITIONER
LIFEMARK HOSPITALS OF LOUISIANA, INC.

MILES P. CLEMENTS, (La #4184)
JOSEPH N. MOLE, (La #09538)
KENNETH A. MAYEAUX, (La #17674)
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HOSPITALS OF LOUISIANA, INC.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC., ET AL.	*	CIVIL ACTION
	*	NO. 93-1794
	*	C/W 93-4249
VERSUS	*	C/W 95-2922
	*	C/W 95-3993
LILJEBERG ENTERPRISES, INC.	*	SECTION "T"

* *

CERTIFICATE OF INTERESTED PARTIES

Pursuant to Loc.R. 28.2.1, the undersigned counsel of record certified that the following listed persons have an interest in the outcome of this case. These representations are made in order that judges of this Court may evaluate possible disqualification or recusal.

Jacob J. Amato, Jr., Esq.
Amato and Creely, APLC

American Medical International, Inc.

Douglas S. Draper, Esq.
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Kenneth Fonte, Esq.
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Lifemark Hospitals, Inc.

Lifemark Hospitals of Louisiana, Inc.
Liljeberg Enterprises, Inc.

Hans J. Liljeberg, Esq.
Liljeberg Enterprises, Inc.

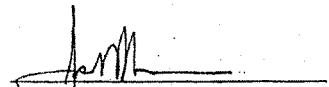
John A. Liljeberg, Jr.

Robert Liljeberg

Don M. Richard, Esq.
Denechaud and Denechaud

St. Jude Hospital of Kenner, Louisiana, Inc.

Respectfully submitted,



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ATTORNEYS FOR LIFEMARK
HOSPITALS OF LOUISIANA, INC.

REQUEST FOR ORAL ARGUMENT

Petitioner requests oral argument pursuant to Fed.R.App.P. 34(a) and Loc.R. 28.2.4, and submits that oral argument would be helpful to this Court in its resolution of this matter. This Writ Petition presents the Court with a unique case involving the standard for recusal of a federal judge whose two closest personal friends were retained as trial counsel for the plaintiff, on a contingency fee basis, on the eve of a multi-million dollar non-jury trial. Oral argument should be allowed in this case because this writ is not frivolous; the issue presented has not been authoritatively decided; and the decisional process would be significantly aided by oral argument. Fed.R.App.P. 34(a).

The issue presented in this case involves whether the appearance of impropriety standard set forth in 28 U.S.C. § 455(a) warrants disqualification of the district court judge. This Court has established a body of case law applying 28 U.S.C. § 455(a). However, as this Court has eloquently stated regarding Section 455(a):

> . . . [N]o case is precisely on point; after all, each § 455(a) case is extremely fact intensive and fact bound, and must be judged on its unique facts and circumstances more than by comparison to situations considered in prior jurisprudence.

United States v. Jordan, 49 F.3d 152, 157 (5th Cir. 1995). For this reason, the facts and issue presented here have not been authoritatively decided; and accordingly, oral argument would aid this Court in its determination.

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STATEMENT OF JURISDICTION

I. Subject Matter Jurisdiction

The United States District Court for the Eastern District of Louisiana has jurisdiction of this matter pursuant to 28 U.S.C. § 1334. This controversy originated in federal court when Liljeberg Enterprises, Inc. (hereinafter "LEI") filed bankruptcy in January 1993 and also filed a Motion to Assume an Executory Contract in its Chapter 11 proceeding. LEI and Lifemark Hospitals of Louisiana, Inc. (hereinafter "Lifemark") are parties to this contract. Lifemark successfully moved for withdrawal of the bankruptcy reference so that the entire controversy moved to the district court. Additionally, a lawsuit that LEI had initiated against Lifemark in 1987 in state court was removed to bankruptcy court and then to the district court, where it has been consolidated with several other lawsuits between the parties and their affiliates.

The district court also has independent federal question jurisdiction of these consolidated cases pursuant to 28 U.S.C. § 1337. Lifemark has asserted claims against LEI for violations of federal antitrust laws. The district court has supplemental jurisdiction of all of the other claims in this matter pursuant to 28 U.S.C. § 1367(a). The non-antitrust claims are so related to the antitrust claims that they form part of the same case or controversy under Article III of the United States Constitution.

II. Appellate Jurisdiction

Lifemark filed a Motion to Recuse the Honorable G. Thomas Porteous on October 1, 1996. Judge Porteous denied that Motion on October 16, 1996 and issued a Judgment denying said motion on October 17, 1996. (See Lifemark's Motion to Recuse and the District Court's Judgment, Exhibits "B" and "C", respectively). Lifemark files this Writ of Mandamus pursuant to Fed. R. App. P. 21, and on the grounds that the district court abused its discretion in denying Lifemark's motion.

This Court has the authority to issue extraordinary writs pursuant to 28 U.S.C. § 1651(a), which provides that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." See In Re: Billedeaux, 972 F.2d 104 (5th Cir. 1992) (petition for writ of mandamus is appropriate remedy for denial of motion to recuse).

STATEMENT OF THE ISSUE

In a case that has been pending for ten years (the last three of which have been in federal court where the case has been presided over by several district judges), the plaintiff, Liljeberg Enterprises, Inc., just two months before the bench trial of this complex $140 million commercial dispute, hired on a contingency fee basis two additional trial counsel, Jacob J. Amato and Leonard L. Levenson, whose sole prior relationship to each other is their admitted longstanding personal friendship with the latest presiding Judge, the Honorable G. Thomas Porteous, Jr. The District Court improperly denied defendant, Lifemark's, Motion to Recuse pursuant to 28 U.S.C. § 455(a) on grounds that the Court felt that it could be fair and impartial. This Court must determine whether in the eyes of a reasonable person LEI's actions could create the mere "appearance of impropriety" under 28 U.S.C. § 455(a) such that a reasonable person "might" harbor doubts about Judge Porteous' impartiality.

Recusal motions are committed to the sound discretion of the district court. The issue on appeal, therefore, is whether the district court abused its discretion in determining that LEI's conduct would not create even an appearance of impropriety in the eyes of an objective, well-informed observer. United States v. Jordan, 49 F.3d 152, 157 (5th Cir. 1995).

STATEMENT OF THE CASE

I. Course of Proceedings and Disposition in the District Court

This case had its genesis in a lawsuit filed in the Civil District Court for the Parish of Orleans in 1987 by LEI against Lifemark concerning the interpretation of a contract between Lifemark and LEI. When LEI filed bankruptcy in January 1993, it also filed a motion to force assumption of this contract pursuant to 11 U.S.C. § 365. Thereafter, Lifemark counterclaimed, removed the Civil District Court litigation to the bankruptcy court, and successfully moved for withdrawal of the bankruptcy reference so that the entire controversy concerning LEI and Lifemark moved to the district court.

LEI has had several lawyers during the history of this controversy. As of September 1, 1996, LEI had five lawyers signed on to this case, most of whom have been involved for years in the specific controversy that was[1] set to go to trial in the district court on November 4, 1996. Nevertheless, on September 12, 1996, less than two months prior to trial, LEI sought leave to add two more attorneys to this case, Jacob J. Amato, Jr. and Leonard L. Levenson. (See St. Jude Hospital of Kenner, La., Inc.'s Motion to Enroll Additional Counsel of Record, Exhibit "D"). LEI's Motion was granted in the district court's order of September 18, 1996. (See district court's order, Exhibit "E"). In sharp contrast to the hourly fee schedule of LEI's other longstanding counsel, Messrs. Amato and Levenson were given an 11% contingency fee. (See Application to Employ Attorney for Special Assignment

[1] At the hearing on Lifemark's Motion to Recuse on October 16, 1996, Judge Porteous announced that he would continue the trial date. It has since been continued until June, 1997.

on a Contingency Basis and Order Authorizing Appointment of Attorneys, Exhibit "F").

On October 1, 1996, Lifemark filed a Motion to Recuse Judge Porteous on the grounds that LEI's last-minute hiring of Messrs. Amato and Levenson, admittedly two of Judge Porteous' closest friends, is violative of 28 U.S.C. § 455(a). Lifemark's Motion to Recuse was heard by Judge Porteous on October 16, 1996. Judge Porteous, for the reasons orally assigned, denied Lifemark's Motion and rendered a Judgment to that effect. (See Judgment, Exhibit "C"). (See Transcript of Hearing on Motion to Recuse, dated October 16, 1996, Exhibit "G"). Lifemark now files this Petition for Writ of Mandamus, seeking relief from this Court because the facts and law warrant Judge Porteous' disqualification from this case. Briefly stated, the district court abused its discretion in denying Lifemark's Motion to Recuse because LEI's eleventh-hour hiring of the district court's two closest friends, on a contingency fee basis, and in a complex multi-million dollar non-jury case, all create an appearance of impropriety expressly proscribed by 28 U.S.C. § 455(a).

II. Statement of the Facts

In 1983, LEI and Lifemark entered into a contract, entitled Clinical Pharmacy Management Agreement (hereinafter the "Pharmacy Agreement"). Under the Pharmacy Agreement, LEI supplies substantially all of the pharmacy requirements for the Kenner Regional Medical Center, now owned by Lifemark. This litigation originated in 1987 when LEI filed suit against Lifemark in the Civil District Court for the Parish of Orleans regarding the interpretation of the Pharmacy Agreement. LEI subsequently filed bankruptcy in 1993, and in accordance with that filing, LEI also filed a motion to force assumption of the Pharmacy Agreement pursuant to 11 U.S.C. § 365. This motion to assume was filed as an

adversary proceeding, in Bankruptcy Court. Lifemark counterclaimed against LEI and removed the Civil District Court suit to the bankruptcy court. Thereafter, both Lifemark and LEI added various claims and defenses. At the heart of the dispute, however, is the enforceability of the Pharmacy Agreement. Lifemark then successfully moved for withdrawal of the bankruptcy reference, and the entire litigation concerning LEI and Lifemark was accordingly moved to the federal district court. The first pleading was filed in the federal district court in May 1993. Therefore, this litigation has almost a ten-year long history, with more than three of those years pending in federal court. As of the date of the addition of Messrs. Levenson and Amato as counsel, the case was set for a November 4, 1996 trial, without a jury.

Over the course of this litigation, LEI has been represented by a team of attorneys, most of whom have been involved in this case for years. As of one and a half months ago, this team consisted of five lawyers, each of whom has actively participated at some point in this complex case. However, on September 12, 1996, with just one and a half months left prior to trial, LEI requested leave to add two new attorneys to its already adequate list of counsel. LEI also requested to remove the firm of Connick, Lentini, Wimberly & deLaup from its list, a firm that never actively participated in this case. The new attorneys are Jacob J. Amato, Jr. and Leonard L. Levenson. The only thing these two attorneys have in common is that they are, and have been for a long time, two of Judge Porteous' best friends. This fact is undisputed. (See Transcript of Motion to Recuse hearing, Exhibit "G").

Messrs. Amato and Levenson were also given an 11% contingency fee by LEI. Considered alone, this fact might not raise an eyebrow; however, in light of the totality of

the circumstances, LEI's motivations become highly circumspect. None of LEI's other counsel of record have contingency fee arrangements. Furthermore, LEI is seeking over $140 million in damages from Lifemark and its parent, AMI. Though Lifemark believes these damages are ludicrous and completely unsupported, they are nonetheless a measure of the value LEI places on the services of Mr. Amato and Mr. Levenson. Given that this is an extremely complicated lawsuit, involving byzantine accounting issues that have been in litigation for almost ten years, the potential contribution of Messrs. Amato and Levenson to LEI's case at this late stage is questionable.

As stated earlier, there is no doubt that Messrs. Amato and Levenson are extremely close, if not best friends with Judge Porteous. Neither Amato, Levenson, nor Judge Porteous has denied that fact. In fact, both Judge Porteous and Mr. Levenson admitted it in open court. (See Transcript, Exhibit "G"). Moreover, Mr. Levenson, in his oral argument before Judge Porteous opposing Lifemark's Motion to Recuse, went to great lengths to contradict several points made by Lifemark, but made no effort to discount his relationship with Judge Porteous. The relationship between them is also well known in the legal community. The public perception is that Messrs. Amato and Levenson frequently dine with Judge Porteous, at their expense, and that they travel and socialize with Judge Porteous on a very frequent basis. Both gentlemen feel free to visit the Judge in chambers as his friends. Mr. Amato was Judge Porteous' law partner in the 1970's, comes from the same political camp in Jefferson Parish, and has continued to be a close friend. Mr. Levenson was Judge Porteous' personal guest at the most recent Fifth Circuit Judicial Conference. Significantly, these gentlemen do not practice law together. In fact, they have nothing in

common as lawyers save their longstanding friendship with Judge Porteous. All of this was left undisputed[2] by Judge Porteous and by Messrs. Amato and Levenson at the October 16 hearing:

> **[Counsel for Lifemark]** . . . They have not denied what I have said about the relationship between you and them.
>
> **The Court:** I have not denied it, and I don't think they'd deny it.

(See Transcript, Exhibit "G" at p.16).

In its Memorandum in Opposition to Lifemark's Motion to Recuse, authored by Mr. Levenson, LEI took issue with Lifemark's assertions that he and Mr. Amato had only recently become involved in this decade-long, complex dispute:

> Although they have only recently become involved as counsel of record, Messrs. Amato and Levenson have spent a significant portion of the past summer educating themselves about the case before agreeing to serve as trial counsel.

This is an interesting admission. Messrs. Amato and Levenson made their first appearance in this controversy on September 3, 1996, by way of LEI's motion to employ them in its

---

[2] The only fact disputed by Judge Porteous was the assertion that Messrs. Amato and Levenson contributed in 1990 to his campaigns for election as state district judge. (See Transcript, Exhibit "G" at p.8). The Court explained that what appeared on Judge Porteous' 1990 state campaign finance report as contributions from Messrs. Amato and Levenson were, in reality, contributions at a fundraiser for all 13 incumbent judges then running for reelection in Jefferson Parish. Since Judge Porteous was unopposed, he asserted that he received only a small share of the funds raised. He admitted, however, that "The first time I ran, 1984, I think is the only time they gave me money." (See Transcript, Exhibit "G" at p.8). Mr. Levenson clarified that he did not contribute in 1984. Mr. Amato did not deny that he contributed in 1984, as stated by Judge Porteous.

Chapter 11 proceedings. At that time, Judge Porteous' November 4, 1996 trial date had been long established. Their admitted delay in appearing can be explained by a desire to make sure that Judge Porteous would try the case. On July 26, 1996, as expected, Judge Porteous reallotted 22 of his oldest and most difficult cases to the newly confirmed Judge Lemmon. (See Judge Porteous' Order, dated July 26, 1996, Exhibit "H"). This was in accordance with the custom and practice in the Eastern District of Louisiana. He did not reallot this case, which had already been passed on or handled by six other federal judges (Judges Livaudais, Berrigan, Duval, Clement, Sear, and Jones). It was only after their long-time friend decided not to dump this case that Messrs. Amato and Levenson decided to formally sign on.

The record is also clear that LEI and the Liljebergs believe that influence with governmental bodies, including judges, can be bought. In this Court's unpublished opinion, Travelers Insurance Co. v. St. Jude Hospital of Kenner, Louisiana, Inc., Exhibit "J", it was noted that LEI accused Judge Mentz, the district court judge presiding, of being influenced by his membership in social organizations whose membership included attorneys for Travelers. They also alleged that "two of the partners of the law firm representing Travelers "had a reputation in the New Orleans area community as being . . . influential Republican Party patron[s] who had significant contact with party officials responsible for making recommendations for federal appointments.'" Id. at p.7.

In addition, attached hereto as Exhibit "I" is a memorandum authored by John McDaniel, who was employed by Lifemark as the chief executive officer of the hospital, now Kenner Regional Medical Center, where LEI managed the pharmacy, from 1985-1990. In

this Memorandum he recounted John Liljeberg's threats to use all and any political means to see Lifemark/AMI discredited:

> Mr. Liljeberg was adamant about negatively impacting AMI if these issues could not be resolved through settlement efforts and indicated his intentions to cause a "public movement" against AMI involving both mayoral and city council resolutions, key community leader and physician support against AMI. He indicated that he would enlist civic organizations, federal, state and parish politicians, and even the Catholic Church in his effort to discredit AMI.

Clearly, then, the Liljebergs and LEI believe that public officials, including judges, can be influenced through social contact. They have accused others of doing it and, more importantly, have threatened to do it themselves. It is obvious to Lifemark, and now should be obvious to this Court, what LEI's intentions are in hiring not one, but two of the judge's life-long friends and giving them lucrative contingency fee retainers on the eve of a multi-million dollar non-jury trial.

SUMMARY OF ARGUMENT

The facts of this case that create a § 455(a) appearance of impropriety are these: (1) this litigation has been ongoing for almost ten years; (2) trial in this matter, without a jury, was set for November 4, 1996; (3) LEI already had five longstanding counsel of record when, on September 12, 1996, they added Messrs. Amato and Levenson as additional counsel; (4) although Messrs. Amato and Levenson have claimed they were involved several months earlier than their appearance, they only appeared after Judge Porteous chose not to reallot this case on July 26, 1996; (5) Messrs. Amato and Levenson are, admittedly, two of Judge Porteous' best friends; (6) LEI seeks at least $140 million in damages in this extremely complex case; (7) Messrs. Amato and Levenson have been given an 11% contingency fee arrangement for less than three months involvement; and (8) LEI has a documented history of accusing others of attempting to acquire improper influence over the judiciary and has threatened to use its own political influence to attain its goals. None of these facts are disputed. As set forth more fully below, these facts would make a reasonable person harbor doubts about the district court's partiality, which is proscribed by § 455(a). Thus, the District Court abused its discretion in refusing to disqualify itself in this matter.

ARGUMENT

It is respectfully submitted that LEI firmly believes it can influence Judge Porteous by hiring two of his best friends on the eve of trial. They seek to gain partiality, a tactic not foreign to their history of achieving results by that means. In fact, they have been the subject of two Fifth Circuit opinions on the subject. Travelers Insurance Co. v. St. Jude Hospital of Kenner, La., Inc., Exhibit "J"; Liljeberg v. Health Service Acquisition Corp., 486 U.S. 847 (1988). As observed by this Court in Travelers, their litigation tactics are intemperate and they have displayed only contempt for the judicial system.

Recusal is warranted because LEI's actions have created an appearance of impropriety which will infect doubt in any judgment Judge Porteous enters. The legal standard for recusal under the circumstances is provided in 28 U.S.C. § 455(a):

> Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

As this Court has recently held, the appropriate inquiry under § 455 is an objective one. Simply put, the issue is "how things appear to the well informed, thoughtful and objective observer, rather than the hypersensitive, cynical and suspicious person." United States v. Jordan, 49 F.3d 152, 156 (5th Cir. 1995). This Court has elaborated further:

> Because 28 U.S.C. § 455(a) focuses on the appearance of impartiality, as opposed to the existence in fact of any bias or prejudice, a judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks to the average person on the street. Use of the word "might" in the statute was intended to indicate that disqualification should follow if the reasonable man, were he to know all of the circumstances, would harbor doubts about the judge's impartiality.

Potashnick v. Port City Construction Co., 609 F.2d 1101, 1111 (5th Cir. 1980). This standard set forth in § 455(a) must be applied on a case by case basis. "No case is precisely

on point; . . . each Section 455(a) case is extremely fact intensive and fact bound, and must be judged on its unique facts and circumstances more than by comparison to situations considered in prior jurisprudence." Jordan, 49 F.3d at 156.

Even though Judge Porteous is a competent judge who is well suited to try this case, there is no question that a reasonable person would harbor doubts about his partiality based upon LEI's transparent attempt to manipulate the judicial system. As this Court has opined:

> [Our] stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way "justice must satisfy the appearance of justice."

Jordan, 49 F.3d at 157. Thus, recusal is mandated by the very standard set forth by this Court . The district court accordingly abused its discretion by denying Lifemark's motion.

It has been established that Messrs. Amato and Levenson are Judge Porteous' close friends. As LEI has pointed out, friendship by itself is insufficient grounds for a judge to disqualify himself. United States v. Murphy, 768 F.2d 1518, 1537 (7th Cir. 1985). However, in this case it is not just the fact of friendship, but rather the Liljebergs' patent attempt to manipulate these two very close friendships which creates an appearance this Court cannot ignore. An impartial observer aware of Judge Porteous' relationships with Messrs. Amato and Levenson, aware of the ten year history of this case, aware of the last minute enrollment of them as counsel, aware of the complexity of the case, aware of the contingency fee arrangement, and aware of the Liljebergs' attitudes regarding influencing people in power, would undoubtedly believe that LEI is attempting to acquire improper influence in this case. This Court is, therefore, bound by Section 455(a) to dispel the

appearance of impropriety by curing the district court's abuse of its discretion.

LEI has completely failed to adequately explain away any of these suspect circumstances surrounding the hiring of Amato and Levenson. Nevertheless, even if LEI could come up with plausible reasons for the last minute hiring of Messrs. Amato and Levenson, their reasons would be irrelevant. The damage is already done - the appearance of impropriety has been created.

LEI, both in briefs and at oral argument, made much of the fact that Lifemark did not provide specifics to show Judge Porteous' close relationships with Messrs. Amato and Levenson. However, as this Court has stated, "[a] § 455(a) recusal is self-executing . . . no affidavit (or in this case "opinion poll"), is necessary to present the claimed basis for disqualification to the Court." Travelers, Exhibit "J", at p.14. Moreover, even if the rule did require Lifemark to give specifics, neither Judge Porteous nor Mr. Levenson has denied the extent of their relationship. (See Transcript, Exhibit "G" at p.16).

At the hearing on Lifemark's Motion to Recuse, Judge Porteous made the observation that he thought he could be fair:

> Does that make the uninformed observer satisfied? I don't know. But in my mind I am satisfied because if I had any question as to my ability, I would have called and said, "Look, you're right."

(See Transcript, Exhibit "G" at p.9).

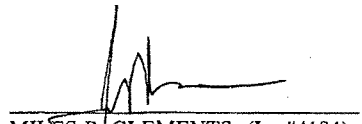
It is respectfully submitted that this is not the appropriate standard for a § 455(a) recusal. Judge Porteous also observed that he is human. That is why the Fifth Circuit Court's standard is not what the judge thinks, but what "the average person on the street" or the fully informed objective observer thinks.

Lifemark has clearly presented its basis for disqualification under § 455(a). Application of the appearance of impropriety standard to the facts presented can produce no other result than recusal. The hiring of two of the judge's best friends on the eve of a bench trial in a complex, decade long case, for a contingency fee, where claims of over $100 million are being made, reeks of impropriety. This Court must, under the clear standard of § 455(a), reverse Judge Porteous' decision.

CONCLUSION

This Court has long held that the "appearance of impropriety" under § 455(a) must be judged by whether the average person on the street might have doubts about the Court's impartiality under the circumstances in this case. Such an observer, fully informed of the Liljebergs' past attempts to misuse and abuse the system, aware of the Court's relationship to the two lawyers in question, aware of the implications of the timing of Messrs. Amato and Levenson's appearance, and aware of the fact that these gentlemen have no professional relationship other than their long friendship with Judge Porteous, would undoubtedly perceive the obvious: the Liljebergs are attempting to obtain an improper advantage. Whether Judge Porteous believes he can be impartial or not, whatever judgment he enters will always be subject to the doubt created by the Liljebergs' cynical attempt to manipulate the system. Section 455(a) recusal is designed to prevent that doubt, and is therefore mandated in this case.

Respectfully submitted,



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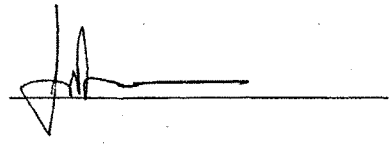
ATTORNEYS FOR LIFEMARK
HOSPITALS OF LOUISIANA, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the Honorable G. Thomas Porteous and upon counsel of record for Liljeberg Enterprises, Inc. by hand delivery.

New Orleans, Louisiana this 24th day of October, 1996.



IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. _____

LIFEMARK HOSPITALS OF LOUISIANA, INC. ET AL.
VERSUS
LILJEBERG ENTERPRISES, INC.
C.A. NO. 93-1794 C/W
93-4249
95-2922
95-3993

IN RE: LIFEMARK HOSPITALS OF LOUISIANA, INC.
PETITIONER

APPENDIX TO BRIEF OF PETITIONER
LIFEMARK HOSPITALS OF LOUISIANA, INC.

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INDEX TO APPENDIX

"A" Docket Sheet - In Re: Liljeberg Enterprises, Inc.

"B" Lifemark Hospitals of Louisiana, Inc.'s Motion to Recuse

"C" Honorable G. Thomas Porteous, Jr.'s Judgment on Lifemark Hospitals of Louisiana, Inc.'s Motion to Recuse

"D" Ex Parte Motion of St. Jude Hospital of Kenner LA., Inc. to Enroll Additional Counsel of Record

"E" Order Granting St. Jude Hospital of Kenner La., Inc.'s Ex Parte Motion to Enroll as Counsel

"F" Liljeberg Enterprises, Inc.'s Application by Debtor to Employ Attorney for Special Assignment on a Contingent Fee Basis

"G" Transcript of Hearing on Plaintiff's Motion to Recuse before the Honorable G. Thomas Porteous, Jr., October 16, 1996

"H" Minute Entry Reallotting Judge Porteous' cases to Judge Lemmon dated July 26, 1996

"I" Memorandum from John W. McDaniel to Donna Erb dated May 24, 1988

"J" Travelers Insurance Co. v. St. Jude Hospital of Kenner, Louisiana, Inc., No. 93-3891 (5th Cir. Nov. 21, 1994).

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Proceedings include all events. MASTER PROTO
2:93cv1794 In re: Liljeberg Ent Inc MAG-2
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6/1/93	1	MISCELLANEOUS BANKRUPTCY MATTER: motion to withdraw the reference of the debtor's mtn to assume executory contract by plaintiff Lifemark Hospitals (sw) [Entry date 06/02/93] [2:93cv1794]
6/2/93	2	ORDERED that a hearing on mtn to w/draw the reference of debtor's mtn to assume executory contract will be held at 10:00 6/23/93; that any objection to said mtn shall be made in writing on or bfr 6/16/93 by Judge Marcel Livaudais (sw) [2:93cv1794]
6/16/93	3	Motion by defendant Liljeberg Ent Inc and ORDER that hrg on mtn to w/draw the reference of debtor's mtn to assume executory contract [2-1] originally set for 6/23/93 is continued at 10:00 7/7/93; that any objection to said mtn shall be filed on or bfr 6-30-93 by Judge Livaudais Date Signed: 6/17/93 (sw) [Entry date 06/17/93] [2:93cv1794]
6/25/93	4	Motion by plaintiff Lifemark Hospitals and ORDER that debtor's mtn to w/draw the reference of debtor's mtn to assume executory contract is continued at 10:00 8/4/93 by Judge Livaudais Date Signed: 6/29/93 (sw) [Entry date 06/29/93] [2:93cv1794]
6/30/93	5	MINUTE ENTRY 6/29/93: ORDERED that mtns set for hrg at 10:00 7/7/93 bfr Judge will be submitted w/o oral argument by Judge Marcel Livaudais (sw) [2:93cv1794]
7/7/93	6	Motion by plaintiff Lifemark Hospitals and ORDER for attorney John Flowers to appear pro hac vice by Judge Marcel Livaudais Date Signed: 7/8/93 (sw) [Entry date 07/09/93] [2:93cv1794]
7/19/93	7	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file response to amd memo in opp to mtn to w/draw reference of mtn to assume by Judge Marcel Livaudais Date Signed: 7/20/93 (sw) [Entry date 07/21/93] [Edit date 07/21/93] [2:93cv1794]
7/20/93	8	Reply by plaintiff Lifemark Hospitals to amd memo in opp to mtn to w/draw reference of mtn to assume (sw) [Entry date 07/21/93] [2:93cv1794]
7/20/93	9	Motion by defendant Liljeberg Ent Inc and ORDER that hrg on mtn to w/draw the reference of debtor's mtn to assume executory contract [2-1] is cont until 10:00 8/18/93 by Judge Marcel Livaudais Date Signed: 7/21/93 (sw) [Entry date 07/22/93] [Edit date 07/26/93] [2:93cv1794]
8/10/93	10	MINUTE ENTRY 8/10/93: ORDERED that mtn to w/draw the reference of debtor's mtn to assume executory contract [2-1] set for hrg at 10:00 8/18/93 bfr Judge will be submitted w/o oral argument by Judge Marcel Livaudais (sw) [Entry date 08/11/93] [2:93cv1794]

10/19/93 11 ORDER AND REASONS: granting LHL's mtn for withdrawal of reference on the debtor's mtn to assume [1-1] ; Status Conf set 3:00 10/29/93 in chambers by Judge Marcel Livaudais (br) [Entry date 10/20/93] [Edit date 10/20/93] [2:93cv1794]

11/1/93 12 MINUTE ENTRY 10/29/93: A Status Conf was held this date. Next status conf is scheduled at 3:00 11/19/93 by Judge Marcel Livaudais (sw) [Entry date 11/02/93] [2:93cv1794]

11/22/93 13 MINUTE ENTRY 11/22/93: A Status Conf was held 11/19/93; A Pre-Trial Conference will be held at 9:00 6/17/94; the Non-jury Trial will be held at 9:30 7/18/94. Counsel are to confer & develop a proposed discovery scheduled for this matter & are to present said schedule to the Court on or bfr 1/17/94 by Judge Marcel Livaudais (sw) [Entry date 11/23/93] [2:93cv1794]

11/22/93 14 MINUTE ENTRY 11/22/93: Clerk is directed to file the documents listed below (from U.S. Bankruptcy Court) & attached herewith into the record by Judge Marcel Livaudais (sw) [Entry date 11/23/93] [2:93cv1794]

12/14/93 15 MOTION by plaintiff Lifemark Hospitals to make all adversary rules applicable to debtor's mtn to assume executory contract (sw) [2:93cv1794]

12/14/93 16 ORDERED that motion by Lifemark Hospitals of LA to make all adversary rules applicable to debtor's mtn to assume executory contract [15-1] is granted, reserving the right to the ptys to object to application of specific rules if appropriate by Judge Marcel Livaudais Date Signed: 12/13/93 (sw) [2:93cv1794]

1/4/94 17 Motion by defendant Liljeberg Ent Inc and ORDER that same be granted an extension of 20 days in which to file responsive pleadings by Judge Marcel Livaudais Date Signed: 1/5/94 (sw) [Entry date 01/06/94] [2:93cv1794]

1/6/94 19 Joint Motion by debtor Liljeberg Ent Inc, plaintiff Lifemark Hospitals and ORDER for withdrawal of reference of the debtor's obj to Lifemark Hospital of Louisiana, Inc.'s proof of claim and the trial of the claim obj is consolidated w/the trial of the assumption mtn. Parties to file copies of Lifemark's proofs of claim and debtor's obj to Lifemark's claims; by Judge Marcel Livaudais Date Signed: 1/7/94 (rg) [Entry date 01/10/94] [2:93cv1794]

1/7/94 18 MTN by pla Lifemark Hospitals to compel debtor Liljeberg Ent Inc to respond to discovery propounded by pla. referred to Magistrate Ivan L. Lemelle at 9:00 1/26/94 (dno) [Entry date 01/10/94] [2:93cv1794]

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2:93cv1794 In re: Liljeberg Ent Inc MAG-2
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1/12/94	20	Motion by plaintiff Lifemark Hospitals and ORDER consolidating cases 2:93-cv-1794 with member cases 2:93-cv-4249; by Judge Marcel Livaudais Date Signed: 1/13/93 (REF: 93-1794 & 93-4249) (rg) [Entry date 01/13/94] [2:93cv1794]
1/12/94	21	Motion by plaintiff Lifemark Hospitals and ORDER for attorney, John Flowers to appear pro hac vice for same is GRANTED by Judge Marcel Livaudais Date Signed: 1/13/94 (REF 93-4249) (dp) [Entry date 01/13/94] [2:93cv1794]
1/19/94	22	MINUTE ENTRY 1/19/94: ORDERED that mtns set for hrg on 1/26/94 will be on the briefs by Magistrate Ivan L. Lemelle (Ref: 93-1794) (sw) [Entry date 01/20/94] [2:93cv1794]
1/24/94	23	Objection by debtor Liljeberg Ent Inc to further extension (Ref: Both cases) (sw) [2:93cv1794]
1/24/94	24	MOTION by defendant Liljeberg Ent Inc to dismiss the antitrust and unfair trade practices counterclaims of Lifemark Hospitals of LA, Inc. to be heard before Judge at 10:00 2/16/94 (RE: 93-1794) (br) [Entry date 01/25/94] [2:93cv1794]
1/26/94	25	MINUTE ENTRY 1/26/94: At a previous conf with the court, the court suggested that counsel for Lifemark Hospitals file a proposed schedule, trial date having been fixed for 7/18/94. A final pre-trial conf will be held at 9:15 6/17/94; non-jury trial will commence at 9:30 7/18/94 by Judge Marcel Livaudais (Ref: Both cases) (sw) [Edit date 03/08/94] [2:93cv1794]
1/26/94	26	Motion by plaintiff Lifemark Hospitals and ORDER continuing hrg on motion by Liljeberg Ent Inc to dismiss the antitrust and unfair trade practices counterclaims of Lifemark Hospitals of LA, Inc. [24-1] at 10:00 3/2/94 by Judge Marcel Livaudais Date Signed: 1/28/94 (Ref: Both cases) (sw) [Entry date 01/28/94] [Edit date 01/28/94] [2:93cv1794]
1/28/94	27	MOTION by debtor Liljeberg Ent Inc to remand case to Civil District Court, Parish of Orleans to be heard before Judge at 10:00 2/16/94 (Ref: Both cases) (sw) [Entry date 01/31/94] [2:93cv1794]
2/3/94	29	MINUTE ENTRY 2/3/94: The M.E. entered 1/26/94 [25-1], setting forth the scheduling order in this consoidated action is amd to include the following: written reports of experts who may be witnesses for defendant(s) shall be obtained & delivered to counsel for plaintiff(2) as soon as possible, but in no event later than 60 days prior to the pre-trial conf date by Judge Marcel Livaudais (Ref: Both cases) (sw) [Entry date 02/07/94] [2:93cv1794]

2/4/94	28	MINUTE ENTRY 2/4/94: ORDERED that mtns set for hrg at 10:00 2/16/94 bfr Judge will be submitted w/o oral argument by Judge Marcel Livaudais (Ref: Both cases) (sw) [Entry date 02/07/94] [2:93cv1794]
2/7/94	30	Motion by defendant Liljeberg Ent Inc and ORDER that Jack Mark Stolier's name be removed from the court's records as counsel for same by Judge Marcel Livaudais Date Signed: 2/8/94 (Ref: Both cases) (sw) [Entry date 02/08/94] [2:93cv1794]
2/8/94	31	Motion by plaintiff Lifemark Hospitals in 2:93-cv-01794 and ORDERED that the hrg on the mtn by dft, Liljeberg Ent Inc to remand to CDC, Parish of Orleans [27-1] is reset to 3/2/94 at 10am by Judge Marcel Livaudais Date Signed: 2-9-94 (REF 93-1794) (jlb) [Entry date 02/10/94] [2:93cv1794]
2/14/94	32	MOTION by plaintiff Lifemark Hospitals for partial summary judgment to be heard before Judge at 10:00 3/2/94 (Ref: Both cases) (sw) [Entry date 02/16/94] [2:93cv1794]
2/14/94	34	Notice of Partial Dismissal by Lifemark Hospitals, counterclaimant, to dismiss, withut prej, its claims agst dfts-in-counterclaim, John Liljeberg, Robert Liljebert, and St. Jude Hospital of Kenner, La but reserving its claims agst debtor, Liljeberg Enterprises, Inc. (Re: Both Cases) (br) [Entry date 02/17/94] [2:93cv1794]
2/17/94	33	MINUTE ENTRY 2/17/94: ORDERED that mtns set for hrg at 10:00 3/2/94 bfr Judge will be submitted w/o oral argument by Judge Marcel Livaudais (Ref: Both cases) (sw) [2:93cv1794]
2/17/94	35	Reply Memo in opposition by pla Lifemark Hospitals to mtn to dismiss the antitrust and unfair trade practices counterclaims of Lifemark Hospitals of LA, Inc. [24-1] filed by dft Liljeberg Ent Inc. (REF BOTH CASES) (dno) [Entry date 02/18/94] [2:93cv1794]
2/22/94	36	Memo in opposition by plaintiff Lifemark Hospitals to motion to remand case to Civil District Court, Parish of Orleans [27-1] filed by debtor Liljeberg Ent Inc Ref 93-1794 & 93-4249 (kh) [2:93cv1794]
2/23/94	37	Mtn by dft Liljeberg Ent Inc and ORDERED that the mtn by pla, Lifemark Hospital of LA, Inc. for partial sum jgm [32-1] is cont to 10:00 3/30/94 by Judge Marcel Livaudais Date Signed: 2-23-94 (REF 93-1794) (jlb) [Entry date 02/24/94] [2:93cv1794]
2/28/94	38	Motion by debtor Liljeberg Ent Inc and ORDER for leave to file suppl memo in support of mtn for remand by Judge Marcel Livaudais Date Signed: 3/1/94 (Ref: Both cases) (sw)

[Entry date 03/02/94] [2:93cv1794]

3/2/94	39	Supplemental Memorandum by debtor Liljeberg Ent Inc in support of their motion to remand case to Civil District Court, Parish of Orleans [27-1] (Ref: Both cases) (sw) [2:93cv1794]
3/4/94	40	MINUTE ENTRY 3/1/94: Hrg held on mtn by Lifemark Hospitals to compel debtor Liljeberg Ent Inc to respond to discovery propounded by [18-1]; ORDERED granted. Full disc responses shall be given by "LEI" no later than 3/11/94 by Magistrate Ivan L. Lemelle (Ref: Both cases) (sw) [Entry date 03/07/94] [2:93cv1794]
3/9/94	41	Motion by plaintiff Lifemark Hospitals and ORDER that trial scheduled for 7/18/94 be rescheduled by Judge Marcel Livaudais (Ref: Both cases) (sw) [Entry date 03/10/94] [2:93cv1794]
3/9/94	42	NOTICE/ORDER that a preliminary conference is scheduled before Courtroom Deputy at 8:40 4/19/94 by phone to set pre-trial & trial dates (Ref: Both cases) (sw) [Entry date 03/10/94] [2:93cv1794]
3/21/94	43	ORDER Case reassigned to Judge Ginger Berrigan by Judge Marcel Livaudais Date Signed: 3/21/94 (Ref: Both Cases) (cp) [2:93cv1794]
3/24/94	44	ORDER that matters be dktd in lead case only except for dispositives by Judge Ginger Berrigan Ref 93-1794 & 93-4249 (kh) [2:93cv1794 2:93cv4249]
3/28/94	45	ORDER: By 4/4/94, counsel shall notify the court of the following: special priority cases, moot mtns, waiver of oral argument w/briefs due 4/8/94. by Judge Ginger Berrigan (REF: ALL CASES) (rg) [Entry date 03/30/94] [2:93cv1794]
4/3/94	106	Witness list submitted by pla Lifemark Hospitals (REF BOTH CASES) (dno) [Entry date 04/04/95] [2:93cv1794]
4/28/94	46	Mtn by pla, Lifemark Hosp & ORDERED that attys Howard Sinor, Jr. & Edward D. Wegmann are withdrawn as counsel for said pla by Judge Ginger Berrigan Date Signed: 4-28-94 (REF BOTH CASES) (jlb) [Entry date 05/02/94] [2:93cv1794]

6/9/94	47	MINUTE ENTRY(6/8/94): ORDER that briefs as to Liljeberg's motion for partial summary judgment [32-1], the motion to remand case to Civil District Court, Parish of Orleans [27-1], the motion to dismiss the antitrust and unfair trade practices counterclaims of Lifemark Hospitals of LA, Inc. [24-1] are to be filed by 7/1/94 at which time the mtns are taken under advisement by Judge Ginger Berrigan Ref 93-1794 & 93-4249 (kh) [2:93cv1794]
6/21/94	48	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file suppl breif by Judge Ginger Berrigan Date Signed: 6/22/94 Ref 93-1794, 93-4249 (kh) [Entry date 06/23/94] [2:93cv1794]
6/23/94	49	Supplemental memorandum by plaintiff Lifemark Hospitals to motion for partial summary judgment [32-1] Ref 93-1794 & 93-4249 (kh) [2:93cv1794]
6/29/94	50	Mtn by debtor & dft Liljeberg Ent Inc, John Liljeberg & Robert L Liljeberg and ORDER extending time until 7/8/94 at 5:00pm to file all briefs & memos directed to mtns described by Court's M.E. dtd 6/8/94, entered 6/9/94. by Judge Ginger Berrigan Date Signed: 6/30/94 (REF BOTH CASES) (dno) [Entry date 07/01/94] [2:93cv1794]
6/30/94	51	RETURN OF SERVICE of subps to Lifemark Hospitals of LA & American Med Intl Inc svd 6/28/94. (REF BOTH CASES) (dno) [Entry date 07/01/94] [2:93cv1794]
7/8/94	53	Motion by plaintiff Lifemark Hospitals and ORDER extending time to file resp to memo anticip[ated to be filed by Liljeberg until 7/15/94 by Judge Ginger Berrigan Ref 93-1794, 93-4249 (kh) [Entry date 07/12/94] [2:93cv1794]
7/11/94	52	Memo in opposition by debtor Liljeberg Ent Inc to motion for partial summary judgment [32-1] filed by plaintiff Lifemark Hospitals Ref 93-1794 (kh) [2:93cv1794]
7/15/94	54	Reply by plaintiff Lifemark Hospitals to response to Lifemark's motion for partial summary judgment [32-1] Ref 93-1794 & 93-4249 (kh) [Entry date 07/18/94] [2:93cv1794]
7/19/94	56	Motion by Lifemark for exp hrg and ORDER finding the motion for protective order [55-1] dismissed as moot as stip by Magistrate Ivan L. Lemelle Date Signed: 7/26/94 Ref 93-1794 & 93-4249 (kh) [Entry date 07/27/94] [2:93cv1794]
7/27/94	55	MOTION by Lifemark for protective order Ref 93-1794 & 93-4249 (kh) [Edit date 07/27/94] [2:93cv1794]

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2:93cv1794 In re: Liljeberg Ent Inc MAG-2
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7/29/94	57	ORDER Case 93-1794, 93-4249 & 92-1234 are reassigned to Judge Marcel Livaudais by Judge Ginger Berrigan Ref 93-1794, 93-4249 (kh) [2:93cv1794 2:93cv4249]
8/15/94	58	MINUTE ENTRY (8/15/94): Status Conf will be held on 8/23/94 at 9:15 am by Judge Marcel Livaudais (REF: 93-1794 & 93-4249) (gw) [2:93cv1794]
8/24/94	59	MINUTE ENTRY 8/23/94: A conf was held this date. ORDERED that mtn by Lifemark Hospital for partial summary judgment [32-1] & mtn by Liljeberg Ent Inc to dism the antitrust & unfair trade practices counterclaims of Lifemark Hospitals [24-1] be cont until completion of disc. The mtn to remand case to Civil District Court, Parish of Orleans [27-1] remains submitted; cases are reassigned to Judge Edith B. Clement by Judge Marcel Livaudais (Ref: Both cases) (sw) [Entry date 08/25/94] [Edit date 08/25/94] [2:93cv1794]
8/31/94	60	ORDER Case reassigned to Judge Ginger Berrigan by Judge Edith B. Clement (Ref: 93-1794, 93-4249) (ps) [Edit date 08/31/94] [2:93cv1794]
9/9/94	61	NOTICE that a preliminary conference is scheduled by telephone before courtroom deputy at 10:00 9/27/94 by Clerk (REF: Both Cases) (kc) [2:93cv1794]
9/23/94	62	MOTION by defendant Liljeberg Ent Inc to compel pla, Lifemark Hosptials of Louisiana & American Medical International for production of documents referred to Magistrate Ivan L. Lemelle to be heard before Mag/Judge Lemelle at 9:00 a.m. on 10/19/94. (REF BOTH CASES) (dp) [Entry date 09/26/94] [Edit date 09/26/94] [2:93cv1794]
9/27/94	63	MINUTE ENTRY (9/27/94): Preliminary Conference held; amendments due w/in 30 days from court's ruling on motion by Liljeberg to dismiss ; pretrial conf set 9:00 5/31/95 & non-jury trial set 10:00 6/19/95 bfr Judge; by Clerk for by Judge Ginger Berrigan (REF: BOTH CASES) (kc) [2:93cv1794]
9/30/94	64	ORDER that all pleadings be filed in the lead case only except for documents which terminate a party or a case, by Clerk (REF: All Cases) (jd) [2:93cv1794]
10/4/94	65	Motion of Liljeberg Enterprise Inc and ORDER for appearance of co-counsel Don M. Richard by Judge Ginger Berrigan Date Signed: 10/5/94 Ref all cases (kh) [Entry date 10/06/94] [2:93cv1794]
10/11/94	66	Memo in opposition by plaintiff Lifemark Hospitals to motion to compel pla, Lifemark Hosptials of Louisiana & American Medical International for production of documents [62-1] filed by Liljeberg Ref 93-1794 & 93-4249 (kh) [Entry date 10/13/94] [2:93cv1794]

10/14/94 67 MINUTE ENTRY(10/14/94): that the motion of Liljeberg to compel pla, Lifemark Hosptials of Louisiana & American Medical International for production of documents [62-1] set for hrg on 10/19/94 will be decided on the brief & is submitted by Magistrate Ivan L. Lemelle Ref 93-1794 (kh) [2:93cv1794]

10/21/94 68 MINUTE ENTRY(10/20/94): ORDER granting in part & denying in part dft Liljeberg Ent Inc's motion to compel pla, Lifemark Hosptials of Louisiana & American Medical International for prod of documents [62-1]. by Magistrate Ivan L. Lemelle (REF 93-1794) (dno) [2:93cv1794]

10/25/94 69 MINUTE ENTRY(10/25/94): Case reassigned to Judge Stanwood R. Duval Jr. by Judge Ginger Berrigan (REF: All Cases) (jd) [2:93cv1794]

11/1/94 70 MINUTE ENTRY(10/31/94): Case reassigned to Judge Okla Jones II by Judge Stanwood R. Duval Jr. (REF: Both Cases) (jd) [Entry date 11/02/94] [2:93cv1794]

11/14/94 71 Joint Mtn by pla Lifemark Hospitals & dft Liljeberg Ent Inc and ORDER for protective order limiting disclosure of confidential information as stip. by Magistrate Ivan L. Lemelle (REF BOTH CASES) (dno) [Entry date 11/15/94] [2:93cv1794]

12/6/94 72 MINUTE ENTRY(12/2/94): Dft Liljeberg Ent's mtns to dismiss the antitrust and unfair trade practices counterclaims of Lifemark Hospitals of LA, Inc. [24-1] & to remand case to Civil District Court, Parish of Orleans [27-1] & pla Lifemark Hospital's mtn for partial sum jgm [32-1] are re-noticed for 8:30 2/15/95 by ORAL ARGUMENT. by Judge Okla Jones II (RF BOTH CASES) (dno) [Entry date 12/07/94] [2:93cv1794]

12/13/94 73 Mtn by pla Lifemark Hospitals and ORDER for leave to file suppl & amended answer to debtor's mtn to assume executory contract. by Judge Okla Jones II Date Signed: 12/15/94 (REF BOTH CASES) (dno) [Entry date 12/15/94] [2:93cv1794]

12/15/94 74 AMENDED ANSWER by pla Lifemark Hospitals to debtor's mtn to assume executory contract. (REF BOTH CASES) (dno) [2:93cv1794]

12/30/94 75 Mtn by atty Jack Stolier and ORDER withdrawing atty same from record as counsel for Liljeberg Enterprises. by Judge Okla Jones II Date Signed: 1/4/95 (REF BOTH CASES) (dno) [Entry date 01/05/95] [2:93cv1794]

1/10/95 76 Notice of Deposition by pla Lifemark Hospitals of John Liljeberg on 1/18/95. (REF BOTH CASES) (dno)

[Entry date 01/11/95] [2:93cv1794]

1/10/95 77 Notice of Deposition by pla Lifemark Hospitals of Robert Liljeberg on 1/19/95. (REF BOTH CASES) (dno) [Entry date 01/11/95] [2:93cv1794]

1/31/95 78 MTN by pla Lifemark Hospitals for partial sum jgm to be heard before Judge at 8:30 3/15/95 (REF BOTH CASES) (dno) [2:93cv1794]

2/2/95 79 Motion by plaintiff Lifemark Hospitals and ORDER that the original affidavit of Walter Earl Bissex be filed into the record by Judge Okla Jones II Date Signed: 2/6/95 (REF: 93-1794 & 93-4249) (gw) [Entry date 02/06/95] [2:93cv1794]

2/6/95 80 Introductory & explanatory guide to phases of suppl memo by pla Lifemark Hospitals in support of its mtn for partial sum jgm [78-1] (REF BOTH CASES) (dno) [Entry date 02/09/95] [2:93cv1794]

2/7/95 90 Mtn by dft Liljeberg Ent Inc and ORDER for leave to file suppl memo & Exhibit numbers 47 through 53 thereof, under seal as stip. by Judge Okla Jones II Date Signed: 3/3/95 (REF BOTH CASES) (dno) [Entry date 03/06/95] [Edit date 03/17/95] [2:93cv1794]

2/7/95 91 Sealed Document (dno) [Entry date 03/06/95] [Edit date 03/17/95] [2:93cv1794]

2/9/95 92 Mtn by pla Lifemark Hospitals and ORDER that same is allowed to substitute suppl memo in lieu of suppl memo filed previously filed. by Judge Okla Jones II Date Signed: 3/3/95 (REF BOTH CASES) (dno) [Entry date 03/06/95] [Edit date 03/17/95] [2:93cv1794]

2/13/95 81 Mtn by pla Lifemark Hospitals and ORDER expediting its mtn for protective order to 2/13/95 at 9:30am. FURTHER ORDERED after teleconference that depo is hereby cont to be reset after ptys' counsel meet & attempt amicable resolution of issues herein. by Magistrate Ivan L. Lemelle (REF BOTH CASES) (dno) [Entry date 02/15/95] [2:93cv1794]

2/14/95 93 Mtn by dft Liljeberg Ent Inc & ORDER for leave to file 1) 2nd suppl memo in opp to Lifemark's mtn for sum jgm: response to Lifemark's Appendix E; 2) Exhibit 57; & 3) Exhibit 58. by Judge Okla Jones II Date Signed: 3/3/95 (REF BOTH CASES) (dno) [Entry date 03/06/95] [Edit date 03/17/95] [2:93cv1794]

2/15/95 82 MTN by pla Lifemark Hospitals for protective order referred to Magistrate Ivan L. Lemelle at 9:30 2/13/95 (REF BOTH CASES) (dno) [2:93cv1794]

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2/15/95	83	Mtn by dft & debtor Liljeberg Ent Inc and ORDER that its mtn to remand case to Civil District Court, Parish of Orleans [27-1] s WITHDRAWN. by Judge Okla Jones II Date Signed: 2/16/95 (REF BOTH CASES) (dno) [Entry date 02/16/95] [2:93cv1794]
2/21/95	84	MINUTE ENTRY(2/15/95): ORDER granting dft Liljeberg's mtn to dismiss the unfair trade practices & denied as to antitrust claims [24-1] withdrawing dft Liljeberg's mtn to remand case to Civil District Court, Parish of Orleans [27-1] & denying pla Lifemark's mtn for partial sum jgm [32-1]. by Judge Okla Jones II (REF BOTH CASES) (dno) [Entry date 02/22/95] [Edit date 02/22/95] [2:93cv1794]
2/21/95	87	Mtn by debtor Liljeberg Ent Inc and ORDER extending time an addl 15 days for ptys to file expert reports. by Magistrate Ivan L. Lemelle Signed: 2/24/95 (REF BOTH CASES) (dno) [Entry date 02/27/95] [Edit date 02/27/95] [2:93cv1794]
2/22/95	85	Memo in opposition by pla Lifemark Hospitals to ex parte mtn for extension of time to file expert reports filed by dft Liljeberg Ent Inc. (REF BOTH CASES) (dno) [Entry date 02/23/95] [2:93cv1794]
2/23/95	86	Memorandum by dft Liljeberg Ent Inc in support of its mtn for extension of time to file expert reports. (REF BOTH CASES) (dno) [Entry date 02/24/95] [2:93cv1794]
2/24/95	88	Notice of Deposition by pla Lifemark Hospitals of Wendy Neeb on 3/9/95. (REF BOTH CASES) (dno) [Entry date 02/27/95] [2:93cv1794]
2/24/95	89	Notice of Deposition by pla Lifemark Hospitals of Warren Arms on 3/14/95. (REF BOTH CASES) (dno) [Entry date 02/27/95] [2:93cv1794]
2/24/95	95	Mtn by pla Lifemark Hospitals and ORDER for leave to file suppl memo in support of its mtn for extension of time to file expert reports. by Judge Okla Jones II Date Signed: 3/3/95 (REF BOTH CASES) (dno) [Entry date 03/06/95] [Edit date 03/17/95] [2:93cv1794]
3/3/95	94	2nd suppl memo in opposition by dft Liljeberg Ent Inc to mtn for sum jgm: response to Lifemark's appendix E [78-1] filed by pla Lifemark Hospitals (REF BOTH CASES) (dno) [Entry date 03/06/95] [Edit date 03/17/95] [2:93cv1794]
3/3/95	96	Suppl Memo by pla Lifemark Hospitals in opposition to dft Liljeberg's mtn for extension of time to file expert reports. (REF BOTH CASES) (dno) [Entry date 03/06/95] [Edit date 03/17/95] [2:93cv1794]

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3/3/95	97	Introductory & explanatory guide to phases of suppl memo by pla Lifemark Hospitals in support of its mtn for partial sum jgm [78-1] (REF BOTH CASES) (dno) [Entry date 03/06/95] [Edit date 03/17/95] [2:93cv1794]
3/7/95	98	Mtn by dft Liljeberg Ent Inc & ORDER extending time until 3/10/95 at 5:00pm to file its opp to pla Lifemark's mtn for sum jgm set for 3/15/95. by Judge Okla Jones II Date Signed: 3/8/95 (REF BOTH CASES) (dno) [Entry date 03/09/95] [Edit date 03/17/95] [2:93cv1794]
3/10/95	101	Memo in opposition by dft Liljeberg Ent Inc to mtn for partial sum jgm [78-1] filed by pla Lifemark Hospitals. (REF BOTH CASES) (dno) [Entry date 03/17/95] [2:93cv1794]
3/13/95	99	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file a suppl memo in support of its mtn for partial sum jgm by Judge Okla Jones II Date Signed: 3/15/95 (REF: 93-1794 & 93-4249) (gw) [Entry date 03/16/95] [Edit date 03/17/95] [2:93cv1794]
3/15/95	100	Suppl Memorandum by plaintiff Lifemark Hospitals in in support of its motion for partial sum jgm [78-1] (REF: 93-1794 & 93-4249) (gw) [Entry date 03/16/95] [Edit date 03/17/95] [2:93cv1794]
3/16/95	102	MINUTE ENTRY(3/15/95): ORDERED that pla Lifemark Hospitals' mtn for partial sum jgm [78-1] set for this date cont to 8:30 3/29/95. by Judge Okla Jones II (REF BOTH CASES) (dno) [Entry date 03/17/95] [2:93cv1794]
3/24/95	105	Mtn by dft Liljeberg Ent Inc and ORDER that original ex parte mtn for leave to file 2nd suppl memo in opp to mtn for sum jgm. Exhibit 57 & 58 be substituted w/corrected Exhibit 58 & 59 as stip. by Judge Edith B. Clement Date Signed: 3/29/95 (REF BOTH CASES) (dno) [Entry date 03/29/95] [Edit date 03/29/95] [2:93cv1794]
3/24/95	114	Mtn by dft Liljeberg Ent Inc and ORDER for leave to file its suppl memo in oppostion to Lifemark's mtn for partial sum jgm. by Judge Ginger Berrigan Date Signed: 4/6/95 (REF BOTH CASES) (dno) [Entry date 04/10/95] [2:93cv1794]
3/27/95	103	MINUTE ENTRY(3/27/95): Pla Lifemark Hospitals' mtn for partial sum jgm [78-1] set for 3/29/95 reset for 8:30 4/12/95. by Judge Ginger Berrigan (REF BOTH CASES) (dno) [Entry date 03/28/95] [2:93cv1794]
3/27/95	104	MTN by dft Liljeberg Ent Inc to compel prod of further documentation from plas to complete discovery referred to Magistrate Ivan L. Lemelle at 9:00 4/12/95 (REF BOTH CASES) (dno) [Entry date 03/28/95] [2:93cv1794]

4/3/95	107	Exhibit list by pla Lifemark Hospitals (REF BOTH CASES) (dno) [Entry date 04/04/95] [2:93cv1794]
4/4/95	108	Memo in opposition by pla Lifemark Hospitals to mtn to compel prod of further documentation from plas to complete discovery [104-1] filed by dft Liljeberg Ent Inc. (REF BOTH CASES) (dno) [2:93cv1794]
4/4/95	109	MINUTE ENTRY (4/4/95): ORDERED that the mtn set for hrg on 4/12/95 will be on the briefs by Magistrate Ivan L. Lemelle (REF: both cases) (gw) [Entry date 04/05/95] [Edit date 04/05/95] [2:93cv1794]
4/4/95	110	Exhibit list by defendant Liljeberg Ent Inc (REF: 93-1794 & 93-4249) (gw) [Entry date 04/05/95] [2:93cv1794]
4/4/95	111	Witness list submitted by defendant Liljeberg Ent Inc (REF: 93-1794 & 93-4249) (gw) [Entry date 04/05/95] [2:93cv1794]
4/5/95	112	NOTICE case reallotted to Magistrate Judge 2 by Clerk (Ref: all cases) (ps) [2:93cv1794]
4/6/95	113	ANSWER by dft Liljeberg Ent Inc to amended counterclaim & counterclaims in response thereto of Lifemark Hospitals. (REF BOTH CASES) (dno) [2:93cv1794]
4/7/95	115	Suppl Memo in opposition by dft Liljeberg Ent Inc to mtn for partial sum jgm [78-1] filed by pla Lifemark Hospitals. (REF BOTH CASES) (dno) [Entry date 04/10/95] [2:93cv1794]
4/10/95	116	MINUTE ENTRY(4/7/95): Pla Lifemark Hosp's mtn for partial sum jgm [78-1] set for 4/12/95 is reset for 8:30 5/10/95. by Judge Ginger Berrigan (REF BOTH CASES) (dno) [2:93cv1794]
4/11/95	118	Mtn by dft Liljeberg Ent Inc and ORDER for leave to file reply to pla's memo in opp to dft's mtn to compel. by Judge Ginger Berrigan Date Signed: 4/12/95 (REF BOTH CASES) (dno) [Entry date 04/13/95] [2:93cv1794]
4/12/95	117	MINUTE ENTRY(4/12/95): ORDER granting pla Liljeberg's mtn to compel prod of further documentation from plas to complete discovery [104-1] AS STIP. by Magistrate Ivan L. Lemelle (REF BOTH CASES) (dno) [2:93cv1794]
4/13/95	119	Reply by dft Liljeberg Ent Inc to pla Lifemark's response to same's mtn to compel. (REF BOTH CASES) (dno) [2:93cv1794]

Proceedings include all events. MASTER PROTO
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4/18/95	123	Mtn by pla Lifemark Hospitals and ORDER expediting its mtn to dismiss counterclaims & to strike related affirmative defenses or for separate trial of counterclaims to 5/10/95 at 8:30am. by Judge Ginger Berrigan (REF BOTH CASES) (dno) [Entry date 04/21/95] [2:93cv1794]
4/19/95	120	Notice of Deposition by pla Lifemark Hospitals of Peggy Mire on 4/26/95. (REF BOTH CASES) (dno) [2:93cv1794]
4/19/95	121	Notice of Deposition by pla Lifemark Hospitals of Tom Rasor on 4/28/95. (REF BOTH CASES) (dno) [2:93cv1794]
4/19/95	122	Notice of Deposition by pla Lifemark Hospitals of Shirley Ellisor on 4/27/95. (REF BOTH CASES) (dno) [2:93cv1794]
4/20/95	124	MTN by pla Lifemark Hospitals to dismiss counterclaims & to strike related affirmative defenses or, alternatively, for separate trial of counterclaims & related affirmative defenses to be heard before Judge at 8:30 5/10/95 (REF BOTH CASES) (dno) [Entry date 04/21/95] [2:93cv1794]
4/21/95	128	Motion by plaintiff Lifemark Hospitals for exp hrg on mtn for review of Mag's order and ORDER that the mtn to review will be submitted on briefs by Judge Okla Jones II Date Signed: 5/2/95 (REF: ALL CASES) (pck) [Entry date 05/03/95] [Edit date 05/03/95] [2:93cv1794]
4/24/95	131	Motion by plaintiff Lifemark Hospitals for exp hrg and ORDER that pla's mtn for partial sum jgm will be submitted on briefs only by Judge Okla Jones II Date Signed: 5/2/95 (REF: BOTH CASES) (pck) [Entry date 05/03/95] [2:93cv1794]
5/2/95	125	Memorandum by defendant Liljeberg Ent Inc in opposition to Lifemark's mtn for exped hrg on its 2nd mtn for partial sum jgm (REF: BOTH CASES) (bb) [Entry date 05/03/95] [2:93cv1794]
5/2/95	126	Memo in opposition by defendant Liljeberg Ent Inc to motion of Lifemark to dismiss counterclaims & to strike related affirmative defenses or, alternatively, for separate trial of counterclaims & related affirmative defenses [124-1] filed by plaintiff Lifemark Hospitals (REF: BOTH CASES) (bb) [Entry date 05/03/95] [2:93cv1794]
5/2/95	127	Reply memorandum by defendant Liljeberg Ent Inc to pla's memo in support of mtn for review of Mag's order (REF: BOTH CASES) (bb) [Entry date 05/03/95] [2:93cv1794]
5/3/95	129	MOTION by plaintiff Lifemark Hospitals for review of Mag's order issd on 4/12/95 to be heard before Judge Jones on briefs (REF: ALL CASES) (pck) [2:93cv1794]

5/3/95	130	MOTION by plaintiff Lifemark Hospitals for partial summary judgment to be heard before Judge Jones on briefs (REF: ALL CASES) (pck) [2:93cv1794]
5/4/95	133	Mtn by pla Lifemark Hospitals and ORDER for leave to file suppl memo in support of its mtn to dismiss counterclaims & to strike. by Judge Okla Jones II (REF BOTH CASES) (dno) [Entry date 05/11/95] [2:93cv1794]
5/5/95	132	MINUTE ENTRY(5/4/95): ORDERED that pla Lifemark's mtn for partial sum jgm & to dismiss counterclaims set for 5/10/95 are taken under submission to be decided w/o oral argument. by Judge Okla Jones II (REF BOTH CASES) (dno) [2:93cv1794]
5/11/95	134	Suppl Memo by pla Lifemark Hospitals in support of its mtn to dismiss counterclaims & to strike related affirmative defenses or, alternatively, for trial of counterclaims & related affirmative defenses [124-1] (REF BOTH CASES) (dno) [2:93cv1794]
5/15/95	135	Motion by plaintiff Lifemark Hospitals in 2:93-cv-01794 and ORDER for leave to file the attached suppl memo in support of the 2nd mtn for partial sum jgm is granted. by Judge Okla Jones II Date Signed: 5/19/95 (Ref: Both Cases) (cp) [Entry date 05/19/95] [2:93cv1794]
5/16/95	137	Mtn by pla Lifemark Hospitals and ORDER expediting its mtn to strike jury demand. Matter will be submitted on briefs only. Opp to mtn due by noon on 6/2/95. by Judge Okla Jones II Date Signed: 5/19/95 (REF BOTH CASES) (dno) [Entry date 05/23/95] [2:93cv1794]
5/16/95	139	Mtn by pla Lifemark Hospitals and ORDER that all briefs in support & in opp to the mtn for partial sum jgm filed by same on 4/24/95 be filed w/Court by 5/31/95 at noon. by Judge Okla Jones II Date Signed: 5/19/95 (REF BOTH CASES) (dno) [Entry date 05/23/95] [2:93cv1794]
5/19/95	136	Memorandum by plaintiff Lifemark Hospitals in 2:93-cv-01794 in support of motion for partial summary judgment (Ref: Both Cases) [130-1] (cp) [2:93cv1794]
5/19/95	138	MTN by pla Lifemark Hospitals to strike jury demand to be heard before Judge on briefs only (REF BOTH CASES) (dno) [Entry date 05/23/95] [2:93cv1794]
5/23/95	140	Memo in opposition by dft Liljeberg Ent Inc to mtn to strike jury demand [138-1] filed by pla Lifemark Hospitals. (REF BOTH CASES) (dno) [Entry date 05/24/95] [2:93cv1794]

5/25/95	141	MINUTE ENTRY(5/25/95): ORDERED that Non-jury Trial set for 6/19/95 is CONT to 8:30 12/4/95. A conf to discuss preliminary trial matters is set for 8:00am on same day. Final pre-trial conf set for 8:30 11/21/95 as stip. by Judge Okla Jones II (REF 93-1794) (dno) [Entry date 05/26/95] [Edit date 05/26/95] [2:93cv1794]
6/2/95	142	Memo in opposition by dft Liljeberg Ent Inc to renewed mtn for sum jgm [130-1] filed by pla Lifemark Hospitals. (REF BOTH CASES) (dno) [Entry date 06/06/95] [2:93cv1794]
6/13/95	143	Mtn by pla Lifemark Hospitals and ORDER for leave to file response to brief of Liljeberg Ent Inc. by Judge Okla Jones II Date Signed: 6/16/95 (REF BOTH CASES) (dno) [Entry date 06/19/95] [2:93cv1794]
6/16/95	144	Memo by pla Lifemark Hospitals in response to Liljeberg's memo in opp to pla's mtn for partial sum jgm [130-1] (REF BOTH CASES) (dno) [Entry date 06/19/95] [2:93cv1794]
6/27/95	145	Mtn by pla Lifemark Hospitals and ORDER for leave to file addl docs to supp its mtn for sum jgm. by Judge Okla Jones II Date Signed: 6/29/95 (REF BOTH CASES) (dno) [Entry date 06/30/95] [2:93cv1794]
7/6/95	146	MTN by debtor Liljeberg Ent Inc for partial sum jgm to be heard before Judge at 8:30 8/2/95 (REF BOTH CASES) (dno) [Entry date 07/10/95] [2:93cv1794]
7/11/95	147	MTN by dft Liljeberg Ent Inc for partial sum jgm to be heard before Judge at 8:30 8/16/95 (REF BOTH CASES) (dno) [Entry date 07/12/95] [2:93cv1794]
7/25/95	148	Memo in opposition by pla Lifemark Hospitals to both mtns for partial sum jgm [147-1] [146-1] filed by dft Liljeberg Inc. (REF BOTH CASES) (dno) [2:93cv1794]
7/27/95	149	MINUTE ENTRY(7/25/95): ORDER & REASONS denying Lifemark Hospitals' mtn for review of Mag's order issd on 4/12/95 [129-1]. by Judge Okla Jones II (REF BOTH CASES) (dno) [Entry date 07/28/95] [2:93cv1794]
8/2/95	150	MINUTE ENTRY (7/31/95): Ordered that the mtn of Liljeberg Enterprises' mtn for partial sum jgm set for 8/2/95 will be submitted on briefs only without oral argument. by Judge Eldon E. Fallon Date Signed: 7/31/95 (Ref: 93-1794) (cp) [2:93cv1794]
8/7/95	153	Mtn by dft Liljeberg Ent Inc and ORDER for leave to file suppl memo in support of its mtn for partial sum jgm. by Judge Okla Jones II Date Signed: 8/15/95 (REF BOTH CASES) (dno) [Entry date 08/16/95] [2:93cv1794]

8/11/95	151	MINUTE ENTRY(8/10/95): Ordered that mtn of Liljeberg Ent will be submitted on briefs w/o oral argument on 8/16/95 by Judge Okla Jones II Date Signed: 8/10/95 (bb) [2:93cv1794]
8/11/95	155	Mtn by pla Lifemark Hospitals and ORDER for entry of a protective order as listed. by Judge Okla Jones II Date Signed: 8/15/95 (REF BOTH CASES) (dno) [Entry date 08/16/95] [2:93cv1794]
8/14/95	152	MTN by pla Lifemark Hospitals for leave to file 2nd suppl answer to debtor's mtn to assume executory contract referred to Magistrate Joseph C. Wilkinson Jr. at 11:00 8/30/95 (REF BOTH CASES) (dno) [2:93cv1794]
8/15/95	154	Suppl Memorandum by dft Liljeberg Ent Inc in support of its mtn for partial sum jgm [147-1]. (REF BOTH CASES) (dno) [Entry date 08/16/95] [2:93cv1794]
8/15/95	156	Re-notice of Hearing by pla Lifemark Hospitals setting its mtn for leave to file 2nd suppl answer to debtor's mtn to assume executory contract [152-1] at 11:00 8/30/95 bfr Mag Wilkinson. (REF BOTH CASES) (dno) [Entry date 08/16/95] [2:93cv1794]
8/21/95	157	Letter to MAg Lemelle from atty Don Richard dtd 8/4/95 re 7/25/95 order issued by Judge Jones. (REF 93-1794) (dno) [2:93cv1794]
8/22/95	158	Memo in opposition by defendant Liljeberg Ent Inc to motion for leave to file 2nd suppl answer to debtor's mtn to assume executory contract [152-1] filed by plaintiff Lifemark Hospitals (REF: BOTH CASES) (pck) [2:93cv1794]
8/25/95	159	MINUTE ENTRY(8/24/95): ORDERED that pla Lifemark's mtn for leave to file 2nd suppl answer set for 8/30/95 is submitted on briefs as stip. by Magistrate Joseph C. Wilkinson Jr. (REF BOTH CASES) (dno) [2:93cv1794]
8/25/95	161	Mtn by pla Lifemark Hospitals and ORDER for leave to file suppl memo in support of its mtn for leave to file 2nd suppl and amended answer. by Magistrate Ivan L. Lemelle Date Signed: 8/28/95 (REF BOTH CASES) (dno) [Entry date 08/30/95] [2:93cv1794]
8/29/95	160	MINUTE ENTRY(8/28/95): ORDER & REASONS denying pla Lifemark Hospital's mtn for partial sum jgm [78-1]. by Judge Okla Jones II Date Signed: 8/28/95 (REF 93-1794) (dno) [2:93cv1794]
8/29/95	162	Suppl Memo by pla Lifemark Hospitals in support of its mtn for leave to file 2nd suppl answer to debtor's mtn to assume executory contract [152-1]. (REF BOTH CASES) (dno) [Entry date 08/30/95] [2:93cv1794]

8/30/95	163	MINUTE ENTRY(8/28/95): ORDER granting pla Lifemark Hospital's mtn for leave to file 2nd suppl answer to debtor's mtn to assume executory contract [152-1]. by Magistrate Ronald Fonseca (REF BOTH CASES) (dno) [2:93cv1794]
9/6/95	164	MINUTE ENTRY(9/5/95): ORDER & REASONS denying pla Lifemark Hospitals' 2nd mtn for partial sum jgm [130-1] by Judge Okla Jones II Date Signed: 9/5/95 (REF BOTH CASES) (dno) [2:93cv1794]
9/8/95	165	MINUTE ENTRY(9/7/95): ORDER & REASONS denying pla Lifemark Hospital's mtn to dismiss counterclaims & to strike related affirmative defenses or, alternatively, for separate trial of counterclaims & affirmative defenses [124-1]. FURTHER ORDERED that the alternative mtn to sever issues is DENIED. by Judge Okla Jones II Date Signed: 9/7/95 (REF 93-1794) (dno) [2:93cv1794]
9/15/95	166	MINUTE ENTRY(9/15/95): ORDERED that audit of 1,000 of Lifemark's patient charts by Liljeberg will be conducted in a room at hospital location to be selected & prepared by Lifemark on dates to be arranged by counsel primarily between hours of 3:00pm & 4:30pm only on Mondays though Fridays as stip. FURTHER ORDERED as stip. by Magistrate Joseph C. Wilkinson Jr. (REF BOTH CASES) (dno) [Entry date 09/18/95] [2:93cv1794]
9/25/95	167	MINUTE ENTRY(9/22/95): Pre-Trial Conf set for 11/21/95 at 8:30am is rescheduled for 11/21/95 at 9:15am bfr Judge Sear as stip. by Judge Morey L. Sear (REF BOTH CASES) (dno) [Entry date 09/26/95] [2:93cv1794]
10/2/95	168	1st amended Exhibit list by dft & debtor Liljeberg Ent Inc. (REF BOTH CASES) (dno) [2:93cv1794]
10/2/95	169	Suppl Witness list submitted by dft & debtor Liljeberg Ent Inc. (REF BOTH CASES) (dno) [2:93cv1794]
10/12/95	170	MINUTE ENTRY(10/11/95): ORDERED that all proceedings in this matter, including pre-trial conf set for 11/21/95 set before Judge, shall be conducted by Section "S" of this Court as stip. by Judge Morey L. Sear (REF BOTH CASES) (dno) [2:93cv1794]
10/13/95	171	MINUTE ENTRY(10/11/95): Pretrial conf set for 11/8/95 at 9:15am will be conducted by Judge Duplantier in his chambers. All other proceedings to be conducted by Section "S" by Judge Adrian G. Duplantier (originally dktd 10/16/95) (dno) [Entry date 10/18/95] [2:93cv1794]

10/20/95 172 Reply by dfts in counterclaim Lifemark Hospitals of LA, Lifemark Hospitals & Amer Med Intl to counterclaims of Liljeberg. (REF BOTH CASES) (dno) [Entry date 10/23/95] [2:93cv1794]

10/23/95 175 Sealed Document (dno) [Entry date 11/07/95] [2:93cv1794]

10/25/95 173 MINUTE ENTRY(10/25/95): ORDERED that a Status Conf is set for 2:00 10/27/95 in chambers. by Judge Okla Jones II (REF BOTH CASES) (dno) [Entry date 10/26/95] [2:93cv1794]

10/30/95 174 Sealed Document (dno) [2:93cv1794]

10/31/95 177 MINUTE ENTRY(10/27/95): A Conf was held this date in chambers. ORDERED that C.A. 94-3993 is consolidated w/C.A. 93-1794. Non-jury Trial set for 12/4/95 is cont to 8:30 6/3/96 as stip. FURTHER ORDERED that Pre-Trial Conf set for 11/8/95 bfr Judge Duplantier is cont to 8:30 5/16/96 bfr Judge Jones as stip. AMENDMENTS pleadings due w/in 30 days as stip. by Judge Okla Jones II (REF ALL CASES) (dno) [2:93cv1794]

10/31/95 176 Sealed Document (dno) [Entry date 11/07/95] [2:93cv1794]

11/3/95 178 Sealed Document (dno) [Entry date 11/07/95] [2:93cv1794]

11/7/95 179 Sealed Document (dno) [2:93cv1794]

11/7/95 180 Sealed Document (dno) [2:93cv1794]

11/7/95 181 MINUTE ENTRY(11/7/95): ORDERED that dft Liljeberg Ent Inc's mtns for partial sum jgm [146-1] & for partial sum jgm [147-1] are RESET for 8:30 2/7/96 as stip. by Judge Okla Jones II (REF 93-1794) (dno) [Entry date 11/08/95] [2:93cv1794]

11/14/95 182 MINUTE ENTRY(11/14/95): Dft Liljeberg Ent Inc's mtn for suppl relief & sanctions in connection w/ongoing audit by same of 1,000 patient charts in possession of Lifemark Hospitals, Inc. is DENIED in part & GRANTED in part as stip. by Magistrate Joseph C. Wilkinson, Jr. (REF 93-1794 & 93-4249) (dno) [Entry date 11/15/95] [2:93cv1794]

11/22/95 183 Sealed Document (dno) [2:93cv1794]

12/4/95 184 MINUTE ENTRY(11/30/95): A status conf was held this date bfr Mag. by Magistrate Joseph C. Wilkinson Jr. (REF 93-1794) (dno) [2:93cv1794]

12/13/95 185 MINUTE ENTRY(12/13/95): consolidating cases 2:93-cv-1794 with member cases 2:95-cv-2922. All docketing to be docketed in Master Case only as stip in order. by Judge Okla Jones II Date Signed: 12/13/95 (Ref: 93-1794 & 95-2922) (cp) [Entry date 12/14/95] [2:93cv1794]

12/15/95 186 Mtn by pla Lifemark Hospitals for exp hrg on its mtn for contempt of, alternatively, for modification of protective order and ORDER DENIED. Dfts are ordered to file an opp by 12/26/95 at 5:00pm. by Judge Okla Jones II Date Signed: 12/19/95 (REF ALL CASES) (dno) [Entry date 12/20/95] [Edit date 12/20/95] [2:93cv1794]

12/26/95 187 Reply by dft Liljeberg Ent Inc to mtn for contempt or, alternatively, for modification of protective order filed by pla Lifemark Hospitals. (REF BOTH CASES) (dno) [Entry date 12/27/95] [2:93cv1794]

1/2/96 188 Memo in opposition by pla Lifemark Hospitals to mtn for review of Mag Wilkinson's 11/15/95 order filed by dft Liljeberg Ent Inc. (REF ALL CASES) (dno) [Entry date 01/03/96] [2:93cv1794]

1/12/96 189 RETURN OF SERVICE of subps to Maxicare, Bergen Brunswig Drug Company & Louisiana Health Service & Indemnity Company svd 12/27/95. (REF 93-1794 & 93-4249) (dno) [Entry date 01/17/96] [2:93cv1794]

1/16/96 190 NOTICE case reallotted to Judge G. T. Porteous Jr. by Clerk (tbl) [Entry date 01/17/96] [2:93cv1794]

1/19/96 191 MINUTE ENTRY(1/17/96): Court's m.e. of 10/27/96 is amended to have C.A. 94-3993 re-allotted to Mag-2. All other aspects reamins in effect. by Judge G. T. Porteous Jr. (REF BOTH CASES) (dno) [Entry date 01/22/96] [2:93cv1794]

1/23/96 192 MOTION by plaintiff Lifemark Hospitals in 2:93-cv-01794 for protective order pursuant to Rule 26(c)(1) & 30(a)(2)(B) for an order quashing notices served upon dft, Liljeberg Enterprises, Inc., scheduling repeat depositions of Charlotte Arras, Bonnie Bicocchi & Kenny Buttone referred to Magistrate Joseph C. Wilkinson Jr. to be heard before Mag/Judge Wilkinson at 11:00 a.m. on 2/7/96 (REF ALL CASES) (dp) [Entry date 01/24/96] [Edit date 01/24/96] [2:93cv1794]

1/31/96 193 ORDER that a Status Conf is set for 10:00 a.m. on 3/1/96 bfr Judge in chambers to reschedule mtns set in these cases by Judge G. T. Porteous Jr. (REF 93-1794) (dp) [Entry date 02/01/96] [2:93cv1794]

2/8/96 194 MINUTE ENTRY (2/6/96): ORDER granting motion by dft, Lijebeg Enterprises for protective order pursuant to Rule 26(c)(1) & 30(a)(2)(B) for an order quashing notices served upon dft, Liljeberg Enterprises, Inc., scheduling repeat depositions of Charlotte Arras, Bonnie Bicocchi & Kenny Buttone [192-1] by Magistrate Joseph C. Wilkinson Jr. (REF 93-1794 & 93-4249) (dp) [Edit date 02/08/96] [2:93cv1794]

2/9/96	195	RETURN OF SERVICE of subp to Mediguip; svd 2/9/96. (dp) [Entry date 02/12/96] [2:93cv1794]
2/9/96	196	RETURN OF SERVICE of subp to Lifemark Hospitals of LA. Inc; svd 2/9/96. (dp) [Entry date 02/12/96] [2:93cv1794]
2/12/96	199	RETURN OF SERVICE of subp to Venacare USA, Inc; svd 2/13/96. (RE 93-1794 & 93-4249) (dp) [Entry date 02/13/96] [2:93cv1794]
2/13/96	197	RETURN OF SERVICE of subp to Physician Sales & Service, Inc.; svd 2/12/96. (REF 93-1794 & 93-4249) (dp) [2:93cv1794]
2/13/96	198	RETURN OF SERVICE of subp to Patio Drugs, Inc; svd 2/13/96. (dp) [2:93cv1794]
2/21/96	200	Objections by plaintiff Lifemark Hospitals in 2:93-cv-01794 to deposition subp. (dp) [2:93cv1794]
2/21/96	201	RETURN OF SERVICE of subp to Brian Hannah; svd 2/16/96. (dp) [Entry date 02/22/96] [2:93cv1794]
2/21/96	202	RETURN OF SERVICE of subp to Joann Slocolm; svd 2/19/96. (dp) [Entry date 02/22/96] [2:93cv1794]
2/22/96	203	RETURN OF SERVICE of subp to Bristol-Myers Squibb Co., Inc on 2/16/96. (dp) [2:93cv1794]
3/1/96	205	Motion by dfts Lifemark Hosp of LA Inc, Lifemark Hosp Inc, Amer Med Intl Inc & Stephen Faucheaux and ORDER for leave to file amd answer to cmp for TRO & prelim inj by Liljeberg Ent Inc by Judge G. T. Porteous Jr. Date Signed: 3/4/96 (REF: 95-2922) (gw) [Entry date 03/06/96] [2:93cv1794]
3/4/96	204	ORDER Pre-Trial Conference cont to 9:00 10/18/96; Non-jury Trial cont to 10:00 11/4/96; all deadlines are to be rescheduled with reference to this new trial date by Judge G. T. Porteous Jr. Date Signed: 3/4/96 (REF: 93-1794) (gw) [Entry date 03/06/96] [Edit date 03/06/96] [2:93cv1794]
3/4/96	206	AMENDED ANSWER by dfts Lifemark Hosp of LA Inc, Lifemark Hosp Inc, Amer Med Intl Inc & Stephen Faucheaux. (REF: 95-2922) (gw) [Entry date 03/06/96] [2:93cv1794]
3/6/96	207	Amd Witness list submitted by defendant Liljeberg Ent Inc (REF: 93-1794 & 93-4249) (gw) [2:93cv1794]
3/18/96	208	Motion by Lifemark Hospitals & Lifemark Hospitals of Louisiana, Inc and ORDER withdrawing attorney (attorney Moise S. Steeg Jr., attorney Charles L. Stern & & Steeg & O'Connor) by Judge G. T. Porteous Jr. Date Signed: 3/18/96 (REF: ALL CASES) (pck) [Entry date 03/21/96] [Edit date 03/21/96] [2:93cv1794]

3/18/96 209 Motion by plaintiff Lifemark Hospitals and ORDER to withdraw attorneys, Moise S. Steeg, Jr. & Charles L. Stern, Jr. of the firm of Steeg & O'Connor for same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 3/19/96 (REF 94-3993) (dp) [Entry date 03/21/96] [Edit date 05/10/96] [2:93cv1794]

4/4/96 210 Motion by plaintiff Lifemark Hospitals and ORDER that attorneys Miles Paul Clements, Joseph Nicholas Mole, Michael Raudon Phillips be enrolled as counsel for same by Judge G. T. Porteous Jr. Date Signed: 4/9/96 (REF: 93-1794, 93-4249, 95-2922) (jd) [Entry date 04/10/96] [2:93cv1794]

4/12/96 211 Motion by plaintiff Lifemark Hospitals and ORDER to enroll Miles P Clements, Joseph N Mole & Michael R Phillips as counsels of record by Judge G. T. Porteous Jr. Date Signed: 4/15/96 (REF: 94-3993) (gw) [Entry date 04/16/96] [2:93cv1794]

4/19/96 212 Motion by defendant Liljeberg Ent Inc and ORDER for appearance of Hans Joseph Liljeberg as additional co-counsel for same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 4/22/96 (dp) [Entry date 04/23/96] [2:93cv1794]

4/22/96 215 Motion by plaintiff Lifemark Hospitals and ORDER for expediting hrg on same's mtn for reconsideration & for partial summary judgment is GRANTED & set for 6/12/96 at 9:30 a.m. by Judge G. T. Porteous Jr. Date Signed: 5/9/96 (dp) [Entry date 05/10/96] [Edit date 07/11/96] [2:93cv1794]

4/29/96 213 Motion by plaintiff Lifemark Hospitals and ORDER for appearance of Kenneth Anthony Mayeaux as additional counsel for same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 4/30/96 (REF 94-3993) (dp) [Entry date 05/02/96] [2:93cv1794]

5/10/96 214 ORDER rescheduling motion by dft, Liljeberg Enterprises for partial sum jgm [146-1] & the motion by dft, Liljeberg Enterprises by for partial sum jgm [147-1] previously set for 5/16/96 to 6/12/96 at 9:30 a.m. by Judge G. T. Porteous Jr. (REF ALL CASES) (dp) [Edit date 07/11/96] [2:93cv1794]

5/10/96 216 MOTION by plaintiff Lifemark Hospitals for reconsideration and for mtn for partial summary judgment to be heard before Judge Porteous at 9:30 a.m. on 6/12/96. (REF 93-1794) (dp) [2:93cv1794]

5/15/96 217 Motion by defendant Liljeberg Ent Inc and ORDER for appearance of Stephen T. Wimberly & William Peter Connick as additional counsel of record for same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 5/16/96 (REF 93-1794, 93-4249, 95-2922) (dp) [Entry date 05/17/96] [Edit date 05/17/96] [2:93cv1794]

5/29/96 219 Motion by plaintiff Lifemark Hospitals and ORDER withdrawing attorney John Flowers r for same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 6/3/96 (dp) [Entry date 06/05/96] [2:93cv1794]

5/30/96 218 Memo in opposition by defendant Liljeberg Ent Inc to motion for partial sum jgm [146-1] filed by plaintiff Lifemark Hospitals. (REF ALL CASES) (dp) [2:93cv1794]

6/7/96 221 Motion by plaintiff Lifemark Hospitals in 2:93-cv-01794 and ORDER for leave to file reply brief to dft's memo in opp to same's mtn for partial summary judgment is GRANTED by Judge G. T. Porteous Jr. Date Signed: 6/10/96 (dp) [Entry date 06/11/96] [Edit date 07/23/96] [2:93cv1794]

6/10/96 220 ORDER re- setting motion by pla, Life Mark for reconsideration and for mtn for partial summary judgment [216-1] motion by dft, Liljeberg for partial sum jgm [146-1] ; motion by pla Life Mark to strike jury demand [138-1] to 9:30 a.m. on 6/25/96, w/oral argument by Judge G. T. Porteous Jr. (REF 93-1794) (dp) [Entry date 06/11/96] [Edit date 07/11/96] [2:93cv1794]

6/10/96 222 Reply by plaintiff Lifemark Hospitals to opp by dft, Liljeberg Enterprisest to same's motion for reconsideration and for mtn for partial summary judgment [216-1] (dp) [Entry date 06/11/96] [2:93cv1794]

6/19/96 223 RETURN OF SERVICE of supbs to Lifemark Hosptials of LA; svd 6/18/96. (dp) [2:93cv1794]

6/25/96 224 ORDER setting motion by pla, Life Mark for reconsideration and for mtn for partial summary judgment [216-1] previously set for 6/25/96 to 9:30 a.m. on 6/28/96 by Judge G. T. Porteous Jr. Date Signed: 6/24/96 (dp) [Entry date 06/26/96] [2:93cv1794]

7/1/96 225 SMOOTH MINUTES: Hrg held 6/28/96 bfr Judge denying motion by pla, Lifemark Hosptials for reconsideration and for mtn for partial summary judgment [216-1] & the motion by dft, Liljeberg for partial sum jgm [146-1] is taken under submission by Judge G. T. Porteous Jr. (dp) [Entry date 07/02/96] [2:93cv1794]

7/2/96	226	MOTION by plaintiff Lifemark Hospitals to compel discovery referred to Magistrate Joseph C. Wilkinson Jr. to be heard before Mag at 11:00 7/17/96 (REF: all cases) (gw) [2:93cv1794]
7/2/96	227	MOTION by plaintiff Lifemark Hospitals for leave to take the deposition of ptys who have already been deposed in case referred to Magistrate Joseph C. Wilkinson Jr. to be heard before Mag/Judge Wilkinson at 11:00 a.m. (REF ALL CASES) (dp) [Entry date 07/03/96] [Edit date 07/03/96] [2:93cv1794]
7/9/96	229	Motion by defendants, Liljeberg Ent Inc and ORDER for exped hrg on same's mtn to continue the mtn filed by pla to compel discovery agst dfts Lijeberg Enterprises & St. Jude is unncessary; dfts, Liljeberg Enterprises & St. Jude may file their oppositions to pla, Lifemark's mtn compel on or bfr 7/17/96; mtn will be decided w/out oral argument by Magistrate Joseph C. Wilkinson Jr. Date Signed: 7/10/96 (REF ALL CASES) (dp) [Entry date 07/12/96] [2:93cv1794]
7/9/96	231	Motion by defendants, Liljeberg Ent Inc & St. Jude and ORDER for exped hrg is unnecessary; dfts, Liljeberg & St. Jude may file their written report to pla's mtn for leave to take the deposition of ptys who have already been deposed by 7/17/96; said mtn will be be decided w/out on the briefs w/out oral argument by Magistrate Joseph C. Wilkinson Jr. Date Signed: 7/19/96. (REF ALL CASES) (dp) [Entry date 07/12/96] [2:93cv1794]
7/10/96	228	Memo in opposition by plaintiff Lifemark Hospitals to mtn to continue same's mtn to compel discovery filed by defendant Liljeberg Ent Inc (dp) [2:93cv1794]
7/10/96	230	MOTION by defendants, Liljeberg Ent Inc & St. Jude to continue mtn by pla, Lifemark to compel discovery agst Liljeberg & St. Jude referred to Magistrate Joseph C. Wilkinson Jr.; no hrg date set - matter will be heard on the briefs, w/out oral argument. (dp) [Entry date 07/12/96] [2:93cv1794]
7/10/96	232	MOTION by defendants, Liljeberg Ent Inc & St. Jude to continue mtn for leave to take the deposition of ptys who have already been deposed by pla, Lifemark referred to Magistrate Joseph C. Wilkinson Jr. No hrg date is set (Matter will be heard on the briefs w/out oral argument. (REF ALL CASES) (dp) [Entry date 07/12/96] [Edit date 07/23/96] [2:93cv1794]
7/12/96	237	Motion by defendant Liljeberg Ent Inc and ORDER for leave to file supplemental brief is GRANTED by Judge G. T. Porteous Jr. Date Signed: 7/22/96 (RF 93-1794) (dp) [Entry date 07/23/96] [Edit date 07/23/96] [2:93cv1794]

7/17/96 233 Memo in opposition by defendant Liljeberg Ent Inc to motion to compel discovery [226-1] filed by plaintiff Lifemark Hospitals. (REF 93-1794) (dp) [2:93cv1794]

7/17/96 234 MOTION by plaintiff Lifemark Hospitals for leave to file 3rd supplemental & amended answer to debtor's mtn to assume executory contract to be heard before Judge Porteous at 9:30 a.m. on 8/21/96. (REF 93-1794) (dp) [Entry date 07/18/96] [Edit date 07/18/96] [2:93cv1794]

7/18/96 235 MINUTE ENTRY (7/17/96): Hrg held this date dismissing the motion by pla, Lifemark for leave to take the deposition of ptys who have already been deposed in case [227-1] by Magistrate Joseph C. Wilkinson Jr. (REF 93-1794 (dp) [Entry date 07/19/96] [Edit date 07/19/96] [2:93cv1794]

7/19/96 236 Memo in opposition by plaintiff Lifemark Hospitals to motion for partial sum jgm [146-1] filed by defendant Liljeberg Ent Inc. (REF 93-1794) (dp) [Entry date 07/22/96] [2:93cv1794]

7/22/96 238 Memorandum by defendant Liljeberg Ent Inc in support of same's motion to continue mtn for leave to take the deposition of ptys who have already been deposed by pla, Lifemark [232-1]. (RF 93-1794) (dp) [Entry date 07/23/96] [2:93cv1794]

7/22/96 239 Motion by defendant Liljeberg Ent Inc in 2:93-cv-01794 and ORDER extending time to provide dft Lifemark Hospital with its final expert reports is GRANTED by Judge G. T. Porteous Jr. (REF 93-1794) (dp) [Entry date 07/24/96] [Edit date 07/24/96] [2:93cv1794]

7/22/96 240 Supplemental Memorandum by defendant Liljeberg Ent Inc. (REF 93-1794) (dp) [Entry date 07/24/96] [2:93cv1794]

8/6/96 241 MOTION by plaintiff Lifemark Hospitals in 2:93-cv-01794 for partial summary judgment pursuant to Rule 56 to be heard before Judge Porteous at 9:30 a.m. on 8/21/96 (REF 94-3993) (dp) [Entry date 08/07/96] [2:93cv1794]

8/13/96 242 Notice of Deposition by plaintiff Lifemark Hospitals of John McDaniel on 9/12/96. (REF 93-1794, 93-4249, 95-2922, 95-3993) (dp) [Entry date 08/14/96] [2:93cv1794]

8/13/96 243 Motion by dft, St. Jude Hospital of Kenner and ORDER to continue motion by pla, Lifemark for partial summary judgment pursuant to Rule 56 [241-1] previously set for 8/21/96 to 9:30 a.m. on 9/4/96 is GRANTED by Judge G. T. Porteous Jr. Date Signed: 8/15/96 (REF 94-3993) (dp) [Entry date 08/16/96] [Edit date 08/16/96] [2:93cv1794]

8/14/96 249 Motion by defendant Liljeberg Ent Inc and ORDER to extend time to respond to pla, Lifemark's mtn for leave of court to file an amended answer is GRANTED until 8/21/96 by Judge G. T. Porteous Jr. Date Signed: 8/15/96 (REF 94-3993) (dp) [Entry date 08/23/96] [Edit date 08/23/96] [2:93cv1794]

8/19/96 244 Witness list submitted by plaintiffs, Lifemark Hospitals. & AMI (REF 93-1794) (dp) [Entry date 08/20/96] [Edit date 08/20/96] [2:93cv1794]

8/19/96 245 Exhibit list by plaintiff Lifemark Hospitals. (REF 93-1794) (dp) [Entry date 08/20/96] [2:93cv1794]

8/19/96 246 Amended Witness list submitted by defendant Liljeberg Ent Inc. (REF 93-1794) (dp) [Entry date 08/20/96] [2:93cv1794]

8/20/96 247 RETURN OF SERVICE of subp to John McDaniel; svd 8/16/96. (REF 93-1794) (dp) [Entry date 08/21/96] [Edit date 08/21/96] [2:93cv1794]

8/21/96 248 Memo in opposition by defendant Liljeberg Ent Inc to motion for leave to file 3rd supplemental & amended answer to debtor's mtn to assume executory contract [234-1] filed by plaintiff Lifemark Hospitals. (REF 94-3993) (dp) [Entry date 08/22/96] [2:93cv1794]

8/22/96 250 RETURN OF SERVICE of subp to Kathleen V. Gaudet, LA. Board of Pharmacy; svd 8/21/96. (REF ALL CASES) (dp) [Entry date 08/23/96] [Edit date 08/23/96] [2:93cv1794]

8/23/96 251 MINUTE ENTRY (8/23/96): ORDERED that no later than 8/238/96 counsel must confer & submit to the Court separate letters as sitp by Magistrate Joseph C. Wilkinson Jr. (REF ALL CASES) (dp) [Entry date 08/26/96] [2:93cv1794]

8/27/96 252 Motion by dft, St. Jude Hospital and ORDER to extend time to file their opposition to mtn by pla, Lifemark's mtn for partial summary judgment is GRANTED until 8/28/96 by Judge G. T. Porteous Jr. Date Signed: 8/28/96 (REF 94-3993) (dp) [Entry date 08/29/96] [Edit date 08/29/96] [2:93cv1794]

8/28/96 253 Amended Witness list submitted by plaintiffs, Lifemark Hospitals & AMI. (REF 93-1794) (dp) [Entry date 08/29/96] [2:93cv1794]

8/28/96 254 Memo by dft, St. Jude Hospital in opposition to motion for partial sum jgm [146-1] filed by plaintiff Lifemark Hospitals. (REF 94-3993) (dp) [Entry date 08/29/96] [2:93cv1794]

Proceedings include all events. MASTER PROTO
2:93cv1794 In re: Liljeberg Ent Inc MAG-2
BKCY

9/6/96	255	MINUTE ENTRY (9/3/96): A Status Conf is set for 3:00 p.m. on 9/19/96 bfr Judge in chambers by Judge G. T. Porteous Jr. (REF ALL CASES) (dp) [Entry date 09/09/96] [Edit date 09/09/96] [2:93cv1794]
9/6/96	262	Motion by dft, St. Jude Hospital and ORDER for leave to file response to pla, Lifemark's reply memo concerning pla, Lifemark's mtn for summary judgment is GRANTED by Judge G. T. Porteous Jr. Date Signed: 9/18/96 (REF 94-3993) (dp) [Entry date 09/23/96] [Edit date 09/23/96] [2:93cv1794]
9/12/96	256	Stipulation by defendants, Liljeberg Ent Inc et al. (REF 93-1794) (dp) [Entry date 09/13/96] [2:93cv1794]
9/12/96	261	Motion by dft St. Jude Hospital of Kenner, LA and ORDER for appearance of Leonard L. Le venson to enroll as additional counsel for record of same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 9/18/96 (REF 94-3993) (dp) [Entry date 09/19/96] [Edit date 09/23/96] [2:93cv1794]
9/17/96	258	MOTION by plaintiff Lifemark Hospitals forr summary judgment pursuant to Rule 56 on the circumvention claims to be heard before Judge Porteous at 9:30 a.m. on 10/2/96. (REF ALL CASES) (dp) [Entry date 09/18/96] [2:93cv1794]
9/17/96	259	MOTION by plaintiff Lifemark Hospitals for partial summary judgment pursuant to Rule 56 to be heard before Judge Porteous at 9:30 a.m. on 10/2/96 (dp) [Entry date 09/18/96] [2:93cv1794]
9/17/96	260	MOTION by plaintiff Lifemark Hospitals for partial summary judgment pursuant to Rule 56 to be heard before Judge Porteous at 9:30 a.m. on 10/2/96 (dp) [Entry date 09/18/96] [2:93cv1794]
9/18/96	257	MOTION by plaintiff Lifemark Hospitals to withdraw the reference and to consolidate with respect to its mtn to dismiss the Chapter 11 proceedings of dft Liljeberg Enterprises, Inc. to be heard before Judge Porteous at 9:30 a.m. on 10/2/96. (REF ALL CASES) (dp) [2:93cv1794]
9/19/96	268	Motion by Liljeberg Ent Inc and ORDER withdrawing attorneys, William Peter Connick & Stephen T. Wimberly & substituting attorneys, Jacob J. Amato Jr & Leonard Louis Levenson for same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 9/23/96 (REF 93-1794) (dp) [Entry date 09/25/96] [Edit date 09/25/96] [2:93cv1794]
9/20/96	263	Supplemental memo by dft, St. Jude Hospital in response to pla, Lifemark's reply memo concering pla, Lifemark's mtn for partial summary judgment. (dp) [Entry date 09/23/96] [2:93cv1794]

9/23/96 266 Witness list submitted by defendants, Liljeberg Ent Inci & St. Jude Hospital. (dp) [Entry date 09/24/96] [2:93cv1794]

9/24/96 264 MINUTE ENTRY (9/23/96): A Status Conf was held on 9/19/96 ; dft, Liljeberg was given until 9/27/96 to respond to pla, Lifemark's 3 mtns for summary judgment, mtn to withdraw the reference & to consoldiate with respect to its mtn to dismiss the Chapter 11 proceedings; pla's expert reports are due 10/1/96; dft's expert reports are due 10/15/96; dft is given until 9/27/96 to submit its witness list by Judge G. T. Porteous Jr. (REF ALL CASES) (dp) [2:93cv1794]

9/24/96 265 RETURN OF SERVICE of subps to St. Charles General Hospital, Meadowcrest Professional Bldg, Doctor's Hospital of Jefferson, Lifemark Hospitals of LA., Lakewview Regional Medical Center Auxiliary, Highland Park Hospital, Inc., Northshore Medical Associates, Northshore Hospital Management Corp; svd 9/23/96. (REF ALL CASES) (dp) [Edit date 09/24/96] [2:93cv1794]

9/24/96 267 Memo in opposition by defendant Liljeberg Ent Inc to motion to withdraw the reference and to consolidate with respect to its mtn to dismiss the Chapter 11 proceedings of dft Liljeberg Enterprises, Inc. [257-1] filed by plaintiff Lifemark Hospitals. (REF 93-1794) (dp) [2:93cv1794]

9/25/96 269 RETURN OF SERVICE of subp to Tenet Health System Hospital, Inc; svd 9/24/96. (REF 93-1794) (dp) [Edit date 09/25/96] [2:93cv1794]

9/27/96 270 Motion by defendant Liljeberg Ent Inc and ORDER for expediting hrg on same's mtn for extension of time to file oppositions to pla, Lifemark's mtns for partial summary judgment is GRANTED & set for 9/27/96 at 1:00 p.m. by Judge Ginger Berrigan. (REF ALL CASES) (dp) [Entry date 09/30/96] [Edit date 09/30/96] [2:93cv1794]

9/27/96 272 Opposition by plaintiff Lifemark Hospitals to mtn by dft, Liljeberg Enterprises. (REF 93-1794) (dp) [Entry date 09/30/96] [2:93cv1794]

9/27/96 273 Witness list submitted by plaintiff Lifemark Hospitals. (REF 93-1794) (dp) [Entry date 09/30/96] [2:93cv1794]

9/30/96 271 Motion by defendant Liljeberg Ent Inc and ORDER for an extension of time to respond to 3 mtns by pla, Lifemark Hospitals for summary judgment is GRANTED until 10/2/96 by Judge Ginger Berrigan. Date Signed: 9/27/96 (dp) [Edit date 09/30/96] [2:93cv1794]

10/1/96 274 Stipulation by defendants, Liljeberg Ent Inc plaintiff Lifemark Hospitals. (REF 93-1794) (dp) [2:93cv1794]

10/1/96 275 Amended Witness list submitted by plaintiff Lifemark Hospitals. (REF 93-1794) (dp) [2:93cv1794]

10/1/96 276 Motion by plaintiff Lifemark Hospitals and ORDER for expediting hrg on same's mtn to recuse is GRANTED & is set for 10/16/96 at 10:30 a.m. by Judge G. T. Porteous Jr. Date Signed: 10/2/96 (REF ALL CASES) (dp) [Entry date 10/03/96] [2:93cv1794]

10/1/96 282 MOTION by plaintiff Lifemark Hospitals in 2:93-cv-01794 to compel payment of audit costs referred to Magistrate Joseph C. Wilkinson Jr. to be heard before Mag/Judge Wilkinson at 11:00 a.m. on 10/16/96 (dp) [Entry date 10/03/96] [2:93cv1794]

10/1/96 284 Motion by Lifemark Hosp of LA Inc and ORDER that expm hrg on its mtn to quash 30(b)(6) ntc of depo & subp d/t served on Tenet HealthSystem by dft Hosp Liljeberg is set for determination on the briefs w/o oral argument; Counsel for Liljeberg Ent Inc has filed its resp om 10/4/96 by Magistrate Joseph C. Wilkinson Jr. Date Signed: 10/7/96 (REF: all cases) (gw) [Entry date 10/10/96] [Edit date 10/10/96] [2:93cv1794]

10/2/96 277 MOTION by plaintiff Lifemark Hospitals to recuse to be heard before Judge Porteous at 10:30 a.m. on 10/16/96. (REF ALL CASES) (dp) [Entry date 10/03/96] [Edit date 10/03/96] [2:93cv1794]

10/2/96 279 Memo in opposition by defendant Liljeberg Ent Inc to motion for partial summary judgment pursuant to Rule 56 [260-1], motion for partial summary judgment pursuant to Rule 56 [259-1] filed by plaintiff Lifemark Hospitals. (REF ALL CASES) (dp) [Entry date 10/03/96] [2:93cv1794]

10/2/96 280 Memo in opposition by defendant Liljeberg Ent Inc to motion for partial summary judgment pursuant to Rule 56 [259-1] filed by plaintiff Lifemark Hospitals. (REF ALL CASES) (dp) [Entry date 10/03/96] [2:93cv1794]

10/2/96 281 Memo in opposition by defendant Liljeberg Ent Inc to motion for partial summary judgment pursuant to Rule 56 [241-1] filed by plaintiff Lifemark Hospitals (REF ALL CASES) (dp) [Entry date 10/03/96] [2:93cv1794]

10/3/96 278 MINUTE ENTRY (10/2/96): Having received the plas' mtn to recuse, the Court finds that in the best interest of justice all mtns are deferred pending resolution of the mtn to recuse by Judge G. T. Porteous Jr. (dp) [2:93cv1794]

10/4/96 286 Memo in opposition by defendant Liljeberg Ent Inc to motion to quash 30(b)(6) ntc of depo & subp d/t of Tenet HealthSystem Hosp Inc [285-1] filed by plaintiff Lifemark Hospitals (REF: all cases) (gw) [Entry date 10/10/96] [2:93cv1794]

10/7/96 283 RETURN OF SERVICE of subp to Liljeberg Enterprises, Inc; svd 10/3/96. (dp) [Entry date 10/08/96] [2:93cv1794]

10/8/96 289 Motion by plaintiff Lifemark Hospitals and ORDER for leave to file a supplemental memo in support of mtn to quash 30(b)(6) deposition & subpoena duces tecum is GRANTED by Magistrate Joseph C. Wilkinson Jr. (REF ALL CASES) (dp) [Entry date 10/11/96] [Edit date 10/11/96] [2:93cv1794]

10/9/96 285 MOTION by Lifemark Hosp of LA Incto quash 30(b)(6) ntc of depo & subp d/t served on Tenet HealthSystems Hosp Inc by dft Liljeberg referred to Magistrate Joseph C. Wilkinson Jr. for determination on the briefs w/o oral argument. (REF: all cases) (gw) [Entry date 10/10/96] [Edit date 10/10/96] [2:93cv1794]

10/9/96 287 MINUTE ENTRY (10/8/96): granting Lifemark Hosp of LA Inc's motion to quash 30(b)(6) ntc of depo & subp d/t served on Tenet HealthSystems Hosp Inc by dft Liljeberg [285-1] by Magistrate Joseph C. Wilkinson Jr. (REF: all cases) (gw) [Entry date 10/10/96] [2:93cv1794]

10/9/96 288 Memo in opposition by defendants Liljeberg Ent Inc & St Jude Hosp of Kenner to motion to recuse [277-1] filed by plaintiff Lifemark Hospitals (REF: all cases) (gw) [Entry date 10/10/96] [2:93cv1794]

10/10/96 290 Memorandum by plaintiff Lifemark Hospitals in support of same's motion to quash 30(b)(6) ntc of depo & subp d/t served on Tenet Health Systems Hosp Inc by dft Liljeberg [285-1] (REF ALL CASES) (dp) [Entry date 10/11/96] [Edit date 10/11/96] [2:93cv1794]

10/10/96 293 Motion by plaintiff Lifemark Hospitals and ORDER for leave to file supplemental memo in support of same's mtn to compel payment of audit costs is GRANTED by Magistrate Joseph C. Wilkinson Jr. Date Signed: 10/15/96 (dp) [Entry date 10/16/96] [2:93cv1794]

10/11/96 291 Memo in opposition by plaintiff Lifemark Hospitals to mtn by dft, Liljeberg Enterprises for review of Mag/Judge's order by defendant Liljeberg Ent Inc. (REF ALL CASES) (dp) [2:93cv1794]

10/11/96 292 Trial deposition designations by plaintiff Lifemark Hospitals. (REF ALL CASES) (dp) [2:93cv1794]

Proceedings include all events. MASTER PROTO
2:93cv1794 In re: Liljeberg Ent Inc MAG-2
BKCY

10/11/96 296 Motion by plaintiff Lifemark Hospitals and ORDER for leave to file reply memo to Liljeberg Ent Inc's opp to its mtn to recuse by Judge G. T. Porteous Jr. Date Signed: 10/15/96 (REF: ALL CASES) (gw) [Entry date 10/17/96] [2:93cv1794]

10/15/96 295 RETURN OF SERVICE of subp to Lifemark Hospitals of LA, Inc. svd 10/15/96. (REF ALL CASES) (dp) [Entry date 10/16/96] [Edit date 10/16/96] [2:93cv1794]

10/16/96 294 Memorandum by plaintiff Lifemark Hospitals in support of same's motion to compel payment of audit costs [282-1] (REF ALL CASES) (dp) [2:93cv1794]

10/16/96 297 Reply memo by plaintiff Lifemark Hospitals to Liljeberg's opp to its motion to recuse [277-1] (REF: ALL CASES) (gw) [Entry date 10/17/96] [2:93cv1794]

10/17/96 298 SMOOTH MINUTES: Hrg held 10/16/96 bfr Judge denying motion by pla, Lifemark Hospitals to recuse [277-1] by Judge G. T. Porteous Jr. (dp) [Entry date 10/18/96] [2:93cv1794]

[END OF DOCKET: 2:93cv1794]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC., ET AL.	*	CIVIL ACTION
	*	NO. 93-1794
	*	C/W 93-4249
VERSUS	*	C/W 95-2922
	*	C/W 95-3993
LILJEBERG ENTERPRISES, INC.	*	SECTION "T"

* *

MOTION TO RECUSE

NOW INTO COURT, through undersigned counsel, comes Lifemark Hospitals of Louisiana, Inc. ("Lifemark"), who respectfully submits that Liljeberg Enterprises, Inc.'s ("LEI") last minute enrollment of Jacob Amato and Leonard Levenson as trial counsel in this matter creates an appearance of impropriety prohibited under 28 U.S.C. §455(a).

Lifemark is in no way suggesting that this Court could not be impartial in determining this matter. But, as set forth fully in the Memorandum in Support attached hereto, the mere appearance of impropriety requires recusal. Thus, for the foregoing reasons and the reasons set forth in the memorandum, Lifemark respectfully requests that this Court recuse itself from this matter prusuant to 28 U.S.C. §455(a).

Respectfully submitted,

Miles P. Clements (La. #4184)
Joseph N. Mole, T.A. (La. #09538)
Michael R. Phillips (La. #21020)
Stephanie A. May (La. #24166)
FRILOT, PARTRIDGE, KOHNKE
& CLEMENTS, L.C.
3600 Energy Centre
1100 Poydras Street
New Orleans, Louisiana 70163-3600
Telephone: (504) 599-8000
Telecopy: (504) 599-8100
ATTORNEYS FOR PLAINTIFF,
LIFEMARK HOSPITALS OF
LOUISIANA, INC.

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing pleading on this 1st day of October, 1996 by hand delivery on all counsel of record.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS, INC.	CIVIL ACTION
VERSUS	NO. 93-1794 c/w 94-3993, 93-4249, 95-2922
LILJEBERG ENTERPRISES, INC.	SECTION "T"

JUDGMENT

On Wednesday, October 16, 1996, the court heard oral argument on Lifemark Hospitals, Inc.'s Motion to Recuse. The Court, having reviewed the motion to recuse, the opposition, the reply, and the response to the reply and having heard oral argument, for reasons stated in open court denies the Motion to Recuse. Accordingly,

IT IS ORDERED, ADJUDGED, AND DECREED that there be judgment entered denying Lifemark Hospitals, Inc.'s Motion to Recuse.

New Orleans, Louisiana, this 17th day of October, 1996.

G. Thomas Porteous, Jr.
United States District Judge

cc: Magistrate Judge Wilkinson
Clerk to Notify all Counsel

EXHIBIT
"C"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SEP 12 3 14 PM '96
LORETTA G. WHYTE
CLERK

LIFEMARK HOSPITALS, INC.	*	CIVIL ACTION
VERSUS	*	NO. ~~94-3993 c/w~~ 93-1794
ST. JUDE HOSPITAL OF KENNER, LA, INC.	*	93-4249 94-2922
	*	SECTION "T" (3)

* * * * * * * *

EX PARTE MOTION OF ST. JUDE HOSPITAL OF KENNER LA., INC. TO ENROLL ADDITIONAL COUNSEL OF RECORD

NOW INTO COURT, through undersigned counsel, comes St. Jude Hospital of Kenner La., Inc., which moves to enroll Jacob J. Amato, Jr., the law firm of Amato and Creely, APLC, Leonard L. Levenson and Leonard L. Levenson, APLC as additional counsel of record in the above referenced consolidated civil actions on behalf of St. Jude Hospital of Kenner La., Inc.

In accordance with ULLR 1.04, Kenneth C. Fonte remains designated as trial attorney on behalf of St. Jude Hospital of Kenner La., Inc..

Respectfully submitted,

JACOB J. AMATO, JR.
AMATO AND CREELY, APLC
901 Derbigny Street
Gretna, Louisiana 70054-0441
(504) 367-8181

LEONARD L. LEVENSON
LEONARD L. LEVENSON, APLC
427 Gravier Street, 3rd Floor
New Orleans, Louisiana 70130
(504) 586-0066

Kenneth C Fonte

KENNETH C. FONTE #5649
GOLDEN & FONTE
3900 Veterans Memorial Blvd.
Suite 200
Metairie, Louisiana 70002
(504) 455-0039
Trial Attorney

SEP 2 3 1996

FEE
PROCESS

EXHIBIT
"D"

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all counsel of record by placing a copy of same in the United States mail, postage prepaid and properly addressed this 11th day of September, 1996.

Kenneth C Ponte

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS, INC.	*	CIVIL ACTION
VERSUS	*	NO. 94-3993 c/w 93-1794
ST. JUDE HOSPITAL OF KENNER, LA, INC.	*	93-4249 94-2922
	*	SECTION "T" (3)

* * * * * * * *

ORDER

Considering St. Jude Hospital of Kenner La., Inc.'s foregoing Ex Parte Motion to Enroll as Counsel:

IT IS HEREBY ORDERED that Jacob J. Amato, Jr., the firm of Amato and Creely, APLC, Leonard L. Levenson and the firm of Leonard L. Levenson, APLC be and are hereby permitted to enroll as additional counsel of record on behalf of St. Jude Hospital of Kenner La., Inc..

New Orleans, Louisiana this 18 day of September, 1996.

UNITED STATES DISTRICT JUDGE

EXHIBIT
"E"

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF LOUISIANA

FILED

SEP 3 4 11 '93

IN RE:	*	NO. 93-10295
LILJEBERG ENTERPRISES, INC.	*	CHAPTER 11
DEBTOR	*	REORGANIZATION

APPLICATION BY DEBTOR TO EMPLOY ATTORNEY FOR SPECIAL ASSIGNMENT ON A CONTINGENT FEE BASIS

The application of Liljeberg Enterprises, Inc., through undersigned counsel, respectfully represents:

I.

On the 27th day of January, 1993, Debtor filed a petition under Chapter 11 of the Bankruptcy Code.

II.

Applicant has continued in possession of its property, and as debtor-in-possession, is now operating its business and managing its property.

III.

Debtor, as debtor-in-possession, wishes to employ Jacob J. Amato, Jr. and the law firm of Amato & Creely, and Leonard L. Levenson, APLC and Leonard L. Levenson ("Special Counsel") duly admitted to practice in the State of Louisiana.

EXHIBIT

"F"

IV.

Debtor wishes to employ Special Counsel to handle specific issues in the following matter:

1. Proceeding against AMI/Lifemark in the case styled "Lifemark Hospitals of Louisiana, Inc., et al v. Liljeberg Enterprises, Inc.", Civil Action No. 93-1794 c/w 93-4249, in the United States District Court for the Eastern District of Louisiana.

V.

The professional services Special Counsel are to render are:

a) to act as trial and, if necessary, appellate counsel for Debtor in connection with the lawsuits and all issues raised in the prosecution and defense thereof;

b) to prepare on behalf of the Debtor the necessary pleadings, discovery requests, and other legal papers; and

c) to perform all work necessary and incidental to the prosecution of the aforementioned case, including without limitation, conducting discovery, and any and all settlement discussions, all trial representation, and, to the extent necessary, the appeal of the matter and the seeking or opposing of supervisory writs and/or writs of certiorari.

VI.

Applicant desires to employ Special Counsel on a contingent fee basis. The contingent fee arrangement is the following:

1. LEI shall pay Special Counsel a contingency fee in the amount of Eleven (11%) percent of the net amount of all sums paid to, and received by, LEI from Lifemark or any of its corporate affiliates or corporate parent by settlement or by final and definitive judgment. The term "net amount" equals the sum of all damages recovered and paid to LEI or any of its agents, affiliates or stockholders after deducing therefrom any and all amounts withheld or offset, or otherwise not paid, by Lifemark or any of its corporate affiliates or corporate parent, on any counterclaims brought against LEI or its corporate affiliates arising out of, or related to, the aforesaid litigation.

2. Notwithstanding any provision of this agreement to the contrary, Special Counsel shall not be entitled to any fee whatsoever, contingency or otherwise, arising out of, or relating to, the recovery of unpaid reimbursable costs of pharmaceuticals owed to LEI by Lifemark or any of its corporate affiliates or corporate parent, and the interest thereon, which accrued prior to July 1, 1993. This claim for the recovery of unpaid reimbursable costs of pharmaceuticals prior to July 1, 1993, and the claim for interest thereon, is further described as the claim

presently pending before the court on a Motion for Partial Summary Judgment.

VII.

Special Counsel represents no interest adverse to Debtor as debtor-in-possession or the estate in the matters upon which they are to be engaged for Debtor as debtor-in-possession, and their employment would be to the best interests of this estate.

WHEREFORE, Applicant prays that it be authorized to employ and appoint Jacob J. Amato, Jr. and the law firm of Amato & Creely, and Leonard L. Levenson, APLC and Leonard L. Levenson to represent it as counsel in the above mentioned proceeding, and that it have such other and further relief as is just.

DRAPER & CULPEPPER, APLC

BY: _____

DOUGLAS S. DRAPER #5073
Suite 2630, LL&E Tower
909 Poydras Street
New Orleans, LA 70112
(504) 581-9595

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF LOUISIANA

IN RE:	*	NO. 93-10295
LILJEBERG ENTERPRISES, INC.	*	CHAPTER 11
DEBTOR	*	REORGANIZATION

AFFIDAVIT OF PROPOSED ATTORNEYS

STATE OF LOUISIANA

PARISH OF ORLEANS

The proposed attorney, Jacob J. Amato, Jr., hereby makes solemn oath:

I.

He is an attorney and counsellor at law, duly admitted to practice in the State of Louisiana.

II.

Jacob J. Amato, Jr. maintains an office for the practice of law at 901 Derbigny Street, Gretna, Louisiana.

III.

Jacob J. Amato, Jr. and the law firm of Amato & Creely have been requested to serve as attorneys in connection with the pending litigation set forth in the motion and are willing to serve in that capacity.

IV.

Jacob J. Amato, Jr. and the law firm of Amato & Creely do not represent any interest adverse to that of the debtor or the creditors herein in the matters upon which they are to be retained.

JACOB J. AMATO, JR.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 28th DAY OF AUGUST, 1996.

NOTARY PUBLIC

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF LOUISIANA

IN RE:	*	NO. 93-10295
LILJEBERG ENTERPRISES, INC.	*	CHAPTER 11
DEBTOR	*	REORGANIZATION

AFFIDAVIT OF PROPOSED ATTORNEYS

STATE OF LOUISIANA

PARISH OF ORLEANS

The proposed attorney, Leonard L. Levenson, hereby makes solemn oath:

I.

He is an attorney and counsellor at law, duly admitted to practice in the State of Louisiana.

II.

Leonard L. Levenson maintains an office for the practice of law at 427 Gravier Street, New Orleans, Louisiana.

III.

Leonard L. Levenson and Leonard L. Levenson, APLC have been requested to serve as attorneys in connection with the pending litigation set forth in the motion and are willing to serve in that capacity.

IV.

Leonard L. Levenson and Leonard L. Levenson, APLC do not represent any interest adverse to that of the debtor or the creditors herein in the matters upon which they are to be retained.

Leonard L. Levenson

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS 28th DAY OF AUGUST, 1996.

Zara Zeringue
NOTARY PUBLIC

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

DOCKETED
SEP 5 1996
FRANK J. KATHUS CLERK
UNITED STATES BANKRUPTCY COURT
NEW ORLEANS, LA

IN RE:	*	NO. 93-10299
LILJEBERG ENTERPRISES, INC.	*	CHAPTER 11
DEBTOR	*	REORGANIZATION

ORDER AUTHORIZING APPOINTMENT OF ATTORNEYS

Upon the application of Liljeberg Enterprises, Inc., the above named debtor, praying for authority to employ and appoint Jacob J. Amato, Jr. and the law firm of Amato & Creely, and Leonard L. Levenson, APLC and Leonard L. Levenson ("Special Counsel"), to handle specific issues in the following matter:

1. Proceeding against AMI/Lifemark in the case styled "Lifemark Hospitals of Louisiana, Inc., et al v. Liljeberg Enterprises, Inc.", Civil Action No. 93-1794 c/w 93-4249, in the United States District Court for the Eastern District of Louisiana.

And it appearing that Special Counsel are attorneys duly admitted to practice in the State of Louisiana, and the Court being satisfied that they represent no interest adverse to Liljeberg Enterprises, Inc. as debtor-in-possession herein, or to its estate in the matters upon which they are to be engaged, that their employment is necessary and would be to the best interest of the estate;

RELIEF
ORDERED
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COMP
D.C.
C.R.D.
ADM.
FIN.
PCS.
EA.
SECT.
PLEADING
1103

IT IS HEREBY ORDERED that Liljeberg Enterprises, Inc. as debtor-in-possession herein, be and is hereby authorized to employ Special Counsel to represent it in the above mentioned proceedings.

New Orleans, Louisiana, this 4th day of ~~August~~ Sept., 1996.

J. M. Brahney, III
JUDGE
UNITED STATES BANKRUPTCY COURT

DOUGLAS S. DRAPER #5073
DRAPER & CULPEPPER, APLC
Suite 2630, LL&E Tower
909 Poydras Street
New Orleans, LA 70112
(504) 581-9595

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

TO: COUNSEL FOR MOVANT

RE: DIRECTIVE ON SERVICE OF ATTACHED DOCUMENT

YOU ARE REQUIRED to serve the attached document on the parties mandated by the Federal Bankruptcy Rules and/or the Bankruptcy Code.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA
HALE BOGGS FEDERAL BUILDING
501 MAGAZINE STREET, ROOM 601
NEW ORLEANS, LOUISIANA 70130
(504) 589-6506

Date: 9/5/94

By: [illegible]

1 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
2 NEW ORLEANS, LOUISIANA

3

4 LIFEMARK HOSPITALS, INC. Docket No. 93-179-4-"T"

5 Plaintiff,

6 v. New Orleans, Louisiana
Wednesday, October 16, 1996
7 LILJEBERG ENTERPRISES, INC. 10:17 a.m.

8 Defendant.

9

10 PLAINTIFF'S MOTION TO RECUSE
BEFORE THE HONORABLE G. THOMAS PORTEOUS, JR.
11 UNITED STATES DISTRICT JUDGE

12

APPEARANCES:
13

For the Plaintiff: Frilot, Partridge, Kohnke &
14 Clements
BY: JOSEPH MOLE, ESQ.
15 STEPHANIE MAY
GARY RUFF, ESQ.
16 1100 Poydras Street
Suite 3600
17 New Orleans, Louisiana 70163

18

For the Defendant: Weigand, Levenson & Costa
19 BY: LEONARD LEVENSON, ESQ.
427 Gravier Street
20 First Floor
New Orleans, Louisiana 70130

21

Amato & Creely
22 BY: JAKE AMATO, ESQ.
901 Derbigny Street
23 Gretna, Louisiana 70054

24 BY: HANS LILJEBERG, ESQ.
1221 Elmwood Park Boulevard
25 Suite 701
Harahan, Louisiana 70123

EXHIBIT
"G"

1 APPEARANCES (CON'T):

2 Court Reporter: DAVID A. ZAREK, CCR, RPR, CP
501 Magazine Street, Room 406
3 New Orleans, LA 70130
(504) 523-6062
4

5 Proceedings recorded by mechanical stenography;
transcript produced by dictation.
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1 P R O C E E D I N G S
2 MORNING SESSION
3 (Wednesday, October 16, 1996)
4 THE COURT: Let's take up this next matter, which is
5 93-1794 and all consolidated cases also. This is the motion
6 filed with respect to all of the particular cases to recuse.
7 Let me dictate one thing into the record before everybody
8 commences so that everybody is not necessarily on edge as
9 they might think. Bernard v. Coyne, which is 31 F.3d 842
10 involved the request to disqualify a circuit court judge of
11 the 9th circuit. In that decision that Judge wrote, and I
12 cite and "this" (reading) with full acquiescence counsel for
13 a party who believes Judge's impartiality is reasonably
14 subject to question has not only a professional duty to his
15 client to raise the matter but an independent responsibility
16 as an officer of the court. Judges are not omniscient, and
17 despite safeguards overlook a conflict of interest. A
18 lawyer who reasonably believes that the Judge before whom he
19 is appearing should not sit must raise the issue so that it
20 may be confronted and put to rest. Any other course would
21 risk undermining public confidence in our judicial system."
22 I cite that so that everyone understands that I recognize my
23 duty and obligations, and I am fully prepared to listen.
24 All right, go ahead.
25 MR. MOLE: I appreciate your remarks. It is not a very

1 easy thing to confront the federal judge with the suspicion
2 that he probably doesn't want to hear. I am sure that in
3 the course of trying -- I don't know you very well, Judge,
4 and I have gotten to learn about you only through this
5 case --
6 THE COURT: You told me the last time we graduated from
7 Cor Jesu.
8 MR. MOLE: That's about all we have in common. What I
9 learned about you from trying to investigate what I should
10 do about what I have raised that you probably did read
11 briefs and gave it some intelligent thought. So I don't
12 want to go back through everything I have said.
13 What I would like to emphasize is mainly by what has
14 been established in response to my motion to recuse. I have
15 gotten to know Mr. Levenson and Mr. Amato.
16 THE COURT: Let me make also one other statement for
17 the record if anyone wants to decide whether I am a friend
18 with Mr. Amato and Mr. Levenson, I will put that to rest for
19 the answer is affirmative, yes. Mr. Amato and I practiced
20 the law together probably 20-plus years ago. Is that
21 sufficient?
22 MR. MOLE: Yes.
23 THE COURT: 20-plus is sufficient. So if that is an
24 issue at all, it is a non-issue.
25 MR. MOLE: What prompted us to file the motion is the

1 timing of what happened. This case is 10 years old, the
2 oldest part is 10 years old. The lawyers who are in the
3 case now are these previous to September 12th when you
4 granted leave to add Mr. Amato and Mr. Levenson, who has
5 been in for years. The case was set for trial, and you had
6 an emphasis about keeping the trial date. They were added
7 within two months of the trial date. And the case with that
8 length I don't know Mr. Levenson or Mr. Amato very well. I
9 know they are fun to practice against; they have a sense of
10 humor, and they have given me by doing this quite literally
11 none to my knowledge other than they are your friends. They
12 have been given 11 percent contingency fee in a case that
13 the Liljebergs, everybody -- I disagreed -- value at $140
14 million, at least part of this we have a percentage of. And
15 I think that bears even more weight when you consider Mr.
16 Liljeberg has taken the position that he doesn't give
17 contingency fees. Jim Cobb has sued him in Bankruptcy Court
18 for a fee claiming he had continued standing of plaintiff
19 Liljeberg as a matter of the plaintiff doesn't give those
20 away. This is like how we do it at the last minute. Mr.
21 Levenson in his response to my reply brief says he has been
22 in the case for a lot longer than the time when he showed
23 up. It raises additional questions. Mr. Levenson is also,
24 indeed, your friend: Has he discussed the case with us
25 before at that time he appeared when he was investigating

1 it? Did he wait to see when you would hold on to the case
2 rather than pass it on to Judge Lemmon? Those are the sort
3 of questions that are going to be in the case no matter what
4 happens forever if you be the Judge.
5 Mr. Levenson has accused me and my client of engaging
6 innuendo. I looked up the word. Innuendo is a generally
7 derogatory and witty way of making accusations indirectly.
8 I don't think I have done that. I have been very direct.
9 Mr. Levenson, and I think it is a good tactic, has tried to
10 dare me to say what I think is the nature of the
11 relationship between you and him and you and Mr. Amato, that
12 are the two gentlemen behind me. And if they have something
13 to contradict the statement that I made, which is that you
14 all are indeed very, very close friends, I would have
15 assumed that he would have made it. I am happy to tell the
16 Judge what the public perception is of the relationship.
17 THE COURT: Well, the case you cite by the way involved
18 the judge's wife. So I assume they were fairly close
19 friends, too.
20 MR. MOLE: Probably. You don't have to stipulate.
21 THE COURT: Well, it could be a question sometimes.
22 MR. MOLE: I understand, Your Honor. I don't know what
23 the Court wants to do with that issue, whether or not the
24 Court wants to make a statement or accept the statement.
25 THE COURT: No, I have made the statement. Yes, Mr.

1 Amato and Mr. Levenson are friends of mine. Have I ever
2 been to either one of them's house? The answer is a
3 definitive no. Have I gone along to lunch with them? The
4 answer is a definitive answer yes. Have I been going to
5 lunch with all of the members of the bar? The answer is
6 yes.
7 MR. MOLE: I understand.
8 THE COURT: Has, in fact, at the last status conference
9 I had I saw Mr. Lane here I think in reality aligned with
10 your side who spoke with me, and Mr. Lane and I have been to
11 lunch together. I mean there is not a hell of a lot of
12 lawyers in this city I haven't maintained a very open,
13 friendly relationship with. So if you want to explore in
14 detail, feel free to explore it. I don't have a problem
15 with exploring it. But I don't know what you want to make
16 with it.
17 MR. MOLE: Well, Your Honor --
18 THE COURT: And I also must say something for the
19 record I think other than connecting the dots that the last
20 status conference I had I virtually told everyone I was
21 continuing this case. So this rush to trial that you
22 suggest I am maintaining, I did all but connect the dots the
23 last time.
24 MR. MOLE: Well, I understand.
25 THE COURT: The lawyers have come to this case like a

1 storm cloud through Louisiana. Look at the list. I ran a
2 chaser sheet. Up until I think maybe Mr. Steeg and Mr.
3 O'Connor. Mr. O'Connor were attorneys and they are out for
4 whatever reason. They had a conflict situation. I have no
5 idea what it was. Then you all got in it. Welcome, jump
6 in. I mean I tried to make it clear at the last conference
7 I don't care how many people are on the side or "X" amount
8 of people are talking. Did I not say that?
9 MR. MOLE: It was pretty clear, Your Honor. Well, I
10 would emphasize, Your Honor, that the standard is what a
11 reasonable person would perceive if they knew all the facts.
12 I think the timing of the appearance of Mr. Amato and Mr.
13 Levenson creates the biggest concern along with the fact
14 that they did not practice law together. All they have in
15 common is that they are your close friends. The public
16 perception is that they do dine with you, travel with you,
17 that they have contributed to your campaigns.
18 THE COURT: Well, luckily I didn't have any campaigns.
19 So I'm interested to find out how you know that. I never
20 had any campaigns, counsel. I have never had an opponent.
21 One time I had an opponent --
22 MR. MOLE: I had a campaign return from the --
23 THE COURT: The first time I ran, 1984, I think is the
24 only time when they gave me money.
25 MR. MOLE: 1990 is what I have.

1 THE COURT: 1990 that was the Justice for All Program
2 where they gave to every judge probably, but I could be
3 wrong there.
4 MR. MOLE: I'm sorry if I'm wrong.
5 THE COURT: I don't know. You got the record. What
6 did it say? Let me see them. Don't hide them if there is
7 something in there that's deeply devious, tell me about it.
8 MR. MOLE: May I approach the bench?
9 THE COURT: Sure.
10 (Counsel Mole hands document to the Court.)
11 THE COURT: Yeah, I think if you look at this, you will
12 find that whatever those numbers total, and I'm not a
13 mathematician, but I think those numbers on these pages
14 total more than $6,794. I am fairly certain adding that up.
15 Did you?
16 MR. MOLE: I did not, Your Honor.
17 THE COURT: Well, let's go to the, pick a page at
18 random starting with the firm of Anderson Tranthene and
19 Mateern. There is over $200 on that page, one page out of I
20 don't know how many it is. I think you will find that that
21 was a function that was thrown by the entire judiciary of
22 Jefferson Parish for which I received I forget whatever my
23 portion was, but I reported it, which was $6,794 is what it
24 looks like what it says here. And that's what it was. So,
25 yes, I don't doubt that they contributed. I mean I don't

1 know. Maybe it is pertinent. Maybe microscopes and maybe
2 that's why we shouldn't have it. But, yeah, okay, it's
3 there.
4 MR. MOLE: Your Honor, I appreciate the Court's remarks
5 at the beginning. What I have done again is in an effort to
6 represent my client at the risk of offending the Court --
7 THE COURT: You haven't offended me. But don't
8 misstate, don't come up with a document that clearly shows
9 well in excess of $6700 with some innuendo that that means
10 that they gave that money to me. If you would have checked
11 your homework, you would have found that that was a Justice
12 for all Program for all judges in Jefferson Parish. But go
13 ahead. I don't dispute that I received funding from
14 lawyers.
15 MR. MOLE: Right, Your Honor.
16 THE COURT: No question.
17 MR. MOLE: If the perception is that my client, and I
18 have it that Mr. Levenson and Mr. Amato are not any more
19 sinister than any other member of the bar, then we would be
20 happy to have them or you dispel that. I think you have
21 been honest with us. There is not much more I can say.
22 THE COURT: I understand. Let me tell you, no, it is a
23 uncomfortable position you find yourself in, counselor. You
24 know, I have been doing this for awhile. With all candor I
25 must admit this is the first time a motion for my recusal

1 has ever been filed. Did it get my attention? Yeah, I
2 guess it got my attention. But does that mean that any time
3 a person I perceive to be friends who I have dinner with or
4 whatever that I must disqualify myself? I don't think
5 that's what the rule suggests. I, likewise, don't think
6 that's what the Court had in mind. And even in your own
7 pleadings and even in the case, it is the Travelers case
8 from the Fifth Circuit published opinion which you gave, me
9 that courts even recognized in citing from Murphy in its
10 cite, and I think it is important to state (reading) "In
11 today's legal culture friendship among judges and lawyers
12 are common. They are more than common, they are desirable.
13 A judge need not cut himself off from the rest of the legal
14 community. Social as well as official communications among
15 judges and lawyers may improve the quality of the legal
16 decisions. Social interaction also makes some on the bench
17 quite isolated and as a rule more tolerable to judges. Well
18 qualified people would hesitate to become judges if they
19 knew that wearing the robe meant either discharging one's
20 friends or risking disqualification in a substantial number
21 of cases. Courts have held that a judge need not disqualify
22 himself just because a friend, even a close friend, appears
23 as a lawyer." And that is a Seventh Circuit case but was
24 cited in the Fifth Circuit decision.
25 Now that's a predicament all of us find ourselves in.

1 Mr. Amato and Mr. Levenson have both appeared before me and
2 they have both won and both lost.
3 MR. MOLE: Your Honor, it is again it is not the fact
4 of the friendship, it is the timing. Anyone who you would
5 describe the situation to I think would generally be
6 concerned that the timing is odd that a case of this length
7 amply lawyered when other lawyers appear within the
8 contingency fee in the way they have and that's why we made
9 the motion.
10 THE COURT: I understand it, and it is a perception,
11 clearly it is perception. I agree with you, but again even
12 before this motion was even urged because I believe the
13 status I had before you filed the motion, in fact, I know it
14 was I made it plain that this November 4th date was probably
15 fixed in everybody's mind. I mean I don't know what else to
16 tell you. That was a near fix. We will see what we have
17 got, but I understand, counselor and appreciate your
18 position. And you have to urge these things, and I
19 understand that. I take no animus toward you on that. If
20 you did that, I don't need to repeat that.
21 MR. MOLE: Judge, what you said -- it is the first time
22 I have had to do this myself. I would think one of the
23 lawyers opposing me asked me how many times did you sit
24 around discussing this with your client or your partners,
25 and his answer was to a political extent easy to do. But we

1 convinced ourselves we had to do it.

2 THE COURT: All right.

3 MR. MOLE: Only after great deliberation.

4 THE COURT: All right.

5 MR. LEVENSON: Judge, I feel a little peculiar in this
6 situation as well. I don't recall in the twenty years I
7 have practiced law being in this situation. I think that
8 you must take into consideration the admission by Lifemark
9 in their pleading that they do not question your
10 impartiality. And if they had done any investigation in
11 connection with this matter, they could come up with no
12 other result but that. And that is the test in this type
13 of situation. It is the appearance to a well-informed,
14 thoughtful, objective observer as stated in Jordan. And
15 I think the key point there is well informed. Both well
16 informed about our friendship, well informed about our
17 reputation, well informed about the reputation and
18 experience of Mr. Amato as well as that of myself.

19 Mr. Mole stated that the timing is odd. Well, I
20 think it is correct that from the time that I was
21 originally contacted by the Liljeberg attorneys in
22 connection with this matter the Frilot firm has been
23 involved in this case a very short period of time longer
24 than I.

25 Mr. Mole brought up that when he first learned of that

1 yesterday he questioned why I waited so long to get into the
2 case. Well, when I saw file cabinet upon file cabinet upon
3 file cabinet of the paper, it wasn't candidly a very easy
4 thing to assess for myself nor for Mr. Amato to take and
5 became quite a bit of work to determine whether or not I
6 wanted to dedicate a substantial portion of my future effort
7 to this case which would deprive me of other income and
8 other work as well. Mr. Mole didn't know that because he
9 didn't ask me.
10 The next point Mr. Mole made was that there is nothing
11 in common between Mr. Amato and myself except your
12 friendship. That is incorrect. Another question Mr. Mole
13 should have perhaps inquired into.
14 In Mr. Mole's brief he somewhat criticized my
15 experience or perhaps the lack thereof in his mind in
16 matters of this sort. Mr. Amato and myself have acted as
17 primarily personal injury lawyers. That, of course, is not
18 true. Mr. Amato and myself have tried hundreds if not
19 thousands of cases and rules before juries, judges, state
20 and federal, bankruptcy and federal court and just about
21 every other court I can think of. In fact, at the risk of
22 blowing my own horn, I think that I am probably the only
23 lawyer in this room and maybe the only lawyer with all of
24 the firms combined who has been written up in the WALL
25 STREET JOURNAL in connection with litigation I had handled,

1 and it was not personal injury cases. My experience
2 involves personal injury admittedly in recent years due to
3 the change in the economy this year but also involved
4 commercial litigation, bankruptcy, real estate and title law
5 expertise which I think will become very important in this
6 litigation.
7 Mr. Mole has alluded that in his pleadings that Mr.
8 Amato and myself are your two closest friends. I find it
9 interesting that Mr. Amato and myself are your closest
10 friends that we were not contacted in connection with the
11 background check which must be performed in connection with
12 your appointment. Maybe other people don't think our
13 friendship is viewed the same as Mr. Mole.
14 Finally, Mr. Mole says that we have contributed money
15 to your campaign. Your Honor, as you know I didn't even
16 know you when you ran for office. I only met you in the
17 course of litigating cases in your court. To the best of my
18 knowledge I have never given a campaign contribution to you.
19 To the best of my knowledge you have never had a campaign to
20 which to contribute to. The Justice for All Ball was
21 something that was put together so that all of the judges of
22 the 24th Judicial District Court could have a single fund-
23 raiser, and I think the intent of that was to make it easier
24 on lawyers who contributed to judge's campaigns, and there
25 was some particular form as to how those proceeds were

1 divided up. I don't think they were divided up equally,
2 although how they were distributed I wasn't part of.
3 THE COURT: I don't remember the breakdown, but I do
4 know I was the smallest for what that's worth.
5 MR. LEVENSON: Judge, I think that the rule under
6 Section 455 in the cases make it clear that whether or not
7 we are your friend or even your close friend that is not
8 ground for recusation, and I think that the motion should
9 properly be denied.
10 THE COURT: Mr. Mole anything else you would like to
11 add again?
12 MR. MOLE: Yes, Your Honor. One of the difficult
13 decisions to make is how much of a record should I try to
14 make on this without a balance of the fact that I have to
15 practice law with these gentlemen and before you the rest of
16 my life but that I have a duty to my client. But I think
17 that the record that is made here today is enough, because I
18 don't think Mr. Levenson and Mr. Amato, they have said that
19 they dared me to say what I think are rumors. I don't want
20 to do that. They have not denied what I have said about the
21 relationship between you and them.
22 THE COURT: I have not denied it, and I don't think
23 they deny it.
24 MR. MOLE: Then the fact of the matter is Mr. Levenson
25 could very well deny it if he wanted to, and he has chosen

1 not to do that. That speaks more loudly than anything I
2 could say.
3 THE COURT: Well, you know the issue becomes one of, I
4 guess the confidence of the parties, not the attorneys.
5 Because when it is all said and done you all have been but
6 the spokesperson for the true people in interest and that's
7 the litigants. My concern is not with whether or not
8 lawyers are friends and for whatever value that contribution
9 is to a group as a whole. My concern is that the parties
10 are given a day in court which they can through you present
11 their case, and they can be adjudicated thoroughly without
12 bias, favor, prejudice, public opinion, sympathy, anything
13 else, just on law and facts. That's basically the charge we
14 give juries. We are no longer the juries, but if it was a
15 non-jury trial, we are the trier of fact. And there is a
16 ton of case law that says that I should charge myself
17 according to the same way I would charge a jury.
18 I have always taken the position that if there was ever
19 any question in my mind that this Court should recuse itself
20 that I would notify counsel and give them the opportunity if
21 they wanted to ask me to get off. That includes a case
22 wherein my cousin, Billy, Billy Porteous tries a case in
23 front of me in Gretna, and the plaintiff's lawyer is
24 absolutely delited. And I have got to go fully explain to
25 the jury that I never practiced with him and that they are

1 not to read anything into it. I don't fault you for your
2 filing. I think it is a situation where because of this
3 upward ongoing quick activity of this case because of dates
4 approaching that on its face it appears to be evil or bad or
5 improper. The reality is that none of the above are true.
6 The reality is that if anyone thinks they gain favor from me
7 because someone is in a case need only basically look at
8 what I have done in the past to know that that is a fiction.
9 The question is again in that Bernard case the court
10 said Section 450 requires not only that a Judge be
11 subjectively confident of his ability to be even handed but
12 there is a informed, rational objective observer would not
13 doubt his impartiality. Well, everything we do in the
14 judiciary is under a microscope anyhow. But if the rules
15 were such that every time a contributor and you take a case
16 with current contributions have been made, not 1990
17 contributions, have allowed the Judge to sit where
18 friendship, even "Close friendships are not to be
19 considered," I don't have any difficulty trying this case.
20 Now, after I rule can a party feel that they were
21 wronged? I can't stop that feeling. There is no tie:
22 somebody wins, somebody loses. Are they then upset?
23 Possibly. But that's not for me to concern myself with
24 because again whichever side wins by the evidence and the
25 law will win by the evidence and the law. And as I have

1 told plaintiff lawyers in the past, if 40 percent of zero is
2 zero, I assure you eleven percent of zero is still zero.
3 Now, does that ease your client's mind? I don't know. I
4 can't help you there. Does that make the informed observer
5 satisfied? I don't know. But in my mind I am satisfied
6 because if I had any question as to my ability, I would have
7 called and said, "Look, you're right." Do not think for one
8 moment that this Court went out and solicited this case.
9 This case this Court drew because some other members of the
10 bench couldn't hear it. The pool of judges was very small,
11 and I drew it.
12 Now, I ran the chaser sheet on this, and the reason I
13 talk about a flurry of activity up until the time I drew
14 this case, which was on January 16, 1996, document No. 190
15 or entry 190 in the case re-alloted Judge G.T. Porteous,
16 Jr., since that day when only 190 over a 3-year period
17 entries had been made we have to date, now we have had 102
18 entries made. It always happens that when we get close to
19 trial people get real, real interested. I can't explain it.
20 It just happens. I don't read anything devious or bad about
21 it. In fact, since the time you have come into the case or
22 your firm which was entry No. 210, we have had 82 of them.
23 So there has been a lot of activity, and I will attend to
24 it.
25 I received a multitude of pleadings to find out in

1 taking up other issues today, and I had issued an order and
2 I am hoping everyone got a copy of it. And if they didn't,
3 I don't know what happened. But entry no. 278 says, "Having
4 received the plaintiff's Motion to Recuse, the Court finds
5 it is in the best interest of justice that all motions are
6 deferred pending resolution of the motion to recuse.
7 MR. MOLE: I got that.
8 THE COURT: So I don't know what to tell you all other
9 than I do not believe this is a case where 28 USC 455 is
10 applicable. I don't think a well-informed individual can
11 question my impartiality in this case. Part of me has to
12 sit here and make sure that I don't over help or hurt either
13 one of you. That's always going to be a problem if you know
14 somebody on one side. I'm human, but I assure you I have
15 done this long enough that it won't bother me at all.
16 Saying no is the easiest thing. Saying zero is just a
17 number. Whether it is worth $140 million as you suggest, I
18 don't know. I don't know enough about this case. I don't
19 even know if you all know enough about this case given the
20 rash of pleadings that go back and forth. I'm not even sure
21 it is that complex, but it is sure being made fairly
22 complex.
23 Now, having said all of the above, I tell you now that
24 there is no way on this earth that I can get through any of
25 the motions pending and have a trial date by November 4th.

1 You all can forget it. It is actually impossible, which is
2 exactly what I virtually said when we had the status. I
3 won't be pushing anybody to trial on November 4th. I do
4 want, however, that these things remain in effect. The
5 requirements, those witness lists are cast in stone. I
6 think you all both submitted them. That much is a finished
7 deal. We are not going to be adding witnesses absent a
8 hearing for good cause shown why they should be added. Now,
9 I am not going to say that, I guess something could come up.
10 But that's cast in stone. Both Magistrate Wilkinson and I
11 have told you all that we are available for whatever
12 assistance you need because this is a non-jury trial. I
13 don't intend to enter into any discussions with you all on
14 that. I told you that I believe that Magistrate Wilkinson
15 did. My input is over at that point then. He acts as an
16 arbitrator or mediator if that ever gets to that. If it
17 doesn't, we try your case.
18 Because I know this is an important issue for you and
19 an important issue for your client, I am, in fact, going to
20 issue a judgment denying your motion to recuse myself. It
21 is significant, it is important. If you think it deserves
22 attention by the Fifth Circuit, that's why I am giving you
23 the judgment. If you go there, you do it with no offense to
24 me. And if they disagree with me, then they disagree with
25 me. I don't have a problem with that, counselor. I don't

1 want the issue to be left that you didn't have a mechanism,
2 and I don't think any of you want to do this thing twice.
3 So if you choose to go there, go there. Would I
4 conceive of any grant of a stay? Yes. Would I ask that
5 they expedite it? Probably, yes. And I would hope that you
6 would ask that they expedite it because that does not innure
7 to either side's benefit in this case.
8 MR. MOLE: One of the things that occurred to us and
9 that is that we have a remedy for a writ of mandamus, and we
10 haven't decided to do that.
11 THE COURT: That's why I thought a judgment was
12 necessary, and I don't know if an order would have given you
13 that ability. I am issuing it as a judgment denying your
14 motion to recuse for the reasons I stated on the record,
15 which you can get a transcript of it, of course. But, yes,
16 I told you now that's what I am going to do is give you the
17 guidance to do that.
18 MR. MOLE: One of my concerns is that we have a
19 November 4th trial date. I would have to try to get
20 discovery before then.
21 THE COURT: Does anyone here really believe I can
22 dispose of all of your motions before November 4th? I'm not
23 super human. I have continued all your motions because of
24 this motion to recuse myself.
25 MR. MOLE: We didn't file them to delay things. But I

1 understand Your Honor.
2 THE COURT: I didn't take it for that, but I'm saying I
3 did that on my own motion. Nobody asked me to stay it. I
4 could have done it, but I think whenever somebody asks for a
5 judge to recuse themselves, although technically I can
6 continue a proceeding and particularly in the ruling I had
7 made I think they are entitled for me not to do anything
8 more until we take up the issue. We took the issue up. If
9 you want to go across and do that, I am giving you the
10 procedural tool to do it.
11 MR. MOLE: I appreciate that.
12 THE COURT: Okay, anything else I can dispose of?
13 MR. LEVINSON: On October the 23rd it is scheduled to
14 appear for a pretrial conference.
15 THE COURT: Ignore it. Ignore it. There is no way on
16 earth I am going to do your pretrial. You have got too many
17 motions especially that you would have in the pretrial that
18 the motions are open.
19 MR. LEVENSON: I understand that, Judge. But would you
20 consider making it as a status conference so we can proceed?
21 THE COURT: I will do that as a status conference with
22 you all.
23 MR. MOLE: And no pretrial order?
24 THE COURT: No, obviously not. They will issue an
25 order that the pretrial order is hereby converted to a

1 status conference for whatever time I had it set. Just
2 whatever if that time is blocked out, we keep it at that
3 time.
4 MR. LEVENSON: That's fine, Judge.
5 THE COURT: Discovery I suggest that I believe should
6 be closed at this point in time.
7 MR. MOLE: I think we have everything scheduled that
8 needs to be scheduled, but we still have depositions going
9 on through the last one is October 28th.
10 THE COURT: That's fine. But that's by agreement?
11 MR. MOLE: That's by agreement.
12 THE COURT: That's by agreement. And then as I
13 understand it discovery will be closed?
14 MR. MOLE: Yes, Your Honor. We are cooperating pretty
15 much.
16 THE COURT: Depending on what you do, whether you will
17 be going to go forward and whether there is a stay over
18 there or request for expedited hearing, will depend on when
19 I give you a trial date. Maybe by the 23rd I would ask you
20 and if you are not in position to do it, counselor, I
21 understand. But on the 23rd it is a status conference. If
22 it is your client's desire to proceed with a mandamus or
23 appeal or whatever procedural remedy that is at his disposal
24 with the Fifth Circuit, if you will simply notify me to that
25 effect whether I would or would not set a date. I'm going

to set a date with that pending, I am not going to pass on this case while the ruling of mine which may have some impact on whether to recuse myself on this case. So if you could let me know by that date.

MR. MOLE: We will do that, Judge.

THE COURT: Okay, all right. Thank you all.

MR. MOLE: Thank you, Judge.

(Hearing concludes.)

REPORTER'S CERTIFICATE

The undersigned certifies, in his capacity of Official Court Reporter, United States District Court, Eastern District of Louisiana, the foregoing to be a true and accurate transcription of his Stenograph notes taken Wednesday, October 16, 1996.

New Orleans, Louisiana, this 21st day of October, 1996.

David A. Zarek

David A. Zarek
Official Reporter, Section "A"

MINUTE ENTRY
G. THOMAS PORTEOUS, JR.
JULY 26, 1996

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
JUL 26 2 15 PM '96
LORETTA G. WHYTE
CLERK

IT IS ORDERED that the below listed Section "T" civil cases are permanently reallotted to Judge Mary Ann Lemmon, Section "S" of this court, effective July 26, 1996. Counsel are instructed that any motions pending in these cases should be re-noticed for hearing before Section "S".

CIVIL ACTION CASES:

87-5547	TOTH ALUMINUM CORP. V. TOTH
92-2076	HIBERNIA NATIONAL BANK V. R.T.C.
93-1859	PROGRESSIVE CASUALTY V. R.T.A.
93-3212	U.S.A. V. SEWERAGE AND WATER BOARD
94-1397	CEDOTAL V. WHITNEY NATIONAL BANK
94-2035	THREADGILL V. PRUDENTIAL
94-3180	GILCHRIST V. PRUDENTIAL
94-3380	LOVETT V. SANDERSON
94-3861	ST. PAUL MERCURY INS. V. FAIR GROUNDS CORP.
94-4066	STEWART V. PRUDENTIAL
95-0346	UNITED NATIONAL INSURANCE V. FAIR GROUNDS CORP.
95-0601	GUSTE V. SHELL OIL COMPANY
95-0676	FOLSOM SOUTH VENTURES V. HOECHST CELANESE
95-1844	DANNA V. BARQ'S INC.
95-2487	PRITCHARD V. SIEGEL
95-3738	ORECK CORPORATION V. NATIONAL SUPER SERVICE CO.
95-3739	ORECK CORPORATION V. LINDHAUS USA, INC.
95-3741	ORECK CORPORATION V. MINUTEMAN INTERNATIONAL INC.
95-3742	ORECK CORPORATION V. WINDSOR INDUSTRIES, INC.
96-0819	PROGRESSIVE CASUALTY V. R.T.A.
96-1785	CHEMFIX TECHNOLOGIES V. ADVANCE REMEDIATION

CRIMINAL ACTION CASE:

96-0199	U.S.A. V. CALVIN SMITH AND DARRYL SULLIVAN

G. THOMAS PORTEOUS, JR.
UNITED STATES DISTRICT JUDGE

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DATE OF ENTRY JUL 26 1996

2. Permanent Hospital Loan

At the present time, AMI is financing the permanent loan for LEI at $44,000,000; however, AMI has only been able to document to LEI's satisfaction $35,000,000 of construction cost thereby leaving $9,000,000 which has not been documented to LEI's satisfaction. While this issue has been researched for over two years by AMI Construction accounting, the documentation which has been requested by LEI and audited by Coopers and Lybrand, independent accounting consultants for LEI, this is an issue which needs immediate attention. Mr. Liljeberg indicated that he would desire to leave the $44,000,000 on the books and receive a check for the discounted net present value of the $9,000,000 based upon a twenty-five year calculation. Furthermore, Mr. Liljeberg requested an inventory asset listing for all fixed equipment at St. Jude. Under separate cover, I had forwarded to you our analysis of both the pharmacy contract and permanent loan issues and have attached a copy to this memorandum for your reference.

3. Medical Office Building Buildouts

LEI, through the Medical Office Building Master Lease, still owes AMI approximately $600,000, for its share of buildout expenses associated with the original buildouts of Medical Office building space. Mr. Liljeberg indicated that he would propose that this amount would be offset as a part of the overall settlement on a commensurate basis on a percentage of this amount through the total percentage which the settlement would provide. Additionally, it is stated in the master lease that LEI would have the opportunity to bid on all buildouts and this has not occurred in the past nor has LEI had the right of approval for all contractors, as stated in the contract, and this issue would need to be resolved as well.

4. Medical Office Building Security Deposit

Mr. Liljeberg indicated that he would be willing to refund the $260,000 security deposit which AMI placed upon signing the MOB master lease if AMI would extend the MOB master lease for an additional ten years at the current lease rates and if AMI would further lease the unimproved fifth floor space of approximately 19,000 square feet. The current MOB master lease expires February 1990.

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AMI Memorandum

Senders' Location: AMI St. Jude Medical Center
Kenner, LA

See 2nd page

CONFIDENTIAL COMMUNICATION
SUBJECT TO ATTORNEY/CLIENT PRIVILEGE

TO: Donna Erb DATE: May 24, 1988

FROM: John W. McDaniel cc:

SUBJECT: Liljeberg Enterprises, Inc.

Donna, this memorandum is for the purpose of advising you regarding the various issues surrounding the relationship between AMI St. Jude Medical Center and Liljeberg Enterprises, Inc.

After my meeting with John Liljeberg on Wednesday, May 18, 1988, Mr. Liljeberg clearly indicated that he had no interest whatsoever in negotiating the outstanding issues between AMI and LEI but rather preferred that either AMI and LEI arrange for the ownership to revert back to LEI or pursue these various issues through appropriate legal channels. After much discussion, he indicated that he would be willing to have one meeting wherein these various issues would be considered for possible settlement under various terms and conditions as follows:

1. Pharmacy contract

Mr. Liljeberg clearly explained that the situation surrounding the pharmacy contract was a matter of AMI's position of interpretation of the contract specific to the interpretation of the fee schedule at 1.35 times cost versus LEI's position of 2.35 times cost. Mr. Liljeberg's position is one of intent through his negotiations with Lifemark and Bill Mackie wherein it was the intention of that arrangement to additionally compensate Mr. Liljeberg through the pharmacy contract as a part of the "acquisition" of the Hospital. In order to resolve this most outstanding issue, Mr. Liljeberg indicated that he not only would like for the intent of the contract to be fulfilled, that is reimbursement at 2.35 times cost, but that he would also receive a retroactive adjustment based upon the 2.35 for all albumin products which we have recently begun paying him per advice of legal counsel. In addition, he requests that all products which have the label, "Federal Law Prohibits Dispensing . . . " would become a part of pharmacy although I feel that this item may be negotiable if he were to receive the previously stated it

EXHIBIT
"I"

5. Mammography equipment

Prior to the opening of the hospital, LEI acquired mammography equipment in the amount of $116,000 and has yet to reimburse AMI for this equipment. Mr. Liljeberg indicated that he would be willing to settle this at the current depreciated value of this equipment. It should be noted that this equipment is joint ventured with thirteen physicians in the St. Jude Breast Diagnostic Center and these thirteen physicians are among our top twenty admitters. Any adverse impact surrounding this settlement issue may have adverse impact upon these physicians.

6. Contract Language

Mr. Liljeberg indicated that he would like some language in the various agreements changed, specifically to change the corporation of "St. Jude Hospital of Kenner, LA, Inc." to "St. Jude Hospital of Kenner, LA, Limited Partnership. Mr. Liljeberg's desire to change the corporation to a limited partnership is for the purpose of avoiding La. State franchise taxes. He has indicated that AMI's corporate legal department has been reluctant to consider this in the past.

7. Hold Harmless Clause

Mr. Liljeberg indicated that he would like to change the present language of "hold harmless" to "hold harmless, indemnify and defend". At the present time, St. Jude Hospital of Kenner, LA., Inc. gets served every time St. Jude is served for litigation and Mr. Liljeberg simply seeks reimbursement of legal fees and costs which are incurred as to his requirement to answer and get dismissed from each lawsuit.

8. Property Taxes

Mr. Liljeberg would like consideration for his assistance for lobbying to keep the property taxes of St. Jude at their present rate. St. Jude's property taxes are approximately one half of the appraised value because of Mr. Liljeberg's influence with the property tax assessor and he would propose that consideration for his influence be used as an offset item against the medical office building buildout monies currently owed to AMI.

9. Use of Hospital Name

Mr. Liljeberg claims that AMI should compensate LEI for the use of the name "St. Jude Medical Center" in as much as Mr. Liljeberg has the corporate use for this name and requested that AMI pay for the use of the name a specified amount per year or a specified amount for use over a period of years.

10. HCA Litigation

LEI, through its contractural agreement with AMI, is to be reimbursed one half of all legal expenses associated with the defense of LEI's lawsuit against HCA. Since LEI has twice been heard at the U. S. Supreme Court regarding this litigation, AMI has been reluctant to pay its 50% share per corporate legal's interpretation that the appeal to the U. S. Supreme Court was outside of the agreement. Mr. Liljeberg contends that it is AMI's responsibility to pay 50% of all litigation associated with the HCA lawsuit and states that if the case is moved back to the lower courts, the risk of retrial of the entire suit would be at considerable expense to AMI and simply requests 50% of his legal expenses associated with the expense at the U. S. Supreme Court.

11. Pathology/Radiology Contracts

LEI has the ability, through the master contract, to name both the hospital pathology and radiology groups at the Hospital. Mr. Liljeberg reminded me that he did not have an opportunity to have input when MedLab took over the laboratory contract two years ago and he would like for MedLab to be removed and for the pathology group of his choice to retain the hospital laboratory contract.

While the aforementioned issues are those which are most outstanding, Mr. Liljeberg also mentioned the following as concerns or issues which he would like addressed during the negotiations:

1. Assurances that Hospital operations would meet or exceed community standards such as staffing, technology (i.e. MRI, etc.), marketing, etc. Mr. Liljeberg indicated that he felt that the "starting and stopping" of numerous projects by AMI within New Orleans such as AMICARE, various Network activities, etc. had negatively impacted St. Jude within both the medical community and the community at large.

They alleged, *inter alia*, that Judge Mentz's law clerk and Travelers' counsel made "false statement[s] of material fact to the court", intentionally misled the court in violation of the Rules of Professional Conduct, and otherwise committed "ill practices". In light of the unrestrained accusations and innuendos we have seen in these actions, these charges simply reinforce the perception of the reckless attacks in which the Liljebergs and their counsel have engaged.

With those post-judgment motions, the Liljebergs dragged out the third case until the end of September. While the motions were pending, the Liljebergs failed to raise disqualification. Only after the district court denied the motions at the end of September did the Liljebergs commence their next salvo -- the 60(b)(6) motions. They waited until October 1, 1993 (nearly a year after entry of the judgments in the first two cases), before filing their motions in the first two cases;[10] in the third, they waited yet another month.[11]

Obviously, the delay in the third case cannot be countenanced. As of the alleged first date of knowledge of club membership, the judgment in that case had not been entered. (As noted, it was entered one week later.) As discussed, a party feeling there is a basis for disqualification must make that known to the court at the

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[10] The original judgment in the Partnership Litigation was entered on August 18, 1992, and amended on December 3, 1992; in the LEI Litigation, judgment was entered on August 18, 1992.

[11] The judgment in the SJH Litigation was entered on July 30, 1993. The 60(b)(6) motion was filed on November 2, 1993.

earliest possible moment. Moreover, as noted, a § 455(a) recusal is self-executing, *see* note 8, *supra;* no affidavit (or in this case, "opinion poll") is necessary to present the claimed basis for disqualification to the court.

Had the Liljebergs acted promptly, the district judge could have considered disqualification before entering judgment on the pending summary judgment motion in the third case. As our court has observed, "[i]f disqualification may be raised at any time, a lawyer is then encouraged to delay making a § 455(a) motion as long as possible if he believes that there is any chance that he will win at trial. If he loses, he can always claim the judge was disqualified and get a new trial." *Delesdernier*, 666 F.2d at 121.

As for the first two cases, it is certainly reasonable to suspect that the delay in filing the motions in those cases was also for the purpose of hoping not to impede a favorable decision in the third. Therefore, the delay in seeking recusal in the third action colors that for the first two. Had the recusal motions in all three actions been filed promptly after the alleged first date of knowledge of club membership, this might have assisted the district judge in determining recusal in the third case, for which judgment had not been entered. Accordingly, we will not separate the timeliness issue for the first two cases from the third. To do so would simply reward the Liljebergs for waiting on the result in the third case before seeking recusal in the first two.[12]

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[12] While these appeals were pending, the Liljebergs moved, in the alternative, to remand to the district court so that additional material could be added to the record (affidavit of recently

B.

The 60(b)(6) motions were denied properly for being untimely. In the alternative, even assuming *arguendo* a § 455 violation, the denial of the motions was not an abuse of discretion.[13]

> Rule 60(b)(6) relief is ... neither categorically available nor categorically unavailable for all § 455(a) violations. We conclude that in determining whether a judgment should be vacated for a violation of § 455(a), it is appropriate to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and

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divorced former son-in-law of Judge Mentz; the contemporaneous motion to supplement the record on appeal was denied when filed.) Obviously, in light of our holding that the 60(b)(6) motions were untimely, the motion to remand is DENIED.

[13] We emphasize that, for purposes of this section, in order to determine whether there was an abuse of discretion in denying the 60(b)(6) motions, a § 455 violation is only assumed. It should be noted, however, that the Liljebergs do not cite, nor can we find, any case addressing disqualification because of membership in a private, social club (as discussed, this is the classification given the club by the Liljebergs), to include when members of a law firm representing one of the parties also hold such membership. In addition, we are reminded that

> [i]n today's legal culture friendships among judges and lawyers are common. They are more than common; they are desirable. A judge need not cut himself off from the rest of the legal community. Social as well as official communications among judges and lawyers may improve the quality of legal decisions. Social interactions also make service on the bench, quite isolated as a rule, more tolerable to judges. Many well-qualified people would hesitate to become judges if they knew that wearing the robe meant either discharging one's friends or risking disqualification in substantial numbers of cases. Many courts therefore have held that a judge need not disqualify himself just because a friend -- even a close friend -- appears as a lawyer.

United States v. Murphy, 768 F.2d 1518, 1537 (7th Cir. 1985), *cert. denied*, 475 U.S. 1012 (1986).

> the risk of undermining the public's confidence in the judicial process.

Liljeberg, 486 U.S. at 864; *accord In re Continental Airlines Corp.*, 901 F.2d 1259, 1263 (5th Cir. 1990) ("the 'harmless error' rule applies to a breach of a judge's duty to stand recused under § 455(a)"), *cert. denied*, ___ U.S. ___, 113 S. Ct. 87 (1992).

First, in all three cases, the denial of the 60(b)(6) motions threaten the Liljebergs with a minimal risk of prejudice. In the Partnership Litigation, a jury, not the district judge, considered the facts and evaluated the credibility of the witnesses. It determined the Liljebergs' liability, which we affirmed, *Travelers*, 21 F.3d 1107 (unpublished). The Liljebergs fail to demonstrate, nor do we find, any injustice which would warrant vacating the jury's verdict. In the LEI and SJH Litigations, the sole issue was one of law.[14] The Liljebergs sought review of those judgments; in both instances, we affirmed through *de novo* review. *Travelers*, 7 F.3d 1203 (affirming the summary judgment in the LEI Litigation); *Travelers*, No. 93-3731, slip op. 581 (affirming the summary judgment in the SJH Litigation). Again, the Liljebergs suffered no injustice. *Continental Airlines*, 901 F.2d at 1263 ("The risk of injustice to the parties in allowing a summary judgment ruling to stand is usually slight").

On the other hand, Travelers faces a great risk of injustice should the judgments be vacated. During its dealings with the

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[14] At issue in the LEI Litigation was whether LEI and Krown were obligated to enter into leases with Travelers; in the SJH Litigation, whether *res judicata* prevented Travelers from seeking payment from SJH on the judgment against its partnership.

Liljebergs, Travelers has encountered what another panel of this court described as the most "egregious and unconscionable course of bad faith contractual dealings as the members of this panel can recall having encountered." *Travelers*, 21 F.3d 1107 (unpublished), No. 92-9579, slip op. at 2. Having obtained judgments against the Liljebergs, it would be a travesty of justice -- to say the least -- to require Travelers to start over. Besides, as noted, absent a showing of a material effect on the jury verdict in the Partnership Litigation, the results would be the same, especially in light of our *de novo* affirmance of the LEI and SJH Litigations.

Second, the denial of relief does not produce injustice in other cases. In fact, the Liljebergs fail to identify any.

And third, we find no risk that the public's confidence in the judicial process will be undermined. Partiality for or against an attorney, who is not a party, is not enough to require disqualification unless it can be shown that such a controversy would demonstrate bias for or against the party itself. *See Henderson v. Department of Public Safety and Corrections*, 901 F.2d 1288 (5th Cir. 1990);[15] *Davis v. Board of School Comm'rs of Mobile*

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[15] *Henderson* provides a close analogy to the Liljebergs' § 455(a) contention. A party alleged that the trial judge was required to recuse himself because, *inter alia*, "the judge presiding over this case ... has known the opposing counsel since he was a kid and that the judge presiding over this case was friends of opposing counsel and opposing counsel's father ...." *Henderson*, 901 F.2d at 1295. We recognized that these circumstances did not require disqualification under § 455 and that "even the most superficial research would have put [counsel] on notice that the factual circumstances he alleged were not grounds for recusal .... The trial judge was well within his discretion in finding that the motion for recusal was not well founded, either in fact or in law." *Id.* at 1296.

County, 517 F.2d 1044, 1051-52 (5th Cir. 1975), *cert. denied*, 425 U.S. 944 (1976).[16] *See also Delesdernier*, 666 F.2d at 121 ("... it might legitimately be asked whether the spectacle of an attorney dragging his opponent through a long and costly proceeding, only to conclude by moving for disqualification of the judge, is not equally detrimental to public impressions of the judicial system").[17]

C.

Contending that these appeals are frivolous, Travelers seeks sanctions against the Liljebergs.[18] A frivolous appeal is one

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[16] *See also, e.g.*, *Chitimacha Tribe of La.*, 690 F.2d 1157 (judge not required to recuse himself where some defendants were related to members of the judge's former law firm); *Parrish v. Board of Comm'rs of Ala. State Bar*, 524 F.2d 98 (5th Cir. 1975) (en banc) (fact that judge had acquaintanceship or friendship with some defendants, witnesses, and defense counsel did not require recusal), *cert. denied*, 425 U.S. 944 (1976); *Warner v. Global Natural Resources PLC*, 545 F. Supp. 1298 (S.D. Ohio 1982) (judge not required to recuse himself due to acquaintanceship between plaintiff and judge, and fact that plaintiff had supported judge's nomination to the bench).

[17] The denials of the Liljeberg's other motions, which are raised as issues here, *see* note 4, *supra*, do not constitute an abuse of discretion.

[18] The Liljebergs challenge the district court's award of costs, expenses and attorneys' fees. The district court imposed these sanctions under 28 U.S.C. § 1927, which, pursuant to its plain terms, applies only to attorneys, not the parties in the litigation. *Browning v. Kramer*, 931 F.2d 340, 344 (5th Cir. 1991). Thus, the sanctions were not imposed against the Liljebergs. Additionally, the district court's order only imposed sanctions; it did not quantify the amount. Therefore, even if the Liljebergs were liable, this court would lack jurisdiction because the award of attorneys' fees, without an amount certain, is not a final order. *Southern Travel Club, Inc. v. Carnival Air Lines, Inc.*, 986 F.2d 125, 131 (5th Cir. 1993) ("an order awarding attorney's fees or costs is not reviewable on appeal until the award is reduced to a sum certain"). While these appeals were pending, the district court, in the Partnership Litigation, quantified § 1927 sanctions

which "involves legal points not arguable on their merits." *Olympia Co. v. Celotex Corp.*, 771 F.2d 888, 893 (5th Cir. 1985) (quoting *Hagerty v. Succession of Clement*, 749 F.2d 217, 221-22 (5th Cir. 1984), *cert. denied*, 474 U.S. 968 (1985)), *cert. denied*, 493 U.S. 818 (1989). The instant appeals were simply another dilatory and harassing tactic, with little concern for the resolution of the conflict. Sanctions are most appropriate; in fact, compelled. *Ratcliff v. Texas*, 714 F.2d 24, 25 (5th Cir. 1983) (sanctions warranted when prosecution of appeal was for the purpose of harassment or out of sheer obstinacy). Accordingly, we impose sanctions pursuant to Fed. R. App. P. 38 against John A. Liljeberg, Jr., and Robert Liljeberg in the amount of double costs and damages of $1,000; and, pursuant to 28 U.S.C. § 1927, against their counsel, Kenneth C. Fonte, in the amount of $2,000.[19]

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against the Liljebergs' attorney. This quantification is the subject of *Travelers Ins. Co. v. St. Jude Hosp. of Kenner, La., Inc.*, No. 94-30272 (5th Cir. Nov. 21, 1994), which we also decide today.

[19] According to its plain terms, sanctions imposed under 28 U.S.C. § 1927 can only be for "excess costs, expenses, and attorneys' fees reasonably incurred because of ... [unreasonable and vexatious] conduct." Pursuant to § 1927, because these appeals "multip[ly] the proceedings in [these] case[s] unreasonably and vexatiously", all of the expenses incurred by Travelers for these appeals, to include attorneys' fees, are "excess". Based upon our familiarity with these appeals, the § 1927 papers filed in district court, the brief filed for Travelers, and the fact that it participated in oral argument, we are quite confident that its reasonable attorneys' fees exceeded $3,000, the total of the Rule 38 damages and § 1927 sanctions. For a more complete discussion of § 1927 sanctions, see the above referenced, related opinion rendered today, in which we affirmed the district court's imposition of such sanctions against Kenneth C. Fonte in one of the three cases from which these appeals were taken.

III.

Accordingly, for the foregoing reasons, we AFFIRM the denial of the Rule 60(b)(6) motions, and impose sanctions.

AFFIRMED; SANCTIONS IMPOSED

U.S. COURT OF APPEALS
FILED
DEC 1 1994
CHARLES R. FULBRUGE III
CLERK

U.S. COURT OF APPEALS
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NEW ORLEANS, LA.

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BILL OF COSTS

NOTE: The Bill of Costs is due for filing in this office *within 14 days from the date of the opinion*, in accordance with Rule 39 F.R.A.P. If a bill of costs is not timely filed in this office, processing can be accomplished only by the filing of a formal motion for leave to file same out of time.

The Travelers Insurance Company v. St. Jude Hospital of Kenner, La., et al. No. 93-3832, c/w 93-3833 c/w 93-3891

The Clerk is requested to tax the following costs against: Defendant/Appellants, St. Jude Hospital of Kenner, La., et al.

COSTS TAXABLE UNDER FRAP & LOCAL RULES 39	REQUESTED				ALLOWED (If different from amount requested)			
	No. of Copies	Pages Per Copy	Cost per Page*	Total Cost	No. of Documents	Pages per Document	Cost per Page*	Total Cost
Docket fee ($100.00)								
Appendix or Record Excerpts	9	73	$.25	$164.25	9	73	.25	164.25
Appellant's Brief								
Appellee's Brief	12	55	$.25	$165.00	12	55	.25	165.00
Appellant's Reply Brief								
Other:			Subtotal	$329.25				
** Costs are doubled pursuant to the Court's Order of 11/21/94			Total $ 658.50**		Costs are taxed in the amount of $ 329.25			

Double Costs

Costs are hereby taxed in the amount of $ 658.50 this 13th day of December, 199 4

CHARLES R. FULBRUGE III, CLERK

By Debbie Madere
Deputy Clerk

State of
County of Orleans

I Brent B. Barriere, do hereby swear under penalty of perjury that the services for which fees have been charged were incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this Bill of Costs was this day mailed to opposing counsel, with postage fully prepaid thereon. This 1st day of December, 199 4

BB Barriere
(Signature)

Attorney for The Travelers Insurance Company

*SEE REVERSE SIDE FOR LOCAL & FRAP RULES GOVERNING TAXATION OF COSTS

OP-JCT-7

?

Gene Burleson
May 24, 1988
Page 5

2. Mr. Liljeberg indicated that he would like the existing Board of Directors restructured.

3. Mr. Liljeberg indicated that he would like for AMI to consider leasing his 1122 for his outpatient imaging center and breast diagnostic center.

4. Mr. Liljeberg requested an expansion of the Hospital pharmacy space of 1,500 square feet.

5. Mr. Liljeberg requested a financial statement regarding the amounts applied thus far toward principle and interest for the hospital loan payments.

6. Copies of all medicare cost reports.

7. Mr. Liljeberg indicated that since AMI is required to insure the hospital building, he was not satisfied that the property/casualty insurance was written through an indemnity company licensed in Louisiana. We are presently researching this issue.

Mr. Liljeberg further indicated that he would negotiate with only with Wally Weisman or Gene Burleson and would not negotiate in the presence of attorneys associated with the Jones, Walker Law Firm, specifically Harry Hardin and Dirk Wegmann, but would negotiate only in the presence of AMI Corporate Counsel. He further indicated that his negotiating team would consist of John Liljeberg, Robert Liljeberg and his attorneys, Jim Cobb and Jack Stolier. In addition, he requested that these negotiations be tape recorded and that a court reporter be present and that these expenses be shared equally. Furthermore, he indicated that he would like those present to have the ability to bind the company "at the table" assuming satisfactory settlement was reached.

Donna, Mr. Liljeberg was adamant about negatively impacting AMI if these issues could not be resolved through settlement efforts and indicated his intentions to cause a "public movement" against AMI involving both mayorial and city council resolutions, key community leader and physician support against AMI. He indicated that he would enlist civic organizations, federal, state and parish politicians, and even the Catholic Church in his effort to discredit AMI.

The one issue that causes us the greatest potential adverse public impact involves the inability to document the $9,000,000 dollar difference regarding the construction cost of the hospital. Mr. Liljeberg indicated that he would expose the "Medicare cost pass through" issue to the national media

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because of our inability to document this $9,000,000 difference yet these dollars are being passed through via the Medicare cost reports. While I am sure that these documents exist somewhere, the implication that we are being reimbursed for expenditures which we cannot document clearly would impune our image and create an issue which would be difficult to immediately defend.

Donna, please advise if I may be of any further assistance regarding these issues. Thank you.

jf

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UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

U.S. DISTRICT
EASTERN DISTRICT OF L
FILED DEC 14 1994
LORETTA G.

No. 93-3891

NOV 21 1994
CHARLES R. FULBRUGE III
CLERK

D.C. Docket No. CA 93 173 I

TRAVELERS INSURANCE COMPANY,

Plaintiff-Appellee,

versus

ST. JUDE HOSPITAL OF KENNER
LOUISIANA, INC.,

Defendant-Appellant.

Appeal from the United States District Court for the
Eastern District of Louisiana

Before HIGGINBOTHAM, JONES and BARKSDALE, Circuit Judges.

J U D G M E N T

This cause came on to be heard on the record on appeal and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the district court in this cause is affirmed. IT IS FURTHER ORDERED that sanctions are imposed pursuant to Fed. R. App. P. 38 against John A. Liljeberg, Jr. and Robert Liljeberg in the amount of double costs and damages of $1,000.00; and pursuant to 28 U.S.C.§1927, against their counsel, Kenneth C. Fonte, in the amount of $2,000.00

November 21, 1994

ISSUED AS MANDATE: DEC 13 1994

EXHIBIT
"J"

A true copy
Attest:
Clerk, U.S. Court of Appeals, Fifth Circuit
Carol H. Le Blanc

U.S. COURT OF APPEALS
FILED
NOV 21 1994
CHARLES R. FULBRUGE III
CLERK

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3832

TRAVELERS INSURANCE COMPANY,

Plaintiff-Appellee,

VERSUS

LILJEBERG ENTERPRISES, INC.,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana

****

No. 93-3833

TRAVELERS INSURANCE COMPANY,

Plaintiff-Appellee,

VERSUS

ST. JUDE HOSPITAL, OF KENNER, LOUISIANA, INC., ET AL.,

Defendants-Appellants.

Appeal from the United States District Court
for the Eastern District of Louisiana

****

No. 93-3891

TRAVELERS INSURANCE COMPANY,

Plaintiff-Appellee,

VERSUS

ST. JUDE HOSPITAL OF KENNER, LOUISIANA, INC.,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana

Before HIGGINBOTHAM, JONES, and BARKSDALE, Circuit Judges.

RHESA HAWKINS BARKSDALE, Circuit Judge:

At issue in these three related actions are the use of belated and extremely intemperate post-judgment motions, filed pursuant to Fed. R. Civ. P. 60(b)(6), seeking, primarily because of the trial judge's club memberships and other social contacts, to disqualify him under 28 U.S.C. § 455(a) (judge's "impartiality might reasonably be questioned"), and, therefore, to set aside the adverse judgments. The district court denied the motions as being untimely, and, alternatively, without merit. We AFFIRM and impose sanctions.

I.

Once again, this court has before it another of the continuing disputes between the Liljebergs and Travelers Insurance Company. The background to the three actions before us was developed in our earlier decisions in *Travelers Ins. Co. v. Liljeberg Enters., Inc.*, 7 F.3d 1203 (5th Cir. 1993), *aff'g in part* 799 F. Supp. 641 (E.D. La. 1992); *Travelers Ins. Co. v. St. Jude Hosp. of Kenner, La., Inc.*, 21 F.3d 1107 (5th Cir. 1994) (No. 92-9579; unpublished); and *Travelers Ins. Co. v. St. Jude Hosp. of Kenner, La., Inc.*, No. 93-3731, slip op. 581 (5th Cir. Oct. 25, 1994). We develop the time line only as necessary to clarify and focus the common issue in these three related appeals.

A.

In June 1990, Travelers filed suit against the St. Jude Medical Office Building Limited Partnership (Partnership) and other defendants seeking, *inter alia*, the seizure and judicial sale of the St. Jude Medical Office Building (Partnership Litigation).[1]

---

[1] In addition to the Partnership, other defendants were St. Jude Hospital of Kenner, Louisiana, Inc. (SJH); Liljeberg Enterprises, Inc. (LEI); Krown Drugs, Inc. (Krown); John A. Liljeberg, Jr.; and Robert Liljeberg. SJH, Krown, and LEI are related entities, each formed, owned and controlled by the Liljebergs. Accordingly, references in this opinion to the Liljebergs include not only John and Robert Liljeberg, but also their entities.

Together with the seizure and sale of the building, Travelers also sought: unpaid rents from tenants Krown and LEI under their respective leases; joint liability of the Partnership for the unpaid rents of affiliates Krown and LEI due to the Partnership's consistent misrepresentations of timely collection of their rents; compensation for the destruction of improvements; the seizure and sale of movables surreptitiously removed from the building; and reimbursement for the cost of installing another storm and sewerage system in response to the Liljebergs' threats to block the existing

Following a jury trial, an amended judgment for Travelers was entered in December 1992; the Liljebergs appealed. On October 1, 1993, while the appeal was pending, the Liljebergs moved under Rule 60(b)(6) to have the judgment vacated,[2] claiming that, primarily because of his social contacts, United States District Judge Henry A. Mentz, Jr., violated 28 U.S.C. § 455(a) by failing to disqualify himself from the action although he knew, or should have known, that his impartiality might reasonably be questioned. The denial of the motion was appealed (No. 93-3833). As for the earlier appeal of the underlying judgment, our court affirmed the Liljebergs' liability on April 20, 1994; the determination of prejudgment interest was reversed and remanded. *Travelers*, 21 F.3d 1107 (unpublished).

B.

On August 13, 1992, in a related action, summary judgment was awarded Travelers to enforce two leases against Liljeberg Enterprises, Inc. (LEI Litigation). *Travelers*, 799 F. Supp. 641. LEI appealed; and, as in the Partnership Litigation, it filed the same 60(b)(6) motion on October 1, 1993, which the district court denied. Following that denial, but before LEI filed this appeal

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one.

[2] Fed. R. Civ. P. 60(b) provides, in pertinent part:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: ... (6) any other reason justifying relief from the operation of the judgment.

(No. 93-3832), our court affirmed the underlying summary judgment. *Travelers*, 7 F.3d 1203.

C.

When Travelers was unsuccessful in its efforts to collect the Partnership Litigation judgment, it sued the general partner, St. Jude Hospital of Kenner, Louisiana, Inc. (SJH Litigation). On July 30, 1993, summary judgment was awarded Travelers; and, SJH appealed the denial of its *res judicata* claim. Unlike the first two actions, SJH waited until November 2, 1993, to file essentially the same 60(b)(6) motion. *See* notes 4-5, *infra*. It appealed the denial (No. 93-3891). We recently affirmed the underlying summary judgment. *Travelers*, No. 93-3731, slip op. 581.

II.

At issue for all three appeals from the denials of the Rule 60(b)(6) motions is whether the district judge abused his discretion in refusing, post-judgment, to recuse himself pursuant to § 455(a).[3] That section provides in relevant part: "Any ...

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[3] Although all three 60(b)(6) motions were filed while appeals from the underlying judgments were pending, the district court had jurisdiction to consider the motions. Generally, when an appeal is taken, the district court is divested of jurisdiction except to take action in aid of the appeal until the case is remanded to it by the appellate court, or to correct clerical errors under Rule 60(a). 7 James W. Moore et al., Moore's Federal Practice, ¶ 60.30[2]. Our court recognizes, however,

> the power of the district court to consider on the merits and deny a 60(b) motion filed after a notice of appeal, because the district court's action is in furtherance of the appeal. When the district court is inclined to grant the 60(b) motion, however, then it is necessary to obtain the leave of the court of appeals. Without obtaining leave, the district court is without jurisdiction, and

judge ... of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). A party seeking such disqualification "must show that, if a reasonable man knew of all the circumstances, he would harbor doubts about the judge's impartiality." *Matter of Billedeaux*, 972 F.2d 104, 105 (5th Cir. 1992) (quoting *Chitimacha Tribe of La. v. Harry L. Laws Co.*, 690 F.2d 1157, 1165 (5th Cir. 1982) (citations omitted), *cert. denied*, 464 U.S. 814 (1983)).

Although § 455 does not speak to vacating a judgment, Rule 60(b)(6), in conjunction with § 455, does provide "a procedure whereby, in appropriate cases, a party may be relieved of a final judgment." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 (1988). But, it goes without saying that a Rule 60 motion is not a substitute for an appeal from the underlying judgment. Accordingly, denial of a 60(b)(6) motion is reviewed only for abuse of discretion.[4] *E.g.*, *Williams v. Brown & Root, Inc.*, 828 F.2d

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cannot grant the motion.

Willie v. Continental Oil Co., 746 F.2d 1041, 1046 (5th Cir. 1984) (citations omitted), *vacated*, 760 F.2d 87 (5th Cir. 1985), *rev'd on other grounds*, 784 F.2d 706 (5th Cir. 1986) (en banc); *accord Lairsey v. Advance Abrasives Co.*, 542 F.2d 928, 932 (5th Cir. 1976).

[4] In addition to the 60(b)(6) motions, the Liljebergs filed motions seeking to amend (expand) the statement of facts in the first two cases; the disqualification of Judge Mentz from considering the 60(b)(6) motions; and an evidentiary hearing. As with a 60(b)(6) motion, the district court is given broad discretion in ruling on these motions, and will be affirmed absent an abuse of that discretion. *E.g.*, *Matter of Hipp, Inc.*, 5 F.3d 109, 116 (5th Cir. 1993). *See* note 17, *infra*.

325, 328 (5th Cir. 1987). Therefore, "[i]t is not enough that the granting of relief might have been permissible, or even warranted -- denial must have been so *unwarranted* as to constitute an abuse of discretion." *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 402 (5th Cir. 1981).

The lengthy, unsworn, and extremely intemperate (if not contemptuous) recitation of "facts" in support of the 60(b)(6) motions boils down primarily to assailing the judge's social contacts; essentially, that several attorneys from two law firms representing Travelers (to include the one representing it in these actions), as well as a director of its parent company, are members, with Judge Mentz, of The Boston Club of New Orleans.[5] These

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[5] The club is described by the Liljebergs as "an exclusive private club", which "has a reputation in the New Orleans area community as an elitist social clique". Whether the Boston Club is a "private club" under Chapter 40C of the City Code of New Orleans is at issue before our court in *Louisiana Debating and Literary Assoc. v. City of New Orleans*, No. 94-30180 (5th Cir. argued Nov. 1, 1994).

Other social ties of Judge Mentz which the Liljebergs assail include: membership in a "most secretive and exclusive carnival organization"; membership in Le Debut, a "private social club which selects and presents debutantes for introduction into New Orleans elite society"; membership in the Royal Society of St. George, which the Liljebergs contend "practices discrimination in the selection of ordinary members on the basis of national origin-an ordinary member must be of English birth or descent"; inclusion in The Social Directory of New Orleans, which lists an "aristocracy of merit" and includes "active and distinguished members of the social scene and/or members of old line families"; familial relationship to the director of Travelers' parent company (the brother of the judge's son-in-law (now, former, *see* note 12, *infra*) is married to the director's daughter); and his wife's and daughter's membership, together with wives of members of the two law firms, in an "exclusive private club for women", The Orleans Club, whose purpose is "'to associate into closer bonds of unity' women whose interests comprise the social, professional and financial affairs of New Orleans".

contacts supposedly create a situation in which a reasonable person would question the judge's impartiality, mandating disqualification and vacation of the judgments.[6]

Each of the two 60(b)(6) motions filed on October 1 included an unsworn 104 paragraph statement of material facts in support. One month later, when the Liljebergs sought to disqualify Judge Mentz from considering those motions and also filed the 60(b)(6) motion for the third action, their allegations ballooned into over 160 paragraphs. As noted, most of these "facts" fall in the category of intemperate accusations, inapposite references, and innuendos. For example, the Liljebergs describe at length the legal fees that Travelers paid to the two law firms during the years 1990-1993, and how these fees ranked when compared to the total legal fees paid by Travelers for each year. As another example, when the "facts" expanded to 166 paragraphs, the Liljebergs listed various people, including Judge Mentz, who were listed in The Social Directory of New Orleans.

The Liljebergs further attack Judge Mentz in the motions, claiming that while the cases were before his court, Judge Mentz "sought appointment to" this court, and that two of the partners of the law firm representing Travelers "had a reputation in the New Orleans area community as being ... influential Republican Party patron[s] who had significant contact with party officials responsible for making recommendations for federal appointments." The Liljebergs then intimate improper actions on the part of Judge Mentz and one of those two partners by claiming that, during a recess in the Partnership Litigation, the lawyer (then the United States Attorney) "visited privately with [Judge Mentz] in the court's chambers."

[6] Because we are reviewing the denials of Rule 60(b)(6) motions for abuse of discretion, we do not reach the § 455(a) merits as we would on a direct appeal from a judgment. This notwithstanding, it appears that the reasons given for disqualification are totally without merit; indeed, they are almost laughable. What is not humorous is the attack on the district court and the great waste of judicial time and resources, not to mention the cost to Travelers, caused by the 60(b)(6) motions and these appeals. The allegations speak volumes about the apparent vendetta engaged in by the Liljebergs, and their attorney, Kenneth C. Fonte, against Judge Mentz. This is best exemplified by the recent release of a song, on compact disc, written and performed by Mr. Fonte, entitled "King Henry"; it is nothing more than a personal and extremely unprofessional attack on Judge Mentz. (Shortly before oral argument in late August 1994, Travelers moved that we take judicial notice of this song; in opposition, Mr. Fonte admitted that it was written and recorded in May 1994. The motion was carried with the

The Liljebergs contend that they did not have any knowledge of the club membership until July 23, 1993, almost a year after the

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case; obviously, it is GRANTED.)

For example, the song states that Judge Mentz "grants favors to his friends in the social scene"; is "a slave to aristocracy"; will "lift the blindfold of justice [f]or fraternal fantasy"; and "believes that the Constitution [m]ust yield to noblesse oblige". No doubt, some of the lyrics are fairly clever. At best, they are biting satire. But, they were not written by a folksinger or balladeer. They were penned by a lawyer, an officer of the very court being ridiculed, who had been unsuccessful repeatedly in these actions in that court.

Contending that the song "expressly concerns criticism of official conduct of an officer of the federal government", Mr. Fonte claims protection under the First Amendment. Without addressing his contention, we remind him that "once a lawyer is admitted to the bar, although he does not surrender his freedom of expression, he must temper his criticisms in accordance with professional standards of conduct." *United States Dist. Court v. Sandlin*, 12 F.3d 861, 866 (9th Cir. 1993). He should also note that

> [t]he Louisiana Supreme Court recently approved the Code of Professionalism. Article 7 of that Code continues to emphasize that an attorney "should not engage in personal attacks on other counsel *or the court*." A lawyer's conduct should be characterized *at all times* by personal courtesy and professional integrity embodied in this Code.

Fox v. LAM, 632 So. 2d 877, 879 (La. App. 2d 1994) (emphasis added).

That a lawyer, an officer of the court, would stoop to this sort of conduct reflects a gross lack of understanding of professional conduct and the role that lawyers should play in assisting to uphold the dignity of the courts. To engage in heaping such ridicule on a federal judge undermines the position that the federal courts must hold in our system of government; the object harmed is not the judge, but the very system of justice on which the attorney and his clients depend. It is a sad day indeed when a lawyer's concept of his role and duty as a lawyer and officer of the court is so misguided. Mr. Fonte has stepped far, far beyond the pale.

first two judgments and one week before the third (SJH Litigation).[7] This contention, however, was unsupported by an affidavit or other evidentiary basis.[8] Upon discovery of these circumstances, the Liljebergs never mentioned their concern to Judge Mentz or to Travelers. Instead, they sat passively while Judge Mentz entered judgment in the third case.[9] Only after being

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[7] In denying the motions, Judge Mentz stated that he had disclosed his membership in the Boston Club during his confirmation process (he was appointed in 1982), and had listed it since 1984 in the Almanac of the Federal Judiciary. Although the Liljebergs characterize this publication as "esoteric" and as one "more likely than not most lawyers have never heard of ... and fewer still have bothered to peruse", another court has described it as "a publication widely circulated to the bench and bar". *Standing Comm. on Discipline of the United States Dist. Court for the Cent. Dist. of Cal. v. Yagman*, 856 F. Supp. 1395, 1397 (C.D. Cal. 1994).

[8] Unlike 28 U.S.C. § 144 (requiring an affidavit when seeking recusal based on bias or prejudice), an affidavit is not required to seek disqualification under § 455. Nevertheless, we are still troubled that certain parties may abuse § 455 for a dilatory and litigious purpose based on little or no substantiated basis. *See Delesdernier v. Porterie*, 666 F.2d 116, 121 (5th Cir.) ("Congress did not enact § 455(a) to allow counsel to make a game of the federal judiciary's ethical obligations; we should seek to preserve the integrity of the statute by discouraging bad faith manipulation of its rules for litigious advantage."), *cert. denied*, 459 U.S. 839 (1982).

On the other hand, in making the 60(b)(6) motions, and concerning the key issue of timeliness, the Liljebergs were obviously required, but failed, to support their motions with affidavits or other sworn proof that they did not know of Judge Mentz's club membership prior to July 23, 1993. *E.g.*, *Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673, 683 (7th Cir.) (a party is required, with affidavits, to support a 60(b) motion to vacate an arbitration award when it claims a lack of prior knowledge of a former relationship between an adversary and an arbitrator; the party must negate any inference that it had implicitly consented to go before the arbitrator knowing all it now knows but saying nothing), *cert. denied*, 464 U.S. 1009 (1983).

[9] The Liljebergs maintain that upon learning of the club memberships, their counsel "commenced an investigation of the social ties among those persons to determine whether Judge Mentz

unsuccessful in that case did they seek recusal in all three. The district court denied the motions on two alternate grounds: untimely, and without merit. We address each basis.

A.

The first issue is whether the motions were untimely. Rule 60(b)(6) empowers federal courts with broad authority to relieve a party from a final judgment. *Liljeberg*, 486 U.S. at 863; *Klapprott v. United States*, 335 U.S. 601, 613 (1949). Moreover, a 60(b)(6) motion is not subject to the one year limitation imposed upon subparts (1) through (3). Instead, a party seeking 60(b)(6) relief must file the motion within a "reasonable time", *Liljeberg*, 486 U.S. at 863, which depends upon the particular facts and circumstances of the case. *First RepublicBank Fort Worth v. Norglass, Inc.*, 958 F.2d 117, 119 (5th Cir. 1992); *Ashford v. Steuart*, 657 F.2d 1053, 1055 (9th Cir. 1981) ("What constitutes 'reasonable time' depends on the facts of each case, taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties").

Because the Liljebergs rely upon § 455(a) for invoking Rule 60(b)(6), we consider also § 455(a)'s requirements in determining whether the motions were timely. *See Goldfine v. United States*,

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had violated 28 U.S.C. § 455(a)." In addition, they "commissioned and secured the performance of a sociological study to objectively evaluate public perception of the appearance of impropriety associated with the exclusive private club membership" of Judge Mentz and other New Orleans attorneys. Needless to say, without commenting on the propriety *vel non* of such a poll, this is not the legal standard by which a § 455(a) disqualification is judged.

326 F.2d 456, 457-58 (1st Cir. 1964) (a litigant who seeks a 60(b) vacation based on lack of notice must act within the period he would have had to have originally acted upon receiving actual notice). Our court has recognized that a timeliness requirement applies to raising § 455(a) disqualification. *Delesdernier*, 666 F.2d at 121-23. Furthermore, it is well-settled that -- for obvious reasons -- one seeking disqualification must do so at the earliest moment after knowledge of the facts demonstrating the basis for such disqualification. *Id.* at 121 n.3; *United States v. Patrick*, 542 F.2d 381, 390 (7th Cir. 1976), *cert. denied*, 430 U.S. 931 (1977); *Marcus v. Director, Office of Workers' Compensation Programs, U.S. Dep't of Labor*, 548 F.2d 1044, 1051 n.21 (D.C. Cir. 1976) (citing cases stating the general rule that one must raise the issue of disqualification of the trier, whether judge, administrator, or arbitrator, at the earliest practicable moment after relevant facts become known).

The district court did not abuse its discretion in rejecting all three motions as untimely. As noted, upon allegedly discovering on July 23, 1993, the primary basis for their motions, the Liljebergs failed to mention their concern to the judge or to Travelers. In fact, they not only waited until Judge Mentz entered judgment in the third case (SJH Litigation), but delayed even longer. In the SJH Litigation, after the district court entered judgment on July 30, the Liljebergs (specifically, SJH) on August 9, 1993, moved for a new trial or to alter the judgment, which they subsequently supplemented with another motion to vacate judgment.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

408

No. 96-31098

U.S. COURT OF APPEALS
FILED
OCT 28 1996
CHARLES R. FULBRUGE III
CLERK

In Re: LIFEMARK HOSPITALS OF LOUISIANA INC

Petitioner

Petition for Writ of Mandamus to the United States District Court for the Eastern District of Louisiana, New Orleans

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Before GARWOOD, JOLLY and DENNIS, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the petition for writ of mandamus is

DENIED

;ited States Court of Appe

FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA 70130

October 28, 1996

Ms Loretta Whyte, Clerk
Eastern District of Louisiana, New Orleans
United States District Court
500 Camp Street
Room C-151
New Orleans, LA 70130

No. 96-31098 In Re: Lifemark Hosp
USDC No. 93-CV-1794-T
93-CV-4249-T
95-CV-2922-T
95-CV-3993-T

Enclosed is a certified copy of the judgment issued as the mandate.

Sincerely,

CHARLES R. FULBRUGE III, Clerk

By: Connie Boersma
Connie Boersma, Deputy Clerk

cc: w/encl:
Mr Miles Paul Clements
Mr Joseph N Mole
Mr Kenneth A Mayeaux
Mr Michael Raudon Phillips
Ms Stephanie A May
Hon Thomas G Porteous Jr