

4. Plaintiffs also request that their respective rights to participation in discovery during the course of this litigation be protected in accordance with the Court's July 24, 2003, supplement to the above-referenced Scheduling Order and that Plaintiffs' counsel remain of record herein for such purposes.

5. Defendants have not filed counterclaims and Plaintiffs have not been previously granted a dismissal of an action based on or including the same claims as those presented in this lawsuit.

6. Plaintiffs request that the Court take notice that Plaintiffs have agreed to proceed under the Consolidated Amended Complaint in *Newby* in the interest of judicial economy in conformance with the Court's orders and that should Plaintiffs later recognize a need to protect their rights and to refile this action in the future, Plaintiffs should be protected from the payment of any costs associated with this or any future action as contemplated by Federal Rule 41(d).

CONCLUSION

7. For the reasons stated above, Plaintiffs ask the Court:
- a) to take notice of their intention to proceed under the *Newby* Consolidated Amended Complaint;
 - b) to dismiss their suit without prejudice;
 - c) to order that their continued rights to participate in discovery be recognized and protected;
 - d) to order that their right to refile, if necessary, in this matter, be protected from the payment of any costs associated with this or any future action; and
 - e) for such other and appropriate relief as this Court may deem necessary.

Respectfully submitted,
JUDICIAL WATCH, INC.



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CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure, I hereby certify that a true and correct copy of the foregoing instrument was served on all known counsel of record this 28th day of July, 2003 via website notification at www.esl3624.com.



Todd W. Hutton