

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NO.

DC# CV-06-01284-TSZ

Western Washington (Seattle)

IN RE: ASCENTIVE LLC and ADAM SCHRAN,

Petitioners,

**UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON,**

Respondent,

OMNI LLC et al,

Real Parties in Interest

**FIRST AMENDED EMERGENCY PETITION FOR
WRIT OF MANDAMUS OR PROHIBITION OR TO STAY
PROCEEDINGS
UNDER CIRCUIT RULE 27-3**

Floyd E. Ivey, WSBA #6888
pro hac vice
William J. Connor, WSBA #8234
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Attorneys for Petitioners

CORPORATE DISCLOSURES

ASCENTIVE LLC is a privately held corporation.

(I) Attorneys of Record

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(II) **First Amended Statement of Facts Showing The Existence of an Emergency.**

Petitioners filed an Emergency Petition for Writ of Mandamus, on December 20, 2006, seeking relief from the December 21, 2006 deadline requiring Defendants to obtain new counsel and file an Answer. Thereafter the Court of the Western District of Washington filed its Minute Order Denying Defendants' Motion for Reconsideration of the November 29, 2006 Order disqualifying counsel and Granting Defendants' Motion for Stay of the Minute Order of December 1, 2006 requiring Defendants to obtain new counsel and file an Answer with the Stay granted until January 29, 2006 at which time Defendants are to file a status report.

In light of the Western District of Washington Granting the Motion for Stay, the relief sought by Defendants herein in their Emergency Petition for relief by December 21, 2006 is rendered unnecessary. Defendants hereby withdraw the requested relief by December 21, 2006. Defendants' withdrawal of their request for relief by December 21, 2006 has been communicated to the Circuit Court via teleconference of December 20, 2006.

However, the Petition remains an Emergency Petition in that Defendants' Motion for Reconsideration has been denied. Petitioner Defendants will amend their Emergency Petition for Mandamus or Prohibition and will seek relief from the Order requiring disqualification of Counsel. This amended Emergency Petition

will be promptly filed with the Circuit Court.

Respectfully submitted this 21st day of December, 2006.

LIEBLER, IVEY, CONNOR, BERRY &
ST. HILAIRE

S/ FLOYD E. IVEY

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Floyd E. Ivey, WSBA #6888
Attorneys for Petitioners

(III) Certificate of Service.

I hereby certify that a true and correct copy of the foregoing First Amendment of Emergency Petition for Writ of Mandamus has been served upon Judge T. S. Zilly, United States District Court for the Western District of Washington, and counsel of record for Omni LLC et al, Douglas E. McKinley, Box 202, Richland, Washington, and Robert Siegel, 1325 4th Ave. Suite 940, Seattle, Wa. 98101-2509 via ECF filing with the Western District Court on this 21th day of December, 2006 and upon the 9th Circuit Court of Appeals by U.S. Mail on December 21, 2006 to 95 Seventh St., San Francisco, Ca., 94103-1518.

S/ FLOYD E. IVEY

—
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