

LAS VEGAS SUN

Just call man at center of hepatitis cases Dr. Delay Desai's lawyers slow civil, bankruptcy cases to crawl

By Jeff German

Thursday, August 13, 2009

Attorneys for Dr. Dipak Desai, who is squarely at the heart of litigation over last year's hepatitis C outbreak, are mounting the best possible defense on his behalf: stall, stall and stall.

They know the courts aren't nearly as speedy as one of Desai's endoscopy clinics.

So, in the face of overwhelming evidence against the owner of the endoscopy center that was ground zero for the outbreak, Desai's lawyers know that stalling is easily accomplished.

One significant and simple way to stall the civil lawsuits is to protect Desai behind the bankruptcy filing of his clinics. Check.

And then, delay the bankruptcy proceedings. Check.

"It's a classic legal strategy," says Will Kemp, one of the lead plaintiffs' lawyers in the massive litigation over the hepatitis scare. "When you don't have any defense, you delay."

Three of Desai's clinics, including the Endoscopy Center of Southern Nevada, filed for bankruptcy protection last month, just as key depositions were about to take place.

That action alone temporarily put the patients' litigation on hold, potentially delaying the first trials scheduled for October. Some 5,000 former patients, including more than 200 who allege sloppy medical procedures caused them to be infected with the hepatitis C virus, are suing Desai and his clinics.

U.S. Bankruptcy Judge Mike Nakagawa has scheduled a hearing for Aug. 26 on whether to allow those lawsuits to proceed in District Court.

But the bankruptcy proceedings exposed Desai to another set of risks — revealing a potential gold mine of financial information relevant to the patients' litigation and a parallel criminal investigation.

That's when the doctor's lawyers implemented another stalling move.

On Tuesday, the day Desai was to sit down with bankruptcy court investigators and face tough questions under oath about his business affairs, Nakagawa postponed the grilling.

The subpoena ordering Desai to appear for questioning requires him to bring two years worth of bank statements from his clinics beginning in July 2007. The subpoena also asks for the 2007 and 2008 tax returns of Desai and the clinics.

Desai is likely to have to give up those documents at some point, but when investigators will get a chance to question Desai about them is uncertain.

One of Desai's criminal attorneys, Margaret Stanish, struck an agreement with the bankruptcy trustee to delay the examination for at least a month to allow Stanish time to present evidence in court that Desai is too sick to answer financial questions. In July 2008, Desai's lawyers reported that he had suffered a stroke.

There is a chance Desai may never be questioned in Bankruptcy Court. According to the agreement, Stanish intends to seek a court order from Nakagawa preventing the examination from taking place.

Ed Bernstein, another lead plaintiffs' lawyer in the endoscopy litigation, says this is a typical legal move on the part of Desai, who has a long track record of being "missing in action" in the case.

"He was competent enough to meet with his lawyers to make a decision to file bankruptcy," Bernstein explains. "But now he's trying to say he's not competent enough to answer questions."

Desai this year resorted to a different delay tactic in the endoscopy litigation. He asserted his Fifth Amendment right against self-incrimination and refused to answer key questions about the operation of his clinics. He supposedly was too sick to show up to a sworn deposition himself, so he sent Stanish in his place to take the Fifth for him.

But is Desai really that sick?

Two weeks ago a clinical neuropsychologist hired by the Nevada State Medical Examiners Board concluded that Desai is well enough to stand up to the rigors of disciplinary proceedings before the board. As a result, the board's executive director stated the board would move forward with a hearing on whether to take away Desai's medical license.

The board isn't alone in not buying Desai's latest ill-health claims. The plaintiffs' lawyers are skeptical, too. And who can blame them?

"It seems like another way to try to avoid responsibility for his actions," attorney Marni Rubin says. "What it comes down to is that they're playing dirty, and they're playing sneaky."