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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA,
CIVIL DIVISION
CASE NO. 50 2006CA012461XXXXMB

LASHONNE COLLINS,

Plaintiff,

vs.

GEORGE HWA and NICOLE HWA,

Defendants.

DEPOSITION OF MICHAEL DENKER

Taken before Dona J. Wong, Registered Professional
Reporter and Notary Public in and for the State of Florida
at large, pursuant to Notice of Taking Deposition filed by
the Defendants in the above cause.

Tuesday, May 22, 2007
1145 Banks Road
Margate, Florida
2:35 p.m. - 3:48 p.m.
Job #650292

COPY

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I N D E X

- - -

WITNESS:

DIRECT CROSS REDIRECT RECROSS

MICHAEL DENKER

BY MR. FULMER

4

E X H I B I T S

- - -

PAGE NO.

NUMBER

41

EXB. NO. 1

41

EXB. NO. 2

- - -

PROCEEDINGS

1

2

3 Thereupon,

4

MICHAEL DENKER,

5 being by the undersigned Notary Public first duly sworn,

6 was examined and testified as follows:

7

THE WITNESS: I do.

8

DIRECT (MICHAEL DENKER)

9 BY MR. FULMER:

10 Q. Sir, would you state your full name, please.

11 A. Michael William Denker.

12 Q. How do you spell your last name?

13 A. D-e-n-k-e-r.

14 Q. And your work address, please?

15 A. 1145 Banks Road, Margate, Florida 33063.

16 Q. And are you employed?

17 A. Yes.

18 Q. And for whom are you employed?

19 A. DiscoCare Incorporated.

20 Q. And how do you spell DiscoCare, Incorporated?

21 A. Disco, D-i-s-c-o, Care, C-a-r-e, one word.

22 Q. And is Incorporated on the end of it?

23 A. Yes.

24 Q. And in what capacity are you employed with

25 DiscoCare, Inc.?

1 A. Director.

2 Q. Director of?

3 A. Director.

4 Q. Okay. And how long have you served as the
5 Director for DiscoCare, Inc.?

6 A. Since June 5th of '06.

7 Q. When was DiscoCare incorporated?

8 A. I think it was in the fourth quarter of '05. I
9 couldn't tell you exactly. Somewhere around November of
10 '05.

11 Q. And was there a predecessor to your position?

12 A. No.

13 Q. So when you came on on June 5th of 2006 --

14 A. A lot of Indians, no chief, right.

15 Q. -- you were the first director for DiscoCare?

16 A. Yes.

17 Q. Presently do you have to report to someone?

18 A. Not really, no.

19 Q. Are there any officers and directors of the
20 corporation DiscoCare, Inc.?

21 A. Like a board?

22 Q. Usually they have like -- when their corporation
23 is formed, they have to appoint a president.

24 A. We have a -- I think we just have a CEO. I don't
25 know of a board.

1 Q. Well, a board is different than a president. You
2 have a board consisting of people who don't hold an office
3 but they are board of directors or board of something.

4 A. We have a CEO.

5 Q. Okay. So you mean that's a chief executive
6 officer?

7 A. Yes.

8 Q. And who is the chief executive officer?

9 A. Jonathan Cutler, C-u-t-l-e-r.

10 Q. And where is he -- where is his office?

11 A. He's actually a physician and so that's what I
12 say when I don't report to anybody. He's a podiatrist.

13 Q. And where does he practice podiatry?

14 A. He has a Wellington office. He has a Palm Beach
15 office. He has a south office; I think, Lantana. I know
16 him from the Wellington office.

17 Q. And when you say Palm Beach office, you mean
18 actually on the island of Palm Beach?

19 A. Oh, no, I'm sorry. Like a West Palm Beach
20 office. I'm not very good with the geography up there.

21 Q. And the Wellington office is how you know him
22 from?

23 A. Right, which I call Wellington. It's near 441
24 and it's like Okeechobee west. Once I cross 441 I just
25 assume I'm in Wellington. I don't know. Palm Beach

1 Acres, Palm Beach.

2 Q. And you mentioned a third office.

3 A. I think he has one -- I'm not certain if he has
4 one or he does procedures like in Palm Beach Lakes and
5 then I know he has an office in Lantana on Lantana.

6 Q. In Lantana on Lantana Road?

7 A. Yeah, I think it's on Lantana Road. I think
8 that's more accurate. I don't know if it's in Lantana but
9 I know it's on Lantana Road.

10 Q. And then you mentioned Palm Beach Lakes. Are you
11 saying that he does procedures at Palm Beach Lakes
12 Surgical Center?

13 A. Yes, right. I don't think he has an office there
14 because when I talk to him, I talk to him by cell phone
15 all the time. He bounces from here and there but there's
16 no like a receptionist you can call or anything like you
17 can call.

18 Q. The office under which Mr. or Dr. Cutler performs
19 his practices there, is there a name to it like Wellington
20 Podiatric Associates or something like that?

21 A. I think it's something of -- it's either
22 Wellington or it's west. I couldn't tell you for sure.

23 Q. Does he have any partners in his podiatry office?

24 A. There are other doctors that work there. I don't
25 know if they're -- I don't know what status they are.

1 Q. And how long has Mr. Cutler been the chief
2 executive officer of DiscoCare, Inc.?

3 A. He started it so that's all I can say. I don't
4 know. I don't know if like he --

5 Q. Was DiscoCare a successor corporation for another
6 entity?

7 A. No.

8 Q. Has DiscoCare ever been known as any other name
9 other than DiscoCare?

10 A. No.

11 Q. Has it ever operated under any other name other
12 than DiscoCare, Inc.?

13 A. No.

14 Q. And is DiscoCare an active Florida corporation?

15 A. The only reason I'm thinking -- I'm wondering is
16 that I know the last company I worked for that I knew for
17 sure was a Delaware corporation but I think we're a
18 Florida corporation. I think we're -- we're a Florida
19 corporation.

20 Q. And who did you work for before DiscoCare, Inc.?

21 A. ArthroCare Corporation.

22 Q. And where were they located?

23 A. When I first started working for them, their
24 headquarters was in Sunnyvale, California and then their
25 headquarters moved to Austin, Texas.

1 Q. How long did you work for ArthroCare?

2 A. Since November of 2003.

3 Q. And what was your position with them?

4 A. Sales manager.

5 Q. And what was the nature of the business of
6 ArthroCare?

7 A. Manufacture and seller of medical devices.

8 Q. What type of medical devices?

9 A. Devices used to remove tissue. There's --
10 they're used in various types of surgery. I specialized
11 in the spine.

12 Q. And was there a particular name that was given to
13 this medical device that was used to remove tissue from
14 the spine?

15 A. Yes.

16 Q. And what was the name of that instrument you
17 manufactured and sold on behalf of ArthroCare?

18 A. It's the Perc DC SpineWand and the Perc DLG
19 SpineWand.

20 Q. And is ArthroCare still an active corporation?

21 A. Yes.

22 Q. Are they still manufacturing these two
23 SpineWands?

24 A. Yes.

25 Q. Why did you make the move from ArthroCare to

1 DiscoCare, Inc.?

2 A. I -- actually, I was leaving ArthroCare to go
3 into a totally separate industry and called -- well,
4 actually -- anyway --

5 Q. Called John Cutler?

6 A. Well, actually Dr. Cutler called me. And because
7 I was the sales manager that -- he just knew me from
8 working with him and he had just started this new company
9 that was basically a distributor for the ArthroCare
10 products. And so based upon my familiarity with the
11 products and working with the company, he asked me to come
12 on board.

13 Q. Does Jonathan Cutler have any monetary interest
14 in ArthroCare?

15 A. None that I know of.

16 Q. Is he an officer within ArthroCare? Is it
17 Corporation or Inc.?

18 A. Corp.

19 Q. Is he an officer within that organization?

20 A. No.

21 Q. When you worked for ArthroCare as a sales
22 manager --

23 A. Uh-huh.

24 Q. -- who did you sell to?

25 A. Surgeons, orthopedic spine surgeons,

1 neurosurgeons.

2 Q. Did you sell to any surgeons in the Palm Beach
3 County, Martin County area?

4 A. Yes.

5 Q. And who did you sell to?

6 A. Theofolis, Simon, Reuter, Saslow, Paul. Paul
7 only came up to Palm Beach once. I mean, he only came up
8 one day a week. Kugler, Gomez, Lins, L-i-n-s -- Palm
9 Beach and Martin. Right?

10 Q. Okay.

11 A. I'm just trying to think. I can't think of
12 anybody in Martin.

13 Q. Scott Katzman?

14 A. He's in Fort Pierce. He -- we did sell to him a
15 different product but not these products.

16 Q. Okay.

17 A. We had a -- we had another line of products
18 for -- like a cement injection that -- through ArthroCare
19 that we sold him many moons ago.

20 Q. And who did you sell to? Did you sell to
21 Dr. Gelbard in Fort Lauderdale?

22 A. No.

23 Q. Now, the wands that you referred to, the DC and
24 the DLG, you sold these to -- medical devices to the
25 physicians you referenced before?

1 A. Well, mostly to the facilities that -- not
2 specifically to them but to their facility. But, yes,
3 they're the ones -- they were the surgeons that used the
4 devices is an accurate way to say it.

5 Q. And were they the ones -- they the physicians
6 were the ones ordering them?

7 A. The facility would order them.

8 Q. And which facility would order them? Palm Beach
9 Lakes Surgical Center?

10 A. Yes. Wellington, I think Palms West is the one
11 out in Wellington where Dr. Lins works out. Lake Worth
12 Surgery Center, Brain and -- Brain and Theofolis has a
13 facility called the Brain and something Institute up in
14 Gardens.

15 Q. Is ArthroCare still selling these wands to these
16 facilities?

17 A. Yes.

18 Q. And ArthroCare is selling these medical devices
19 through the distributor DiscoCare, Inc.?

20 A. Yes.

21 Q. And what's the arrangement there? Why is there
22 now a distributor as opposed to before there was none?

23 A. Help to facilitate -- we worked with DiscoCare,
24 like I said, since the fourth quarter of '05.

25 Q. That's when they were formed.

1 A. Right. And they basically as a third party
2 biller were able to get insurance companies to approve
3 procedures that we were having difficulties getting
4 approvals on, and they basically just facilitated a lot
5 more cases being done and that's why ArthroCare signed on
6 with them or signed whatever -- you know, made an
7 agreement with them.

8 Q. Is there a written agreement between ArthroCare
9 and DiscoCare, Inc.?

10 A. Yes.

11 Q. And is there an agreement between DiscoCare and
12 any of the facilities to which these medical devices are
13 ultimately sold?

14 A. No.

15 Q. So it's strictly by order?

16 A. Yes.

17 Q. Now, when you said that DiscoCare was used to
18 facilitate the sale of the medical devices from ArthroCare
19 to the facilities, what was involved with DiscoCare in
20 order for them to facilitate the --

21 A. Getting approvals. You know, it's basically we
22 did the work at the doctor's office, starting to get
23 approvals for the procedures.

24 Q. So did the doctor or surgeon retain DiscoCare in
25 order to get approval for the procedure that they were

1 going to perform?

2 A. Right.

3 Q. And what procedure is DiscoCare facilitating and
4 seeking and obtaining approvals for?

5 A. Disc decompression surgeries.

6 Q. The percutaneous discectomies?

7 A. Sure.

8 Q. And who is involved with obtaining approvals
9 for -- obtaining approvals with the insurance companies
10 for this procedure, who actually does that?

11 A. Me and my staff.

12 Q. And what's involved from your end? Like what do
13 you do? What's involved?

14 A. Predeterminations, precertifications,
15 verification of verified coverage and then based upon
16 that, you know, make that determination of -- of -- let
17 the office know whether the procedure is approved or
18 not -- doctor's office know.

19 Q. So when you say predetermination, you're
20 referring to what? What does that mean?

21 A. The insurance companies, you can submit office
22 notes, M.R.I. reports, you know, whatever the doctor has
23 that makes this patient a good candidate for the surgery,
24 and then we submit that information to the insurance
25 company and then they make what's called a

1 predetermination.

2 Q. And then what's the precertification, what are
3 you referring to there?

4 A. That is a -- precertification we can usually do
5 over the phone or the fax. Predetermination is usually
6 more formal. It's kind of a step-by-step.

7 Q. So precertification is actually done first then?

8 A. Right.

9 Q. So you attempt that first with an insurance
10 company?

11 A. Uh-huh.

12 Q. And if you're successful, one step of the process
13 is eliminated?

14 A. A lot of times the insurance companies will
15 say -- you know, for most of the insurance companies we
16 deal with now, they just say, you know, no
17 precertification is actually necessary is what they would
18 say, which means that they just approve that procedure.
19 But there's still insurance companies out there that, for
20 whatever reason, they'll say the date they need to go to
21 precertification or predetermination and so -- because
22 we're doing that as a service, we don't want to tell the
23 doctor's office that, you know, he's approved unless we
24 know for sure.

25 If the insurance company said we need a

1 precertification, we go and basically have to let the
2 doctor's office know it's going to take a little longer
3 than normal, because we have to wait for them to get back
4 to us.

5 Q. And when you say verify coverage, you're
6 referring to what?

7 A. You know, everybody has an insurance card. That
8 insurance card, everybody's plan is a little different, so
9 you know, just basically understanding the terms and
10 condition of their specific plan.

11 Q. And then if their certification -- if there's
12 insurance coverage covering the procedure, then you notify
13 the doctor's office that they're approved and there's
14 coverage to pay for the procedure?

15 A. Absolutely.

16 Q. And what else is involved after that then?

17 A. Just provide them with the equipment.

18 Q. And what equipment is provided to the surgeon
19 then?

20 A. The spine equipment, the generator, the --
21 everything necessary to do the surgery.

22 Q. And what does that consist of? There's a
23 generator and there's the wand.

24 A. The generator, the wand, sterile cables, foot
25 pedal, the disposables such as access needles, things like

1 that that are disposable.

2 Q. Anything else?

3 A. No.

4 Q. That's it?

5 A. (Witness moving head up and down.)

6 Q. You have to answer out loud.

7 A. Yes, that's it. Sorry.

8 Q. Now, the generator, is that -- when you say the
9 equipment is provided to the surgeon for the procedure and
10 there's a generator involved, does he actually keep the
11 generator or what's involved with that?

12 A. That's really -- we leave that up to the
13 ArthroCare representative. They're more clinical. We
14 don't go to the cases so they have -- they have our
15 generators and so they make determinations of whether or
16 not to leave them on site, go back and forth. That's --
17 basically that's their call.

18 Q. Are they leased to the surgeon?

19 A. No.

20 Q. Are they leased to the surgical center?

21 A. No.

22 Q. They're just provided?

23 A. Right, as part of the service along with the
24 equipment.

25 Q. And then are they left there for an

1 indeterminable amount of time?

2 A. Like I say, that's up to the rep.

3 Q. And the rep would be from ArthroCare?

4 A. Yes.

5 Q. The cable, what are you referring to?

6 A. Attaches the device back to the generator.

7 Q. And you're referring to the wand attaching to the
8 generator?

9 A. Right.

10 Q. And there is a foot pedal that is used by the
11 surgeon during the procedure --

12 A. Yes.

13 Q. -- in order to remove the disc material?

14 A. Right. Remove the disc material, you know, just
15 total control over the device, the foot pedal.

16 Q. And the foot pedal is provided by ArthroCare?

17 A. Well, placed by ArthroCare.

18 Q. And that's left there according to the directives
19 of the representative from ArthroCare?

20 A. Where the generator goes, the foot pedal goes.

21 Q. As well as the cable?

22 A. As well as the cable.

23 Q. And the wand?

24 A. The wand itself is disposable, single use.

25 Q. And the access needles are, as you've indicated,

1 disposable. Right?

2 A. Right.

3 Q. Single use?

4 A. Single use.

5 Q. All right. Did you bring some documents with you
6 today?

7 A. I did.

8 Q. Thank you. What did you bring with you?

9 A. Our bill.

10 Q. Okay. Did you bring any other items with you
11 today?

12 A. No. My depo --

13 Q. You brought the Notice of Taking Deposition?

14 A. Yes.

15 Q. You received a Subpoena for -- Subpoena Duces
16 Tecum for your deposition?

17 A. Yes.

18 Q. And in the Subpoena it asked for invoices for
19 items and goods purchased or used in the case number
20 080706.

21 Did you bring any invoicing for those items or
22 goods purchased?

23 A. Yes.

24 Q. And what are you referring to?

25 A. Our bill.

1 Q. Okay. It also asks for documents and materials
2 used to set or establish pricing for these items or goods
3 in case number 080706.

4 Did you bring any documents?

5 A. I did not.

6 Q. Do any such documents exist?

7 A. Like -- I don't understand what --

8 Q. Well, apparently a bill was rendered by
9 DiscoCare --

10 A. Right.

11 Q. -- for this particular case and a price was
12 charged by DiscoCare.

13 What was utilized to establish the price that was
14 charged for this case?

15 A. ArthroCare's list price.

16 Q. And is there a material on that? I mean --

17 A. Oh, sure.

18 Q. So it's printed material?

19 A. Like a price list, yeah, sure.

20 Q. And do you have that?

21 A. I can get it pretty quickly.

22 Q. Okay. And then there's -- asks for documents and
23 materials to sufficiently describe the items and goods
24 used in this case 080706.

25 So is there something that further describes

1 these five items that are listed on the service bill?

2 A. No. I mean, other than the price list from
3 ArthroCare.

4 Q. Okay. Why don't you get that.

5 A. Okay.

6 MR. PACHTER: Off the record.

7 (Discussion held off the record.)

8 BY MR. FULMER:

9 Q. Now, in regards to the service bill for case
10 number 080706, do you have a copy of that with you?

11 A. I do.

12 Q. Thank you.

13 The first item on there, it says procedure but it
14 says wand. So is that the description of the item?

15 A. Yes.

16 Q. And it says wand but what is that?

17 A. The wand is the device itself.

18 Q. Is there a more complete name for it other than
19 wand?

20 A. Sure. You have it right here. It's the DLG.

21 Q. How do you know if it's the DLG versus a DC
22 versus a DOR from this invoice?

23 A. You know what, I don't. I just assumed it was
24 the DLG.

25 Q. And what's the difference between the R, the G

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1 and the C?

2 A. The C has a loop on it so the doctor removes

3 tissue with a kind of a circular motion creating spherical

4 inside in the disc and then usually in smaller discs