

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. 50 2006CA006810 XXXXMB AB

STEFAN COELLO,

Plaintiff,

vs.

RONALD LEVINE,

Defendant.

DEPOSITION OF DR. JONATHAN CUTLER

Friday, August 10, 2007

1:10 p.m. - 2:10 p.m.

2047 Palm Beach Lakes Boulevard

West Palm Beach, Florida

Reported By:

Barbara DeSimone, Registered Professional Reporter

Notary Public, State of Florida

Esquire Deposition Services

West Palm Beach Office

Job No. 657488

COPY

1 Appearances:

2 On Behalf of the Plaintiff:

3 WILLIAM ZOELLER, ESQ.
4 SCHULER HALVORSON & WEISSER, P.A.
5 Barrister Building, Fourth Floor
6 1615 Forum Place
7 West Palm Beach, Florida 33401
8 561.689.8180

9 On Behalf of the Defendant:

10 FRED L. FULMER, ESQ.
11 LAW OFFICES OF FRED LAND FULMER
12 Galleria Corporate Centre, Suite 1216
13 2455 East Sunrise Boulevard
14 Fort Lauderdale, Florida 33304
15 954.763.1052

16 On Behalf of the WITNESS,
17 PALM BEACH LAKES SURGERY CENTER and DISCOCARE:

18 STEVEN L. ROBBINS, ESQ.
19 STEVEN L. ROBBINS, P.A.
20 6334 Foster Street
21 Jupiter, Florida 33458
22 561.748.7816

23 WITNESS: DR. JONATHAN CUTLER

24 EXAMINATION DIRECT CROSS REDIRECT RECROSS
25 BY MR. FULMER 3

26	EXHIBIT	DESCRIPTION	PAGE
27		Affidavit of Erica Rodriguez was marked	
28	29	Witness' Exhibit No. 1.....	5
30		Department of State document was marked	
31	32	Witness' Exhibit No. 2.....	13

1 BY MR. FULMER:

2 Q. Is there a standard procedure in your office
3 for the services of a subpoena upon you or for your
4 records?

5 A. There is no standard --

6 MR. ZOELLER: Objection.

7 MR. ROBBINS: Objection, compound,
8 predicate.

9 MR. ZOELLER: Same objection.

10 BY MR. FULMER:

11 Q. Have you ever authorized any individual
12 within your office to accept service of a subpoena
13 duces tecum for records or for you to appear for a
14 deposition?

15 MR. ROBBINS: Objection, predicate.

16 MR. ZOELLER: Objection.

17 A. No.

18 MR. ZOELLER: Join.

19 BY MR. FULMER:

20 Q. Who is Erica Rodriguez?

21 A. She works at my Foot and Ankle Center.

22 Q. Where does she work for you?

23 A. Are you asking in what corporation or in
24 what -- or what address?

25 Q. You said that she works for you in the Foot

1 and Ankle --

2 A. Center.

3 Q. And do you have -- is there just one Foot
4 and Ankle Center?

5 A. I have several offices.

6 Q. All right. At what location does she work
7 for you for the Foot and Ankle Center?

8 A. In Royal Palm Beach.

9 Q. And what is her position?

10 A. She's a check-in clerk.

11 Q. And what are her duties as a check-in clerk?

12 A. People come in, sign in. She collects their
13 co-pay.

14 Q. How long has she been working for you?

15 A. I don't know the exact time.

16 Q. Has she been working for you for more than a
17 month?

18 A. Yes.

19 Q. More than a year?

20 A. Yes.

21 Q. More than three years?

22 A. That I don't know.

23 Q. Has she worked for you anywhere else other
24 than the Foot and Ankle Center?

25 A. No.

1 MR. FULMER: May I see the affidavit.

2 BY MR. FULMER:

3 Q. Why was this affidavit prepared by Erica
4 Rodriguez?

5 MR. ROBBINS: Objection, predicate.

6 MR. ZOELLER: Join.

7 MR. ROBBINS: Speculation.

8 A. I'd have to see it.

9 MR. ZOELLER: Join. You did say
10 speculation?

11 MR. ROBBINS: Yes, sir.

12 A. I guess to show that she's not me.

13 BY MR. FULMER:

14 Q. Were you present when she signed this
15 affidavit?

16 A. I'm not sure when she signed it.

17 Q. When she signed this affidavit, were you
18 present when she signed it?

19 A. I did not see her sign it.

20 Q. Do you know a Beth Altman?

21 A. Yes.

22 Q. Who is Beth Altman?

23 A. She works in the Foot and Ankle Center.

24 Q. And what is her position at the Foot and
25 Ankle Center?

1 Q. Who would know that answer?

2 A. I don't know if there are such -- I don't
3 know if there is such an answer to that question.

4 Q. What position do you hold with Palm Beach
5 Lakes Surgery Center?

6 A. I'm the managing director.

7 Q. And what are your responsibilities as the
8 managing director?

9 A. I oversee the day-to-day activities of
10 what's going on at the Surgery Center.

11 Q. Would that include the maintaining of
12 records within the Palm Beach County -- or Palm
13 Beach Lakes Surgery Center?

14 MR. ZOELLER: I'm going to object to
15 form. It's vague.

16 MR. ROBBINS: Join.

17 A. When you ask what records, you are referring
18 to what specifically?

19 BY MR. FULMER:

20 Q. The records that are part and parcel of the
21 day-to-day operations of the Palm Beach Lakes
22 Surgery Center.

23 A. Yes, I oversee that.

24 Q. There is some hesitancy or doubt in your
25 response. Is there somebody else other than you?

1 MR. ROBBINS: Objection, speculation.

2 Move to strike.

3 MR. ZOELLER: Join in that objection.

4 A. Well, I mean, I oversee everything that goes
5 on here.

6 BY MR. FULMER:

7 Q. So if there is a question in regards to the
8 maintenance of the records, are you the one that
9 people would respond to and ask questions of?

10 A. Correct.

11 Q. So in regards to records regarding the
12 schedules of surgeries performed at the Palm Beach
13 Lakes Surgery Center from January 1, 2004, to
14 present date, is there such a list or record or
15 computer entry?

16 A. I do not know that answer.

17 Q. Who would know that answer?

18 A. I would have to try to find the answer out.

19 Q. Well, how would you go about finding that
20 answer?

21 A. I would ask the various people who are
22 involved in the Surgery Center.

23 Q. And who would be the various people that you
24 would ask at the Surgery Center to find that
25 information out?

1 A. Well, I would ask -- Jackie Walker would be
2 the only person.

3 Q. And why would you ask Jackie Walker?

4 A. Jackie Walker's responsibility -- is under
5 me as helping to run the Surgery Center.

6 Q. And other than helping you run the Surgery
7 Center, why would you ask her regarding records for
8 surgeries performed at this facility?

9 MR. ROBBINS: Objection, asked and
10 answered.

11 A. Because she would help, hopefully help me
12 find the answer to that question.

13 BY MR. FULMER:

14 Q. Would she have some expertise or some
15 specific knowledge that you don't have that would
16 enable her to obtain that information?

17 MR. ZOELLER: Objection to the form,
18 speculation.

19 MR. ROBBINS: Object to the form,
20 speculation.

21 A. I don't know. I don't know because I don't
22 know if your answer exists, so I think the two of us
23 together would try to find out and try to help you
24 answer that question.

25 BY MR. FULMER:

1 Q. Does there exist any contract between
2 Discocare and Palm Beach Lakes Surgery Center?

3 MR. ROBBINS: Objection, relevance. I'm
4 going to object on privilege, trade secret,
5 instruct him not to answer, as well clearly
6 on relevancy.

7 As we would show by Witness Composite No.
8 2, Discocare did not even exist until 2006
9 and Mr. Coello's procedures were in August of
10 '05, so it would be impossible for anything
11 about Discocare to have anything to do with
12 this action or any question that he could
13 possibly ask that would produce relevant and
14 admissible information concerning this
15 action.

16 (Department of State document was marked
17 Witness' Exhibit No. 2 for identification.)

18 BY MR. FULMER:

19 Q. Were there any agreements between Discocare
20 and Palm Beach Lakes Surgery Center from January 1,
21 2004, to present date?

22 MR. ZOELLER: Object to the form. It's
23 vague.

24 MR. ROBBINS: Are you asking if there was
25 a contract before the company existed?

1 BY MR. FULMER:

2 Q. My question is, from January 1, 2004,
3 through present date, are there any agreements
4 between Discocare and the Palm Beach Lakes Surgery
5 Center?

6 MR. ZOELLER: Same objection. It's
7 vague.

8 MR. ROBBINS: Fred, can you help me? Can
9 you help me? How can he possibly have a
10 contract before the company exists?

11 MR. FULMER: My question is, from January
12 1, 2004, through present date.

13 MR. ROBBINS: Oh, through present date?

14 MR. FULMER: Yeah.

15 MR. ROBBINS: Okay, then I would object
16 with respect to trade secret and privilege in
17 that, again, Mr. Coello's procedure was in
18 August of '05. These companies didn't come
19 into existence until -- Discocare was May of
20 '06, so that therefore any contract that
21 would exist not only could not have anything
22 to do with your case or Mr. Coello, but is a
23 matter of private business and contract
24 between the contracting parties, not for
25 publication, therefore privileged.

1 MR. ZOELLER: I would join.

2 MR. ROBBINS: Instruct the witness not to
3 answer.

4 BY MR. FULMER:

5 Q. Are there any contracts or agreements
6 between Arthrocare and Palm Beach Lakes Surgery
7 Center from January 1, 2004, to present date?

8 A. No.

9 Q. In regard to any documents, records,
10 brochures, e-mails, computer entries, meeting
11 minutes regarding the establishment or setting of
12 fees, invoices charged by Discocare for the
13 distribution and sale of medical devices and
14 supplies from January 1, 2004, to present date?

15 MR. ROBBINS: Object, privileged, trade
16 secret, do not answer.

17 MR. ZOELLER: Object that it's vague and
18 also calls for speculation.

19 MR. ROBBINS: Not to mention, again,
20 irrelevant.

21 MR. ZOELLER: And relevancy.

22 MR. ROBBINS: And, Fred, if it will help
23 in terms of expediting, since Dr. Cutler has
24 a surgery, I'm going to instruct him not to
25 answer any questions about Discocare. It's

1 impossible for it to ever be admissible in
2 your case.

3 BY MR. FULMER:

4 Q. Any contracts, agreements, order forms,
5 invoicing bills, statements between Arthrocare and
6 Discocare from January 1, 2004, to present date?

7 MR. ROBBINS: Same objection. Don't
8 answer.

9 MR. ZOELLER: Same objection as well.

10 BY MR. FULMER:

11 Q. In regards to any contracts, agreements,
12 order forms, invoicing bills, statements between
13 Discocare and Palm Beach Lakes Surgery Center from
14 January 1, 2004, to present date.

15 MR. ROBBINS: Same objection, privileged,
16 trade secret, irrelevant.

17 MR. ZOELLER: Join.

18 BY MR. FULMER:

19 Q. Any invoicing from Discocare to Stefan
20 Coello for services performed by Discocare?

21 MR. ZOELLER: Objection, form,
22 irrelevant.

23 MR. ROBBINS: He's asking if you invoiced
24 Stefan Coello from Discocare before it even
25 existed.

1 THE WITNESS: Answer it?

2 MR. ROBBINS: Yeah.

3 A. No.

4 BY MR. FULMER:

5 Q. Do you presently hold any official
6 capacities with Discocare?

7 MR. ZOELLER: Objection to form. It's
8 irrelevant.

9 MR. ROBBINS: Same objection.

10 A. Yes.

11 BY MR. FULMER:

12 Q. And what capacity do you have with
13 Discocare?

14 MR. ZOELLER: Objection, relevance.

15 MR. ROBBINS: Same.

16 A. I'm the president of Discocare.

17 BY MR. FULMER:

18 Q. And how long have you been the president of
19 Discocare?

20 MR. ZOELLER: Same objection.

21 MR. ROBBINS: Same objection.

22 A. Since the company formed.

23 BY MR. FULMER:

24 Q. And when was the company formed?

25 A. In May of '06.

1 Q. And did you have -- when you say it was
2 formed in May of '06, do you mean it was
3 incorporated in May of '06?

4 A. Correct.

5 Q. Did you have the assistance of an attorney
6 in incorporating?

7 A. I incorporated myself.

8 MR. ZOELLER: Objection, relevance.

9 MR. ROBBINS: Same.

10 BY MR. FULMER:

11 Q. So you did not have the assistance of an
12 attorney when the Discocare was incorporated?

13 MR. ZOELLER: Same objection.

14 MR. ROBBINS: Same objection.

15 A. No. I did it myself.

16 BY MR. FULMER:

17 Q. Is there a difference between Discocare and
18 Discocare Distribution?

19 MR. ZOELLER: Object that it's irrelevant,
20 but...

21 MR. ROBBINS: Same objection.

22 A. It's just two separate companies.

23 BY MR. FULMER:

24 Q. And do you hold any offices with Discocare
25 Distribution?

1 MR. ZOELLER: Objection, relevance.

2 MR. ROBBINS: Same.

3 A. Yeah, I'm the president of this.

4 BY MR. FULMER:

5 Q. You are looking at a form from the what,
6 State of Florida?

7 A. Correct.

8 Q. Were you aware that you were president of
9 Discocare Distribution?

10 A. Yes.

11 MR. ZOELLER: Objection, form.

12 BY MR. FULMER:

13 Q. I mean, before looking at this were you
14 aware you were president of Discocare Distribution?

15 MR. ZOELLER: Relevance.

16 MR. ROBBINS: Same objection.

17 A. I don't think it says it on here on this
18 form whether I am or not.

19 BY MR. FULMER:

20 Q. Do you hold any other offices with Discocare
21 Distribution?

22 MR. ZOELLER: Relevance.

23 MR. ROBBINS: Same.

24 A. No. I'm the president.

25 BY MR. FULMER:

1 Q. What form were you looking at?

2 MR. ROBBINS: The form we gave you, Fred,
3 Sunbiz form, part of Witness' No. 2.

4 BY MR. FULMER:

5 Q. In looking at the form for Discocare
6 Distribution, Inc. from Florida Department of State,
7 Division of Corporations, it lists your name as the
8 registered agent, and then it lists Officer/Director
9 Detail, and it says Title PSTD.

10 A. Okay.

11 Q. Do you know what that stands for?

12 A. No.

13 Q. Do you know if you are also the
14 secretary/treasurer and a director of the
15 corporation?

16 A. I think I'm everything.

17 MR. ZOELLER: Objection, relevance.

18 MR. ROBBINS: Same objection.

19 BY MR. FULMER:

20 Q. In regards to Palm Beach Lakes Surgery
21 Center, is there a corporate name for under which
22 the facility operates?

23 A. I believe it's Palm Beach Lakes Surgery
24 Center.

25 Q. Is it incorporated or is it a name

1 associated with that has a legal name for Palm Beach
2 Lakes Surgery Center?

3 MR. ROBBINS: Objection, predicate,
4 competence.

5 A. I believe it's incorporated as Palm Beach
6 Lakes Surgery Center.

7 BY MR. FULMER:

8 Q. So the proper name would be Palm Beach Lakes
9 Surgery Center, Inc.?

10 MR. ROBBINS: Objection.

11 A. I'm not sure, to be honest.

12 MR. ROBBINS: Predicate and competence.

13 BY MR. FULMER:

14 Q. And you are the managing partner or managing
15 member?

16 A. That's correct.

17 Q. And are there any other members or partners
18 of Palm Beach Lakes Surgery Center?

19 MR. ZOELLER: Objection to form,
20 relevancy.

21 MR. ROBBINS: Same.

22 A. There are other partners in the Surgery
23 Center.

24 BY MR. FULMER:

25 Q. And who are the other partners in the

1 Surgery Center?

2 MR. ZOELLER: Objection, relevance.

3 MR. ROBBINS: Same.

4 A. There is Dr. Simon, there is Dr. Kugler,
5 there is Dr. Gomez.

6 BY MR. FULMER:

7 Q. And yourself?

8 A. That's correct.

9 Q. And how long have the four individuals whom
10 you've just named been partners or members of the
11 Surgery Center?

12 MR. ZOELLER: Objection, relevance.

13 MR. ROBBINS: Same.

14 A. Since its inception.

15 BY MR. FULMER:

16 Q. And the inception was when?

17 A. I don't have the exact date, but I believe
18 it was in two thousand -- I believe it was in 2004.

19 Q. And do you know when in 2004?

20 A. No, I don't.

21 Q. Were there -- at one time were there other
22 members of the Palm Beach Lakes Surgery Center over
23 the four individuals you listed above?

24 MR. ZOELLER: Objection, relevance.

25 MR. ROBBINS: Same.

1 A. Yes.

2 BY MR. FULMER:

3 Q. And who were the other members of the
4 facility, the Surgery Center before?

5 MR. ZOELLER: Relevance.

6 MR. ROBBINS: Same.

7 A. I'm sorry, when you say "members," you are
8 referring to?

9 BY MR. FULMER:

10 Q. I thought you said that you were the
11 managing member.

12 A. Correct.

13 Q. So that's why I'm using the word "member."
14 If they are known as some other name, I'll be glad
15 to use that?

16 A. Are you referring to "member" as "partner"
17 or...?

18 Q. Is there a partnership agreement between
19 you, Dr. Kugler, Dr. Gomez and Dr. Simon?

20 MR. ROBBINS: Objection, predicate and
21 competence.

22 MR. ZOELLER: Relevance, and I'll join in
23 this objection.

24 A. I don't know.

25 BY MR. FULMER:

1 Q. So how do you want to refer to these four
2 individuals that have a monetary interest in the
3 Palm Beach Lakes Surgery Center?

4 A. We just say "partners."

5 Q. But you don't know if there is an actual
6 partnership agreement?

7 A. I do not know that, correct.

8 Q. I'm sorry?

9 A. I do not know for sure.

10 Q. Before the four individuals that were just
11 named, were there other individuals who were
12 partners in Palm Beach Lakes Surgery Center?

13 MR. ZOELLER: Objection, relevance.

14 MR. ROBBINS: Same.

15 A. Yes.

16 BY MR. FULMER:

17 Q. And who were those individuals?

18 MR. ZOELLER: Relevance.

19 MR. ROBBINS: Same.

20 A. Gary Carroll and Tony Rogers.

21 BY MR. FULMER:

22 Q. And who is Gary Carroll?

23 A. He's an individual.

24 Q. What is his profession?

25 MR. ZOELLER: Objection, relevance.

1 MR. ROBBINS: Same.

2 A. Businessman.

3 BY MR. FULMER:

4 Q. And Tony Rogers, who is he?

5 MR. ZOELLER: Same objection.

6 MR. ROBBINS: Same.

7 A. He's a doctor.

8 BY MR. FULMER:

9 Q. What type of physician?

10 A. He is a pain management doctor.

11 Q. Other than serving as a president of

12 Discocara, Discocare Distribution, do you serve or

13 have any other official capacities or titles or

14 positions with any other companies?

15 MR. ZOELLER: Object to relevancy.

16 MR. ROBBINS: Same.

17 A. I'm the president of the South Florida Foot

18 and Ankle Center.

19 BY MR. FULMER:

20 Q. Any other corporations or entities that you

21 serve as a president or an officer of?

22 MR. ZOELLER: Same objection.

23 MR. ROBBINS: Same.

24 A. None affiliated with medicine.

25 BY MR. FULMER:

1 Q. Do you have any partnerships or
2 entrepreneurial interest or agreements or interests
3 with Dr. Kugler in any other entity or business?

4 MR. ZOELLER: Objection to relevance.

5 MR. ROBBINS: Same.

6 A. No.

7 BY MR. FULMER:

8 Q. You have an office down in Lantana, correct?

9 A. Correct.

10 Q. Is that Lake Worth or Lantana?

11 A. Lantana.

12 Q. And is your office there with the office of
13 Dr. Kugler?

14 A. No.

15 Q. You are in a separate office building?

16 A. I'm not in that office.

17 Q. So your office is in a separate office than
18 Dr. Kugler's?

19 A. That's correct.

20 Q. Do you have a monetary interest in the
21 Lantana office building where Dr. Kugler has his
22 office?

23 MR. ZOELLER: Relevance.

24 MR. ROBBINS: Same.

25 A. I guess we're real estate partners in that.

1 BY MR. FULMER:

2 Q. And how long have you been real estate
3 partners with Dr. Kugler in the Lantana office
4 building?

5 MR. ZOELLER: Objection to relevance.

6 MR. ROBBINS: Same.

7 A. I believe approximately three years.

8 BY MR. FULMER:

9 Q. And do you know the physical address for
10 that office in Lantana?

11 A. 3618 Lantana Boulevard.

12 Q. Are you in a partnership agreement or
13 partners or share a monetary interest with Dr.
14 Kugler in any other entities, corporations or
15 partnerships?

16 MR. ZOELLER: I'm going to object. It's
17 irrelevant.

18 MR. ROBBINS: Same objection.

19 A. Nothing in medical, no.

20 BY MR. FULMER:

21 Q. Well, how about outside of medical?

22 MR. ZOELLER: That's irrelevant, and I
23 don't know -- I mean, Fred, this is basically
24 going into trying to find out all his
25 personal business ventures, which has nothing

1 to do with this case. He's not even a
2 treating doctor.

3 MR. ROBBINS: I'm going to object.

4 MR. ZOELLER: I don't know if Gerber would
5 allow this type of thing.

6 MR. ROBBINS: I'm going to object. It's
7 also outside the scope of discovery, and
8 can't be reasonably calculated to lead to
9 admissible evidence, and would also be a
10 privileged private business matter.

11 MR. ZOELLER: Join.

12 MR. ROBBINS: Instruct him not to answer
13 with regard to these matters.

14 BY MR. FULMER:

15 Q. Are you or -- have you been or are you
16 presently in a partnership or corporation with Dr.
17 Kugler involving -- entitled Legal Funding?

18 A. Repeat the question.

19 (A portion of the record was read by the
20 reporter.)

21 MR. ZOELLER: Objection, relevance.

22 MR. ROBBINS: Same objections.

23 A. I am not a party with Dr. Kugler in regard
24 to Legal Funding.

25 BY MR. FULMER:

1 Q. Have you ever been?

2 MR. ZOELLER: Objection, relevance.

3 MR. ROBBINS: Same objection.

4 A. Yes, I have.

5 BY MR. FULMER:

6 Q. And when were you a partner with Dr. Kugler
7 in the company or entity called Legal Funding?

8 MR. ZOELLER: Objection, relevance.

9 MR. ROBBINS: Same objection.

10 A. I don't know the exact timeline when it
11 was.

12 BY MR. FULMER:

13 Q. Approximately when was it?

14 A. Couple years ago.

15 Q. So 2004, 2005?

16 A. That's about right.

17 MR. ROBBINS: Same objections.

18 MR. ZOELLER: Join.

19 BY MR. FULMER:

20 Q. For what period of time?

21 A. I don't have that answer.

22 Q. And what was the nature of the business?

23 MR. ZOELLER: Relevance.

24 MR. ROBBINS: Same objection, and instruct
25 the witness not to answer. It's privileged,

1 absolutely beyond the scope of your
2 discovery, Fred.

3 MR. ZOELLER: Join.

4 MR. ROBBINS: And for the record, I'm
5 going to say, you know, if you can ask some
6 questions about Mr. Coello, Dr. Cutler would
7 be happy to answer to the extent he can, but
8 if you are going to continue on these, you
9 know, personal matters outside the scope of
10 discovery, we're going to seek protection
11 from the court and terminate the deposition.
12 He's here voluntarily for you, Fred, to talk
13 about Mr. Coello if you want him to.

14 MR. FULMER: That's your --

15 MR. ROBBINS: Right.

16 MR. FULMER: -- thinking, but that's...

17 BY MR. FULMER:

18 Q. Is Legal Funding still an active
19 corporation?

20 MR. ZOELLER: Objection, relevance.

21 MR. ROBBINS: Same objections.

22 Dr. Cutler, don't answer.

23 Also predicate.

24 BY MR. FULMER:

25 Q. All right. In regards to Palm Beach Lakes

1 Surgery Center, does the center bill a facility fee
2 for procedures performed on patients?

3 A. Yes, they do.

4 Q. And since January 1, 2004, who has been
5 involved with establishing the fees for procedures
6 performed at the Surgery Center?

7 A. They were established before I became a
8 managing partner.

9 Q. And you became a managing partner...?

10 A. Approximately end of '05, beginning of '06.

11 Q. Who was the managing partner before that?

12 A. Gary Carroll.

13 Q. You said Gary Carroll is a businessman.

14 Does he live in West Palm Beach?

15 A. I do not believe so, no.

16 Q. Where do you believe that he lives?

17 A. I do not know.

18 Q. When you last knew of him, where did he
19 live?

20 A. I don't know that answer.

21 Q. Where was he from?

22 A. He lived somewhere in Florida.

23 Q. Does he live in South Florida?

24 A. I believe so.

25 Q. Does he live in Palm Beach County?

1 A. I don't know that answer.

2 Q. How did you meet Gary Carroll?

3 A. I don't remember.

4 Q. Was there anyone else involved with setting
5 facility fees for procedures performed at Palm Beach
6 Lakes Surgery Center?

7 A. Not that I know of.

8 Q. So Gary Carroll set the fees himself?

9 MR. ROBBINS: Objection, speculation, lack
10 of predicate.

11 MR. ZOELLER: Join.

12 A. I didn't say that.

13 BY MR. FULMER:

14 Q. Well, how long have you been performing
15 procedures here at the Palm Beach Lakes Surgery
16 Center?

17 A. Since the inception.

18 Q. Which was sometime in 2004?

19 A. Okay.

20 Q. Correct?

21 A. I'm not sure of the exact date.

22 Q. I'm not sure of the exact date either
23 because you said 2004, so do you know when in 2004
24 that you started to do procedures here?

25 A. No, I do not.

1 Q. January?

2 A. Are you answering for me? I don't know the
3 answer.

4 Q. I don't know.

5 A. And that's what I said.

6 Q. I haven't looked at any documents and I
7 haven't seen your surgical procedure charts here so
8 I don't know. I'm trying to get a date other than
9 12 months of 2004.

10 A. And what I'm trying to explain to you is I
11 don't know the exact date.

12 Q. Okay.

13 A. It's three or four years ago.

14 Q. So when you started doing procedures here,
15 were you aware that the Surgical Center was sending
16 out a bill for the facility fee?

17 A. Yes.

18 Q. And did you review any of those bills?

19 A. No.

20 Q. So until you became the managing partner at
21 the end of 2005, beginning of 2006, who was cloaked
22 with responsibility for setting the fees for the
23 facility for procedures performed here?

24 MR. ROBBINS: Objection, predicate,
25 speculation.

1 MR. ZOELLER: Join.

2 A. I do not know.

3 BY MR. FULMER:

4 Q. You had patients that had procedures
5 performed here at the Surgery Center before you
6 became the managing partner, correct?

7 A. That's correct.

8 Q. And you were aware that a facility fee was
9 going to be billed to the patient?

10 A. That's correct.

11 Q. And did you have any understanding or
12 knowledge as to what fee would be charged to your
13 patients?

14 A. No.

15 Q. And you were a member or partner of the
16 facility and you had no knowledge as to what the fee
17 was going to be?

18 A. That's correct.

19 Q. Who would actually bill, generate the bill
20 for the facility fee before you became the managing
21 partner?

22 MR. ROBBINS: Objection, speculation,
23 predicate.

24 MR. ZOELLER: Join.

25 A. When you say "generate the bill," could you

1 explain what you mean by that?

2 BY MR. FULMER:

3 Q. Well, somehow it has to get on paper from
4 this office, the Palm Beach Lakes Surgery Center, to
5 the patient, and explain how that would happen.

6 A. I will hypothesize. I don't know the exact
7 answer, but someone would print a bill and send it
8 to the insurance company.

9 Q. Okay. And who would do that? Would you do
10 that?

11 A. No.

12 Q. Okay. Who would do that?

13 A. I don't know.

14 Q. Would -- what's her name, Jackie, the girl's
15 name that you mentioned before, Jackie Walker?

16 A. Jackie Walker.

17 Q. Would she do that?

18 A. I don't know.

19 Q. Okay. Are you currently involved with
20 setting the facility fees for Palm Beach Lakes
21 Surgery Center?

22 MR. ZOELLER: Objection, relevance.

23 MR. ROBBINS: Same.

24 A. I've reviewed them.

25 BY MR. FULMER:

1 Q. How often do you review them?

2 MR. ZOELLER: Objection, relevance.

3 MR. ROBBINS: Same.

4 A. I reviewed them when I became managing
5 partner.

6 BY MR. FULMER:

7 Q. And when you say that you reviewed them, you
8 were reviewing them for what, for what purpose?

9 MR. ZOELLER: Objection, relevance.

10 A. Just to see what --

11 MR. ROBBINS: Same.

12 A. Just to see what the fees are.

13 BY MR. FULMER:

14 Q. When you became an investor in this
15 facility, did you review any documents as to what
16 the revenues were from the facility?

17 MR. ZOELLER: Objection, relevance.

18 MR. ROBBINS: Same.

19 A. When I became an investor, did I review
20 documents of the revenues of the facility?

21 BY MR. FULMER:

22 Q. Yes. Sometime in 2004 you became a partner
23 in this facility?

24 A. Correct.

25 Q. And from that date until you became the

1 managing partner in the end of 2005, were you aware
2 of what facility fees were being generated from this
3 facility?

4 MR. ZOELLER: Relevance.

5 MR. ROBBINS: Same.

6 A. In an overall capacity on a macro, not on a
7 micro.

8 BY MR. FULMER:

9 Q. So you just knew how much money was coming
10 in, is that what you are saying?

11 A. That's correct.

12 MR. ZOELLER: Relevance.

13 MR. ROBBINS: Same.

14 BY MR. FULMER:

15 Q. Now, does Palm Beach Lakes Surgery Center,
16 do they work under letters of protection?

17 A. Yes, they do.

18 Q. And for what period of time have they been
19 working under letters of protection?

20 MR. ZOELLER: Relevance.

21 MR. ROBBINS: Same.

22 A. They have been -- ever since I became
23 managing director they have been.

24 BY MR. FULMER:

25 Q. Do you know if there was any in existence

1 before you became managing director of Palm Beach
2 Lakes Surgery Center?

3 MR. ZOELLER: Relevance.

4 MR. ROBBINS: Same.

5 A. I do not have specific knowledge, but I
6 believe they were.

7 BY MR. FULMER:

8 Q. Who is charged with -- at the facility --
9 with following up on the status of letters of
10 protection issued from the facility?

11 MR. ZOELLER: Relevance.

12 MR. ROBBINS: Same.

13 A. I'm not sure.

14 BY MR. FULMER:

15 Q. In regards to letters of protection and
16 their relation to account balances for that
17 particular patient, who is charged with -- well,
18 first of all, is there ever a time when a letter of
19 protection and an account balance is resolved for
20 less than the amount stated on the invoice for the
21 facility fee from Palm Beach Lakes Surgery Center?

22 MR. ZOELLER: Objection, vague, predicate,
23 and relevance.

24 MR. ROBBINS: Join.

25 A. Are you referring to Mr. Coello?

1 BY MR. FULMER:

2 Q. In general.

3 MR. ZOELLER: Same objection.

4 MR. ROBBINS: Same.

5 A. Our goal is to try to collect as much as we
6 can from that patient. We try to collect that
7 invoice, that full invoice.

8 BY MR. FULMER:

9 Q. And are there times when the invoice is not
10 collected at 100 percent or in full?

11 MR. ZOELLER: Same objection.

12 MR. ROBBINS: Same.

13 A. Our job is we're going to go after the
14 patient to try to collect that invoice.

15 BY MR. FULMER:

16 Q. But are there times that the account balance
17 is resolved and settled for an amount less than that
18 invoiced?

19 MR. ZOELLER: Same objection.

20 MR. ROBBINS: Same objections.

21 A. As managing director, my goal is to make
22 sure that we try to get that full invoice when we
23 can.

24 BY MR. FULMER:

25 Q. So are you saying that in every case you get

1 a hundred percent of the account balance?

2 MR. ZOELLER: Same objection.

3 A. I hope to.

4 BY MR. FULMER:

5 Q. That's your goal, but what actually happens
6 in reality?

7 MR. ZOELLER: Object to form, same
8 objections.

9 MR. ROBBINS: Same objections.

10 A. I'm sure in reality we don't collect a
11 hundred percent.

12 BY MR. FULMER:

13 Q. Are there times when that account balance is
14 resolved and settled for an amount less than the
15 invoiced amount?

16 MR. ZOELLER: Same objection.

17 MR. ROBBINS: Same.

18 A. I think I answered that when I said
19 unfortunately, as much as we try to, we don't always
20 collect a hundred percent.

21 BY MR. FULMER:

22 Q. So I guess in a round-about way you are
23 saying that you do resolve your account balances for
24 less than 100 percent?

25 MR. ZOELLER: Same objections.

1 MR. ROBBINS: Objection. Same. Also that
2 would be a privileged matter of private
3 contract with whomever he's resolving an
4 issue with, if it ever happens.

5 A. I'm still trying to collect a hundred
6 percent of the time.

7 BY MR. FULMER:

8 Q. I know you are, but how about those that
9 have been resolved? I'm sure that there are some
10 that have been resolved, correct?

11 MR. ZOELLER: Same objections.

12 BY MR. FULMER:

13 Q. Because I'm sure since 2004 since you've
14 been a partner you've collected on some of these
15 facility fees that you've invoiced, correct?

16 A. Yes.

17 Q. And on those where there is a letter of
18 protection have they been resolved for an amount
19 less than the amount invoiced?

20 MR. ZOELLER: Objection, vague, predicate,
21 relevancy.

22 MR. ROBBINS: Same.

23 A. To answer your question, our goal is to try
24 to collect a hundred percent, and unfortunately
25 there may be times when we don't collect a hundred

1 percent, but we're going after a hundred percent of
2 our bill.

3 BY MR. FULMER:

4 Q. Do you understand when I use the word
5 "resolve" and "settle"?

6 A. I do.

7 Q. Okay. So if the facility invoices a patient
8 with a letter of protection, let's say,
9 hypothetically for \$10,000 and the invoice is
10 resolved or settled so that the patient has no
11 further obligation to the facility for an amount
12 that's, say, \$8,000, has that ever occurred?

13 MR. ZOELLER: Objection, relevance,
14 incomplete hypothetical, predicate, vague.

15 MR. ROBBINS: Objection.

16 A. Are you referring to Mr. Coello specifically
17 or...?

18 MR. ROBBINS: And objection, that poses a
19 hypothetical improperly to a lay witness for
20 this deposition.

21 BY MR. FULMER:

22 Q. No.

23 A. Repeat the question.

24 MR. ROBBINS: Same objections.

25 (A portion of the record was read by the

1 reporter.)

2 MR. ZOELLER: Same objection.

3 MR. ROBBINS: Same.

4 A. I can't answer specifically. I can answer
5 that we expect to collect a hundred percent of our
6 bill. I'm sure in the course of doing any business
7 that we're involved we haven't collected a hundred
8 percent of our bill, but our goal is to collect a
9 hundred percent.

10 BY MR. FULMER:

11 Q. Is Jackie Walker charged with handling of
12 letters of protection here at the Palm Beach Lakes
13 Surgery Center?

14 A. I'm not sure.

15 Q. Well, if you wanted to follow up on cases
16 that you handle with letters of protection, how
17 would you go about doing that?

18 MR. ZOELLER: Objection, relevance.

19 MR. ROBBINS: Same.

20 A. I probably would discuss with Jackie Walker
21 what's going on.

22 BY MR. FULMER:

23 Q. And do you know if she has a listing of
24 those cases where there are -- they are being
25 handled under a letter of protection?

1 A. I do not know.

2 MR. ROBBINS: Only got a couple more,
3 Fred?

4 MR. FULMER: Yes, I've got some more
5 questions.

6 MR. ROBBINS: I mean, two minutes more or
7 you think thirty minutes more?

8 MR. FULMER: Does he need to go?

9 MR. ROBBINS: Yeah, he's got to operate.

10 MR. FULMER: Okay.

11 BY MR. FULMER:

12 Q. Discocare, why was it established?

13 MR. ZOELLER: Objection, relevance.

14 MR. ROBBINS: Same objections. Don't
15 answer. Same objections as previously stated
16 on the record; that is, it's a matter of
17 private privileged business, and instruct him
18 not to answer.

19 BY MR. FULMER:

20 Q. Would there be any documents or information
21 that would indicate as to the present whereabouts or
22 former whereabouts of Gary Carroll?

23 A. None that I know of.

24 Q. Well, I'm assuming when you -- when was he
25 bought out?

1 MR. ZOELLER: Objection. Assumes facts
2 not in evidence, speculation.

3 BY MR. FULMER:

4 Q. Did you guys buy him out?

5 A. Yes, we did.

6 Q. When did you buy him out?

7 A. I believe it was January of '06.

8 Q. And was there some type of an agreement
9 associated with that buyout?

10 MR. ZOELLER: Objection, relevance.

11 MR. ROBBINS: Same.

12 A. I believe so.

13 BY MR. FULMER:

14 Q. And who would have that document?

15 A. I do not know.

16 Q. As managing partner of this organization,
17 you wouldn't know where it would be?

18 A. I would have -- I could try to find out for
19 you, but as you ask me this question at 2:05 or 2:06
20 on a Friday afternoon, I do not know that answer.

21 Q. Would it be here at this office?

22 A. Again, I do not know.

23 Q. Who would you have to ask in order to find
24 out where it would be?

25 A. A lot of people. I'm not really sure.

1 Q. Well, give me a few names. I mean, if you
2 were required to go and find it, how would you go
3 about finding it?

4 A. I'd probably would ask Jackie Walker, would
5 be my first person.

6 Q. Okay. How do you spell Mr. Carroll's last
7 name?

8 A. C A -- I believe two Rs and I believe two
9 Ls.

10 Q. C A R R O L L?

11 A. I believe.

12 Q. Other than Gary Carroll, did anybody else
13 other than he have any involvement with establishing
14 the fee that would be charged by the facility prior
15 to you becoming managing partner in the end of 2005?

16 MR. ROBBINS: Objection, predicate and
17 speculation.

18 MR. ZOELLER: Join.

19 A. Correct me if I'm wrong, I'm not sure, but I
20 don't remember saying that he did have -- say that
21 Gary Carroll did have the -- set the fees.

22 BY MR. FULMER:

23 Q. All right. Who established the facility
24 fees?

25 A. I do not know, I believe was my answer.

1 Q. Did Dr. Kugler have any involvement with
2 setting the facility fees in the year 2005?

3 MR. ZOELLER: Objection, calls for
4 speculation.

5 A. I do not know, and I can give you one more
6 question.

7 BY MR. FULMER:

8 Q. Well, if you don't know who set up the
9 facility fees or set the amount for the facility fee
10 in the year 2005, who would know who set up these,
11 established the fees for this facility in 2005, and
12 particularly August of 2005?

13 MR. ROBBINS: Objection, speculation.

14 MR. ZOELLER: Same objection.

15 A. I'm going to answer honestly I do not know.

16 BY MR. FULMER:

17 Q. Who was the managing director before you
18 became; was it Gary Carroll?

19 A. That's correct.

20 Q. And you have to go for surgery. Is that
21 correct?

22 A. Right. I gave you an hour and tried to live
23 up to that.

24 MR. FULMER: Okay. Well, I'm not done,
25 but if you've got to go to surgery, I guess

1 you've got to go to surgery.

2 THE REPORTER: Do you want this
3 transcribed?

4 MR. FULMER: Sure.

5 MR. ROBBINS: He will read.

6 MR. ZOELLER: I would like a copy.

7 (Witness excused.)

8 (Deposition concluded at 2:10 p.m.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25