

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

MOHAMMED N. ISLAM,

Case No: CACE 07-013797 (09)

Plaintiff,

vs.

ALEXANDER W. ANDERSON,

Defendant

CIRCUIT CIVIL-12
2008 APR -2 PM 12:31
FILED FOR RECORDS
CLERK OF CIRCUIT COURT
BROWARD COUNTY, FLORIDA

**DEFENDANT'S OBJECTION TO PLAINTIFF'S NOTICE FOR TRIAL AND REQUEST
FOR CASE MANAGEMENT CONFERENCE PURSUANT TO R.C.P. 1.200(a)**

Defendant, ALEXANDER W. ANDERSON, by and through the undersigned counsel, hereby objects to the Plaintiff's Notice for Trial, requests that a trial date not be set at this time and further requests that the Court schedule a Case Management Conference and as grounds therefore states:

1. Steinger, Iscoe & Greene, P.A., the law firm representing the Plaintiff, filed a Notice for Trial indicating that the instant action is ready for Jury Trial. The case is **not** ready for trial. In fact, due to the extraordinary circumstances surrounding this case together with the difficulties encountered in attempting to obtain discovery from non-party witnesses, including some of the Plaintiff's medical providers, the case is not nearly ready for trial and the Defendant needs the assistance of the Court in coordinating the progress of this action.

CIRCUMSTANCES AND NATURE OF THE CASE

2. This is a personal injury action arising out of automobile accident. Negligence is not in issue. The case is being defended on the issues of causation, permanency, and damages, especially the amount of the medical bills submitted by some of the Plaintiff's medical providers.

3. On November 28, 2005 the Plaintiff and the Defendant were involved in a car accident. The Plaintiff drove his car home from the scene of the accident. Thereafter, on the same day, his wife drove him to the North Broward Medical Center. The Plaintiff did not receive any other medical attention related to the car accident for two months.

4. On February 27, 2006 the Plaintiff was seen by Charles Matuszak, M.D. of Jeffrey L. Kugler, M.D., P.A. Later that same day he was seen by a chiropractor.

5. Less than two weeks later the plaintiff was being represented by Steinger & Iscoe, P.A.

6. The Plaintiff's total medical bills are \$66,646.50. Of that amount, however, \$54,409.20 was billed on one day by two medical providers, Jeffrey L. Kugler, M.D. and Jane Bistline, M.D., and a non-medical provider company known as DiscoCare, Inc. These charges were related to a three (3) level lumbar discogram purportedly done by Dr. Bistline and a three (3) level percutaneous discectomy purportedly done immediately afterward by Dr. Kugler. There is a charge in the amount of \$7,454.00 by Discocare for a SpineWand purportedly used in the procedure. The SpineWand is manufactured by the Arthrocare Corp. When a percutaneous discectomy is performed using the Arthrocare SpineWand, the procedure is known as a Plasma Disc Decompression (PDD) or a Nucleoplasty. Discocare, Inc. was the exclusive distributor of the Arthrocare Spinewand and has since been purchased by Arthrocare for the sum of \$25,000,000.00.

The "DiscoCare Model"

7. Attached hereto as Exhibit "A" is a job advertisement posted September 23, 2007 on the website of the Arthrocare Corporation for the position of a Regional

Business Development Manager in Miami, Florida. Attached hereto as Exhibit "B" is a job advertisement posted by the Arthrocare Corporation for the position of a Regional Business Development Manager in Houston, Tx. With the exception of the location of the job, the advertisements are virtually the same.

8. These Arthrocare ads seeking Regional Business Development Managers make it clear that it would be a "plus" for the candidate to be an attorney or law school graduate and that they need to either be familiar with "personal injury law" or have experience in developing physician referral networks.

9. According to the ads, the "Essential Duties and Responsibilities..." of the position include "**Selling and implementing Plasma Disc Decompression (PDD) and the DiscoCare Model** within an assigned territory, which includes **establishing networks of surgeons, pain physicians, facilities and MRI Centers** that meet the criteria for treating PDD patients." [Emphasis supplied]. Further, according to the ads, "Essential tasks include:

- **ensuring that clients from targeted law firms** suffering from back, leg or neck pain as a result an injury ... **are referred into this network**
- ensuring that clients are seen by surgeons in a timely manner and the treatment algorithm followed
- **ensuring that appropriate candidates (as determined by the surgeon) are scheduled for and receive a PDD procedure** and that all appropriate paperwork is turned in
- ensuring all documentation needed to settle/close cases is turned in to the law firms in a timely manner". [Emphasis supplied].

10. The ads also state that "Call points include:
- **Physicians office** – Educate the surgeon and staff on PDD benefits, procedure technique, how to identify potential PDD candidates, correct documentation for the approval for the PDD procedure with maximum reimbursement, billing, patient flow and referral patterns
 - **Facility Staff** – Educate the staff on PDD benefits, procedure, procedure protocol, technique, correct documentation pre/post procedure, billing, patient flow and referral patterns
 - **Attorneys office** – Educate the attorneys and staff on PDD benefits, procedure, technique, how to identify potential PDD candidates, correct documentation for the approval for the PDD procedure with **maximum case settlement, billing, patient flow and referral patterns**". [Emphasis supplied].

11. The people filling these Regional Business Development Manager positions were also to be responsible for providing a "weekly surgeon **pipeline report**" and meeting or exceeding a "**sales quota**". [Emphasis supplied].

12. It would appear that the purpose of these Regional Business Development Manager positions for Arthrocare is to *develop business* (the sale of SpineWands used in the PDD procedure) through the implementation of something called the "Discocare Model." According to the advertisements, this *Discocare Model* appears to involve a establishing and managing a network of physicians, facilities and targeted law firms and *educating them on maximizing patient flow and referral patterns, billings and case settlements*. This model appears to be based on personal injury claims and suits as opposed to managed care or self-pay claims because it involves developing business

with targeted law firms and Arthrocare was seeking attorneys or law school graduates familiar with State personal injury law. In order to meet a sales quota these Regional Business Development Managers were to be tasked with *ensuring* that injured clients of targeted law firms are referred into the network and once in the network, *ensuring* that these people follow a treatment algorithm.

13. The Defendant will require discovery to determine whether the DiscoCare Model is being implemented in this case. At least according to the advertisements, it would appear that the DiscoCare Model entails a network of doctors and lawyers along with a medical device manufacturer setting out to maximize medical bills and therefore case settlement amounts in an unnatural or artificial manner. Such a Model would be contrary to any notion of legal causation. Negligence is the "legal cause" of loss, injury or damage even though it operates in combination with some other cause occurring after the negligence occurs **if the other cause was itself reasonably foreseeable** or the loss, injury or damage was a reasonably foreseeable consequence of the negligence. Florida Standard Jury Instructions in Civil Cases, 5.1 [c].

14. Based upon the language of the published advertisements together with the particular facts of this case pertaining to medical treatment and billing and what is known about some of the relationships involving non-parties to this action, there is a basis for conducting discovery pertaining to the "DiscoCare Model" and whether or not it is being applied to this case. Due to the extraordinary nature of the discovery that will be needed together with the problems that have been encountered with attempting to even complete the initial discovery with non-parties, the case should not be scheduled for trial.

FACTS PERTAINING TO MEDICAL BILLS AND TREATMENT

15. On the day of the accident the plaintiff was seen at the North Broward Hospital. The total charges at the hospital, including X-Rays and a CT scan, were \$3,271.30. The plaintiff received no more medical attention and incurred no more medical bills until two months later when he saw Dr. Matuszak of Dr. Kugler's office. Upon the advice of Dr. Kugler's office, the Plaintiff was referred to and received chiropractic treatment totaling \$3,190.00 and MRI's totaling \$2,450.00. As previously stated, the Plaintiff's total medical bills are \$66,646.50. Of that amount, \$63,375.20 was billed after the Plaintiff first appeared at Dr. Kugler's office and, as previously stated, \$54,409.20 of that amount was related to a procedure or procedures done on one day.

16. According to the medical records and bills of Drs. Kugler and Bistline on February 15, 2007 the Plaintiff purportedly underwent a lumbar discogram at three (3) levels performed by Dr. Bistline. The discogram is a diagnostic test and, according to the records of Drs. Bistline and Kugler, they were positive at all three levels and based on those findings the disc decompression procedure (PDD) was immediately performed at those same three levels.

17. These procedures were not performed at a hospital or ambulatory surgical center, but rather the Broward County office of Jeffrey L. Kugler, M.D., P.A. located at 1600 S. Federal Highway, Tenth Floor, Pompano Beach, Florida 33062. According to the Plaintiff's deposition testimony, Dr. Kugler told him the procedure would take fifteen (15) to twenty (20) minutes. According to the anesthesia record, that appears to have been about correct. This was a minimally invasive out-patient procedure lasting approximately twenty minutes, the charges for which are itemized as follows:

Jeffrey Kugler, P.A.	\$34,800.00
Dr. Jane Bistline	\$12,155.20
DiscoCare, Inc.	<u>\$ 7,454.00</u>
Total:	\$54,409.20

18. According to the records of Drs. Kugler and Bistline, the PDD was performed at three lumbar levels because the discograms were positive at those three levels. However, according to the sworn deposition testimony of the Plaintiff no discogram was performed. It is important to note that the Plaintiff is a medical doctor. He is not licensed in the United States, but received his degree in India in 1980, worked with the Ministry of Health in Canada for two years and then practiced in Trinidad & Tobago until 1999 when he came to the United States. According to his testimony the Plaintiff knew what a percutaneous discectomy was before he even got in the accident that is the subject of this case. The Plaintiff provided the following sworn testimony:

Q. Did Dr. Matuszak, Bistline or Kugler or anyone else in that office talk to you about whether you needed any other diagnostic tests on your low back before having the procedure? I know you had the MRI. Did they tell you whether you needed any other diagnostic tests before having the percutaneous discectomy?

A. No.

Q. Did you have any other diagnostic tests before the percutaneous discectomy?

A. No.

Q. Did Dr. Kugler or Dr. Bistline ever talk to you about a discogram?

A. No.

Q. Do you know what a discogram is?

A. Yes.

Q. Did they tell you whether you whether you were going to need one?

A. No.

Q. Did you have one?

A. No?

Q. Nobody ever talked to you about the results of a discogram because you didn't have one?

A. No.

Q. You know what a discogram is? If somebody mentioned it, you would have known what it was?

A. Yes.

Q. You know it's an invasive test, not a simple procedure?

A. Yes.

Q. If someone was going to do one of those to you, you'd want to know about it?

A. Of course, yes.

Q. Have you ever witnessed a discogram?

A. No.

Q. You know what they are?

A. Yes.

Q. You know they are done under monitored anesthesia?

A. Yes.

Q. You know it's invasive?

A. Yes.

19. The medical bills and records, including a consent, clearly indicate that the discograms were performed and the Plaintiff, a medical doctor, clearly testified that they were not. It may be an issue of fact as to whether the discograms were performed, but it is clear from the plaintiff's testimony that Dr. Kugler did not need to have the

discograms performed in order to know he wanted to do the percutaneous discectomy. It is clear from the plaintiff's deposition testimony that he went to the doctors office on February 15, 2007 knowing he was going to have the percutaneous discectomy. It is also clear from the Plaintiff's testimony that even if the discograms were actually performed, they were totally superfluous and the PDD was a foregone conclusion. The Plaintiff testified that Dr. Kugler told him there were no risks involved in the procedure. The Plaintiff also provided the following testimony:

Q. Did you go ask them any more questions about the percutaneous discectomy before you had it?

A. I had visited with Dr. Kugler before actually going for the discectomy. I can't remember, about two or three visits, and I asked a couple of questions. He was nice and explained everything and encouraged me, you are the best candidate, you have no other underlying causes, no disc degeneration, you are the best candidate.

20. The Defendant needs to conduct discovery to, among other things, determine whether the discograms, assuming they were performed, were intentionally performed merely to "maximize" the bills under some sort of business model in general, or the "Discocare Model" in particular.

21. The Defendant is well aware of the Stuart v. Hertz case and is not seeking discovery to determine whether the performance of the discograms and PDD's were an error in judgment (Malpractice) leading to further injury to the Plaintiff. Rather, the Defendant is seeking discovery to determine whether or not the discograms and PDD's were performed as a part of intentional business model designed to "maximize" the billings and the settlement.

22. According to the Plaintiff's testimony, he hasn't paid his doctors anything and has not been asked for any money. Presumably the doctors have "Letters of Protection" and expect to be paid out of the proceeds of any recovery in this case.

23. Another issue regarding billing is that DiscoCare billed \$7,454.00 for the SpineWand used in the PDD procedure. Previously the Spinewands were sold by Arthrocare directly to the facilities or doctors and a cost of approximately \$900.00 to \$1,300.00 was rolled into the charges of the facility. Now Discocare, which is not a device manufacturer or medical provider, issues a separate bill, as it did in this case, for the Spinewand which is 500% to 600% higher than it was before Discocare entered the scene. The Defendant needs to conduct discovery to determine if this new charge for the SpineWand is part of a business model designed to maximize the bills and case settlement. The Defendant needs discovery to determine the particulars of the new billing for the SpineWand. The Defendant needs discovery to determine the exact nature and particulars of the "Discocare Model" beyond its description by Arthrocare. The Defendant also needs discovery to determine whether DiscoCare has a financial interest in the outcome of this case.

24. Dr. Kugler billed a total of \$34,800.00 for his twenty minute minimally invasive outpatient procedure. He billed \$19,800.00 for the first lumbar level and \$7,500.00 each for the next two. He billed the procedure on the first level under CPT code 63056 and the other two under CPT 63057.

25. It is known that before DiscoCare appeared, the Arthrocare website indicated that the proper CPT code for the PDD was a 62287. Dr. Kugler himself used to bill CPT 62287 for the PDD.

26. CPT code 62287, according to Physician's Current Procedural Terminology published by the American Medical Association included one or more levels. CPT 63056 is not inclusive of one or more levels and each level can be billed separately. Moreover, a CPT 63056 is an open procedure in which an incision is made with a scalpel and which could logically command a higher charge than a 62287. The Defendant needs discovery to determine Dr. Kugler's rationale for billing the PDD's as he did and whether or not the billing codes he used were correct or part of an artificial business model designed to maximize billings and case settlements. The Defendant also seeks to determine whether Dr. Kugler has been paid yet or whether he is secured by a Letter of Protection and has an interest in the outcome of this case.

27. The questions regarding whether the PDD's were correctly coded and billed by Dr. Kugler are even more crucial in light of the testimony of the Plaintiff. In reference to Dr. Kugler and the discectomy (PDD) the Plaintiff testified:

Q. He told you it was out-patient?

A. Yes.

Q. And it wasn't going to be an open procedure; they weren't using a scalpel or anything like that?

A. Yes.

The Plaintiff went on to testify about what he observed after the procedure:

Q. After you had the procedure, you went home. Did you ever look or detect what kind of mark or wound or entry had been made for the percutaneous discectomy?

A. On my back?

Q. Was there a bandage?

A. Yes.

Q. Was there any indication that a scalpel had been used? Were you cut?

A. No, but I have seen the small holes, punch holes, like it's already healed up, like a scab.

Q. Were you able to see and feel --

A. When I took it off, plaster, I called up the office up to five days.

Q. The what off?

A. The plaster?

Q. The bandage?

A. Yes.

Q. Then you could tell there were the needle marks?

A. Yes.

Q. How many were there?

A. I think, if I remember -- I don't know. I think, two or three other places maybe. They don't heal up better, but three points.

Q. Were there any other marks on you other than the needle marks, any mapping marks or anything like that?

A. No, I could not see the back, but my wife explained the three little marks.

28. Contrary the Plaintiff's testimony, Dr. Kugler's operative report states that "A skin incision was made with and 11 blade scalpel".

THE NON-PARTY WITNESSES AND THEIR RELATIONSHIPS

29. Arthrocare Corp. manufactures the device (SpineWand) used in the discectomy (PDD) performed on the Plaintiff by Dr. Kugler.

30. According to the Arthrocare job advertisements attached hereto, there is something called a "Discocare Model" which entails maximizing bills and case settlements.

31. DiscoCare issued a bill for the SpineWand used in the Plaintiff's PDD.

32. DiscoCare was formed in late 2005. It appears to have been owned by Jonathan Cutler, D.P.M.

33. Jonathan Cutler, D.P.M. is believed to be a friend of Dr. Kugler. Dr. Kugler and Dr. Cutler are also founding partners of the Palm Beach Lakes Surgical Center in Palm Beach County at which Dr. Kugler performs many PDD procedures using the Arthrocare Spinewands billed by Discocare.

34. Discocare, until recently, operated out of the Palm Beach Lakes Surgical Center and had on-site employees there.

35. The Plaintiff is represented by Steinger & Iscoe. That representation appears to have begun less than two weeks after the Plaintiff first appeared at Dr. Kugler's office.

36. Marc Nathanson works at Dr. Kugler's office. Marc Nathanson's sister is Janet Nathanson, who is the wife of Michael Steinger, Esq. of Steinger & Iscoe.

37. Gary Iscoe, Esq. is partner of Michael Steinger at Steinger & Iscoe. Gary Iscoe is believed to be the brother of Matthew Iscoe. Matthew Iscoe was, at least at one point, a Regional Manager of DiscoCare.

38. Although not parties to this action, Dr. Kugler, Dr. Bistline, Palm Beach Lakes Surgical Center, and DiscoCare are all represented by counsel. In fact, they are all represented by *the same* attorney, Steven Robbins, Esq. Attorney Robbins has required the undersigned law firm to schedule all depositions of his clients through him.

39. Mark Izydore is a person known to frequently appear at Dr. Kugler's office and the Palm Beach Lakes Surgical Center.

40. The undersigned counsel had Mark Izydore served with a Subpoena for Deposition in this case and Attorney Robbins filed an appearance and Motion for Protective Order on behalf of Mr. Izydore and now represents him too.

DISCOVERY DIFFICULTIES ENCOUNTERED
WITH THE NON-PARTY WITNESSES

41. Defendant is seeking to depose the Plaintiff's treating physicians in this matter as well as other individuals whose testimony are integral to the defense of this action.

42. As previously stated attorney Steven Robbins represents a majority of the Plaintiff's treating physicians, facilities, and medical suppliers including Jeffrey Kugler, M.D., Jane Bistline, M.D., Palm Beach Lakes Surgical Center, and DiscoCare, Inc.

43. The undersigned counsel's office first contacted Attorney Robbins via e-mail, his preferred method of communication according to his November 14, 2007 correspondence, and by telephone on December 13, 2007, in an effort to coordinate the deposition of Jane Bistline, M.D.

44. Undersigned counsel additionally sent correspondence via facsimile and U.S. Mail on December 14, 2007 requesting dates of availability for Dr. Bistline's deposition.

45. On December 17, 2007 undersigned counsel's office sent a follow up e-mail to Attorney Robbins regarding his client's availability for said deposition and

Attorney Robbins responded, advising that his office would be closed until January 14, 2008 but that he would coordinate a date for Dr. Bistline's deposition thereafter.

46. As such, on December 18, 2007 undersigned's office complied with Attorney Robbins' request and provided four available dates for Dr. Bistline's deposition, including 1/14/08, 1/16/08, 1/23/08, and 1/25/08, all of which were cleared with opposing counsel's office.

47. On December 18, 2007, Attorney Robbins advised that he would check his client's availability for 1/23/08 and 1/25/08 as he was not available on the other two dates provided.

48. Thereafter, undersigned counsel received no response from Attorney Robbins regarding his client's availability for said deposition.

49. On January 14, 2008, just over a month after first attempting to coordinate and schedule Dr. Bistline's deposition, undersigned's office once again e-mailed Attorney Robbins and requested a deposition date in late January or early February and advised that this deposition would need to be scheduled by the end of the week.

50. Attorney Robbins responded that Dr. Bistline was available for deposition on February 19, 2008 and February 26, 2008.

51. Upon finally receiving dates of availability and confirming that opposing counsel was available on these dates, the undersigned's office advised that the proposed dates were acceptable. Additionally, as a courtesy, undersigned counsel inquired as to where Dr. Bistline would prefer her deposition to be taken as well as whether or not Attorney Robbins would be accepting service of process on her behalf.

52. When a response from Attorney Robbins was not received regarding the location of the deposition and service of process, the undersigned's office advised

Attorney Robbins, on January 21, 2008, that if a response was not received by the next business day, Dr. Bistline's deposition would be set for the mutually coordinated date of February 19, 2008.

53. Attorney Robbins then responded that the previously coordinated deposition date of February 19, 2008 date was no longer available but that March 4, 2008 was available for Dr. Bistline's deposition.

54. Despite the February 19, 2008 deposition of Dr. Bistline taking over a month to schedule and numerous e-mails and telephone calls between the parties to coordinate, on January 22, 2008 Defendant's undersigned counsel accepted the March 4, 2008 date for this deposition in an effort to proceed with the discovery of this case.

55. On January 24, 2008 Defendant's undersigned counsel issued a Subpoena for Deposition Duces Tecum and Notice of Taking Video Deposition Duces Tecum to Dr. Jane Bistline to take place on March 4, 2008 at 1:30 p.m. and a copy was sent to her personal counsel, Attorney Robbins.

56. On March 3, 2008, the day before Dr. Bistline's scheduled deposition, undersigned's office was advised by Dr. Bistline's office of a \$700.00 per hour expert witness fee which would be required to be prepaid prior to her sitting for a deposition.

57. This was the first mention of the expert witness fee as Attorney Robbins never mentioned his client's expert fee during the process of coordinating this deposition.

58. Later that day an invoice for Dr. Bistline's testimony was received via facsimile which indicated the hourly rate would be \$800.00, \$100.00 more per hour than was quoted over the phone hours beforehand.

59. Undersigned counsel cancelled the deposition and filed a Motion to Determine Reasonable Expert Fee and Conditions of Deposition which is pending.

60. Dr. Bistline's deposition is not the only non-party deposition with which undersigned counsel has had difficulty in scheduling.

61. Defendant is also seeking to take the deposition of Dominique Lovering, the office manager and/or the person with the most knowledge of billing for Jane Bistline, M.D.

62. On January 18, 2008, undersigned's office e-mailed Attorney Robbins inquiring as to whether or not he represents Dominique Lovering and if so to please advise as to her availability for deposition.

63. In an e-mail dated January 21, 2008, Attorney Robbins advised that he does represent Ms. Lovering but that he would not coordinate a date for her deposition and/or agree to her being deposed.

64. Given that Attorney Robbins would not coordinate a date for Ms. Lovering's deposition, same was unilaterally scheduled for February 19, 2008. A date was then cleared with Plaintiff's counsel and a courtesy copy of the Subpoena and Notice of Taking Deposition of Ms. Lovering was forwarded to Attorney Robbins on February 4, 2008.

65. Due to a scheduling conflict Ms. Lovering's deposition for February 19, 2008 was cancelled and on February 14, 2008 undersigned counsel advised Attorney Robbins of the need to cancel same and sent a second request for a mutually convenient date for her deposition.

66. On February 25, 2008, Attorney Robbins again advised that he would not produce Ms. Lovering for deposition.

67. In addition to Dr. Bistline and Ms. Lovering, Defendant is also seeking to depose Jackie Walker. Ms. Walker was believed to have some employment relationship with one or more of the entities represented by Attorney Robbins.

68. On January 24, 2008 undersigned counsel e-mailed Attorney Robbins and asked if he represented Ms. Walker and if he would provide dates of availability for her deposition.

69. Attorney Robbins replied that he did represent Jackie Walker and would check her availability for deposition.

70. On January 30, 2008, undersigned counsel advised that if a response was not received Ms. Walker's deposition would be scheduled on the previously coordinated date of February 19, 2008 (the same day as Ms. Lovering's deposition).

71. Attorney Robbins advised that same was acceptable and a Subpoena for Deposition Duces Tecum and Notice of Taking Deposition Duces Tecum were issued to Jackie Walker and a courtesy copy sent to Attorney Robbins on February 4, 2008.

72. Due to the same scheduling conflict that arose regarding Ms. Lovering's deposition, Ms. Walker's deposition had to be cancelled as well. On February 14, 2008 Defendant's undersigned counsel advised Attorney Robbins of the cancellation and requested a new date for the deposition of Ms. Walker.

73. On February 15, 2008, Attorney Robbins advised that he would check her availability and advise of same.

74. Ten days later, Attorney Robbins had yet to provide any dates of availability for Ms. Walker's deposition. The undersigned's office advised Attorney Robbins that the deposition needed to be scheduled and if dates were not provided by February 27, 2008 same would be unilaterally set.

75. On February 25, 2008 Attorney Robbins requested a general idea of the timeframe Defendant was inquiring to take Ms. Walker's deposition.

76. On February 27, 2008, Attorney Robbins was advised that Defendant needed three dates in April for this deposition, and given the difficulty and duration of time spent trying to schedule same, these dates would need to be provided by noon.

77. Attorney Robbins responded that he would check with his client regarding availability for April and whenever he received that information he would forward same.

78. As of this date no dates of availability have been provided by Attorney Robbins for Ms. Walker's deposition, so the Defendant has scheduled same unilaterally.

79. With regard to the scheduling and coordinating of depositions, Defendant has also attempted to set the depositions of Michael Denker and Jackie Marsh regarding their connection to DiscoCare, Inc.

80. On January 25, 2008, undersigned counsel requested dates for the depositions of Mr. Denker and Ms. Marsh from Attorney Robbins.

81. On February 1, 2008, a follow up e-mail was sent to Attorney Robbins requesting dates for these depositions.

82. On February 4, 2008 Attorney Robbins advised that he was attempting to determine deposition dates for the DiscoCare representatives.

83. On February 13, 2008, undersigned counsel sent an e-mail to Attorney Robbins advising that deposition dates for Mr. Denker and Ms. Marsh had not yet been received and that if he failed to contact undersigned counsel by the end of the week the depositions would be unilaterally scheduled.

84. On February 25, 2008, undersigned counsel once again e-mailed Attorney Robbins to seek dates of availability for Michael Denker and Jackie Marsh, as it had

been over one month since these dates had originally been requested. Attorney Robbins was also advised that he would have until February 27, 2008 to provide these dates or same would be unilaterally scheduled.

85. On February 25, 2008, Attorney Robbins advised that he did not represent Jackie Marsh, as she was not employed by DiscoCare, Inc. and that he would need a better idea of when we sought to depose Mr. Denker.

86. Undersigned's office last contacted Attorney Robbins on February 27, 2008 and advised him that Defendant would need three dates in April for Mr. Denker's deposition and considering the multiple opportunities afforded to Attorney Robbins to provide these dates, they would need to be received by noon.

87. As of the date of this Motion no dates of availability have been provided for Mr. Denker's deposition and so he has been scheduled for deposition unilaterally.

88. Defendant has also requested to take the deposition of Dr. Kugler's person with the most knowledge of contracts between health insurers, health maintenance organizations, and Medicare regarding contracts and contractual rates and undersigned's office was advised by Attorney Robbins that such discovery would not be permitted as it would be "outside the scope of permissible discovery".

89. In addition to the difficulties the Defendant has had in scheduling the depositions of the non-parties represented by attorney Robbins, the undersigned's attempt to serve Mark Izydore with a subpoena for deposition was difficult.

90. On or about February 4, 2008 undersigned counsel issued a Subpoena and Notice of Taking Deposition to Mark Izydore for a deposition to take place on March 10, 2008 at 10:30 a.m.

91. On February 5, 2008, Certified Process Server, Colin Phipps, attempted to serve the Subpoena for Deposition on Mr. Izydore. Please see the Affidavit of Colin Phipps attached hereto as Exhibit "C".

92. On February 5, 2008, Licensed Private Detective, Fred Fields, was conducting surveillance on Mr. Izydore and has personal knowledge of the events that transpired during Mr. Phipps attempts to serve Mr. Izydore with the Subpoena for Deposition. Please see the Affidavit of Fred Fields attached hereto as Exhibit "D".

93. Based upon the affidavits of Mr. Phipps and Mr. Fields it is clear that Mr. Izydore and others went to extraordinary lengths on February 5, 2008 to prevent service of the subpoena.

94. The next day, on February 6, 2008 the Subpoena for Deposition was finally served via substitute service on a co-resident at Mr. Izydore's home address.

95. On March 10, 2008, the morning of Mr. Izydore's scheduled deposition and over one month from the date Mr. Izydore was served with the Subpoena, the undersigned's office received correspondence from Attorney Robbins via facsimile regarding the deposition. This correspondence was accompanied by a copy of a Notice of Appearance for Non-Party, Mark Izydore, Non-Party's Objection and Motion for Protective Order, and Affidavit of Mark Izydore.

96. Attorney Robbins letter faxed to the undersigned on the morning of the deposition stated, in pertinent part:

"Enclosed please find this firm's Notice of Appearance in the above-referenced action. In the event that you have not yet received our previously served Objections, MFPO and supporting Affidavit, I enclose a copy of each as well."

"As a result of the foregoing, there will be no deposition of the non-party witness, Mr. Izydore, today."

97. The Certificate of Service on the Objection and Motion for Protective Order reflects service on the undersigned by mail on Friday, March 7, 2008. It is not known how attorney Robbins believed that the undersigned may have actually received the pleading in his Broward County office by 8:03 AM on Monday, March 10, 2008 when he faxed the letter. It is also not known why attorney Robbins did not call or fax the undersigned's office on Friday, March 7, 2008 when the pleading was prepared and signed by him. To the best of the undersigned counsel's knowledge, no attempt was made to schedule a hearing on the Plaintiff's objections and Motion for Protective Order prior to the time and date of the scheduled deposition. What is known is that more than one month after Mr. Izydore was served, on the morning the deposition was to take place, the undersigned was notified of the Objections and Motion and that Mr. Izydore would not be appearing for the deposition.

98. The deposition of Mark Izydore did not take place on March 10, 2008 as scheduled and the Motion for Protective Order remains pending.

99. The Motion and Mr. Izydore's Affidavit basically claim that he doesn't have any knowledge at all about this matter and that the undersigned's attempt to depose him is in bad faith, solely to harass him and invade his privacy and interrogate him about his personal life, etc. Mr. Izydore's Affidavit, although shrewdly worded, falls far short of exhausting all of the possibilities of discoverable information he could provide. The issue of Mr. Izydore's deposition and his Motion for Protective Order will be dealt with separately, but counsel will be more than happy to conduct the deposition with a Special Master present.

100. It is interesting that despite Mr. Izydore's alleged lack of involvement or knowledge pertinent to this matter, when service of a Subpoena on him was attempted he apparently fled to Dr. Kugler's office and several people from Dr. Kugler's office assisted him in evading service at Dr. Kugler's office that day. In fact, according to the Affidavit of Fred Fields, who was conducting surveillance on Mr. Izydore that day, it was William Tracy of Dr. Kugler's office who actually drove Mr. Izydore's car away from Dr. Kugler's office that day. Coincidentally, it was the same William Tracy who notarized Mr. Izydore's Affidavit.

**SUMMARY OF OBJECTION TO PLAINTIFF'S NOTICE FOR TRIAL AND
REQUEST FOR CASE MANAGEMENT CONFERENCE**

101. Although the pleadings are at issue in this case, the case is not ready for trial due to the above-described difficulties encountered in attempting the initial non-party discovery. Additionally, the issues as described herein make this different than a routine personal injury case. Due to the advertisements describing the "DiscoCare Model", the facts of this case known thus far and the above-described relationships among non-parties, the Defendant needs to conduct non-routine discovery to determine:

- a. whether the DiscoCare Model was "implemented" in this case;
- b. the particulars of the Discocare Model beyond what was described in the Arthrocare advertisements;
- c. whether the Plaintiff's medical expenses were legally caused by the accident or whether there was some superceding intervening cause, in other words, whether there was any artificial attempt by non-parties having a financial interest in the outcome of this case to maximize the medical bills and settlement value.


102. Additionally, pursuant to R.C.P. 1.200(a) the Defendant requests that the Court convene a Case Management Conference in order to:

- a. coordinate the progress of the action due to the complex litigation factors that are present; and
- b. limit, schedule, order or expedite discovery.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile & U.S. Mail this 2nd day of April, 2008 to: Seth Pachtor, Esquire, Steinger & Iscoe, P.A., 1645 Palm Beach Lakes Blvd., 9th Floor, West Palm Beach, FL 33401 (561) 616-5573 and Steven Robbins, Esquire, 6334 Foster Street, Jupiter, Florida 33458 (561) 745-7817.

ROIG, KASPEROVICH, TUTAN & WOODS, P.A.
1255 South Military Trail, Suite 100
Deerfield Beach, FL 33442
(954) 462-0330 / (954) 462-7798 Fax

BY: 
STEVEN R. WOODS, ESQ.
Florida Bar No. 628484

/tmp

EXHIBIT
A

Regional Business Development Manager: ArthroCare Corporation

Job ID SALE07047
Company Name ArthroCare Corporation
Job Category Sales; Legal
Location Miami, FL
Position Type Full-Time, Employee
Salary Unspecified
Experience 2-5 Years Experience
Desired Education Level Juris Doctorate
Date Posted September 23, 2007



[View ArthroCare Corporation profile and job listings](#)

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Regional Business Development Manager

Miami (Dade Co), FL

ArthroCare Corp. (Nasdaq:ARTC) is a multi-business medical device company that develops products based on its pioneering Coblation(R) technology. The benefits of Coblation technology provide an answer to the challenges of soft tissue management in any surgical specialty where controlled and efficient ablation is of value. Current applications include: Arthroscopic surgery, Spine surgery, Dermatologic surgery, Ear, nose & throat surgery (ENT), and General surgery.

Our greatest achievements come from our greatest assets: ArthroCare's employees. We are continuously seeking new talent to join ArthroCare's winning ranks. People who thrive at ArthroCare are passionate about improving surgical procedures and patient outcomes, have a competitive spirit and winning attitude, and place a high value on teamwork and trust. We offer a competitive benefits package and excellent opportunity for career development.

We currently have an opportunity for a Regional Business Development Manager to join us! Achieve sales in a given geographical area by working with specific surgical practices. Uphold company policies, procedures, and image. Call on accounts directly to achieve sales goals. Attend courses and shows as necessary.

Essential Duties and Responsibilities include but are not limited to: (Other duties may be assigned)

- Selling and Implementing Plasma Disc Decompression (PDD) and the DiscoCare Model within an assigned territory, which includes establishing networks of surgeons, pain physicians, facilities and MRI centers that meet the criteria for treating PDD patients. Essential tasks include:
 - Ensuring that clients from targeted law firms suffering from back, leg or neck pain as a result of an injury from targeted law firms are referred into this network
 - Ensuring that clients are seen by surgeons in a timely manner and the treatment algorithm followed
 - Ensuring that appropriate candidates (as determined by the surgeon) are scheduled for and receive a PDD procedure and that all appropriate paperwork is turned in
 - Ensuring all documentation needed to settle/close cases is turned in to the law firms in a timely manner
- Call points include:
 - Physicians office – Educate the surgeon and staff on PDD benefits, procedure, technique, how to identify potential PDD candidates, correct documentation for approval for the PDD procedure with maximum reimbursement, billing, patient flow and referral patterns).
 - Facility Staff – Educate the staff on PDD benefits, procedure, procedure protocol, technique, correct documentation pre/post procedure, billing, patient flow and referral patterns).
 - Attorney's office – Educate the attorneys and staff on PDD benefits, procedure, technique, how to identify potential PDD candidates, correct documentation for approval for the PDD procedure with maximum case settlement, billing, patient flow and referral patterns).
- Establishing the relationship between a Paralegal or Case Manager and the Physicians nurse, office manager or PA.
- Booking Cases – Step-by-step directions for Case Authorization Forms to be submitted.
- Reporting – A weekly surgeon pipeline report.
- Meet or exceed the sales quota that has been assigned.
- Ensure that company property-samples and equipment, including lot control numbers, overall condition and safety, is accounted for and properly maintained.
- Establish and maintain solid business relationships with all key customers, such as surgeons and hospital/surgery center personnel, within the defined geographic area.

Qualifications:

- Minimum of three years successful outside sales experience
- BA or BS degree (or equivalent work experience)
- Attorneys (or law school graduates) is a big plus!!!
- Need to either be familiar with personal Injury law in respective state or having experience developing physician referral networks
- Excellent communication skills.
- Office equipment and word processing.
- Ability to resolve customer problems and ensure a win-win result.
- Technical aptitude/ability to learn all aspects of the company's products and how they are used in surgery.
- Strong work ethic.
- Ability to build positive working relationships.

For consideration of this and other opportunities please visit our career center at:

<http://careers.arthrocare.com>

Equal Opportunity Employer
www.ArthroCare.com

Information contained herein has been obtained from sources believed to be reliable, but its accuracy and completeness, and that of any implied opinions based thereon, are not guaranteed. The reader does not endorse or guarantee this material, and has no obligation to correct any such data if it is subsequently found to be incomplete or incorrect. A proper understanding of this e-mail may require additional information and/or context possessed only by the intended recipient.

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2. Use city names, state names, or zip codes to narrow your search to a local region
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4. Try parenthesis to find specific keyword phrases. For example, "search engine marketing".
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Ref Code:

62781274

Minimum Education Level:

Bachelors Degree

Minimum Career Level:

Experienced (Non-Manager)

EXHIBIT "B"

ArthroCare Corp



www.arthrocare.com

Regional Business Development Manager Houston, TX

ArthroCare Corp. (Nasdaq:ARTC) is a multi-business medical device company that develops products based on its pioneering Coblation(R) technology. The benefits of Coblation technology provide an answer to the challenges of soft tissue management in any surgical specialty where controlled and efficient ablation is of value. Current applications include: Arthroscopic surgery, Spine surgery, Dermatologic surgery, Ear, nose & throat surgery (ENT), and General surgery.

Our greatest achievements come from our greatest assets: ArthroCare's employees. We are continuously seeking new talent to join ArthroCare's winning ranks. People who thrive at ArthroCare are passionate about improving surgical procedures and patient outcomes, have a competitive spirit and winning attitude, and place a high value on teamwork and trust. We offer a competitive benefits package and excellent opportunity for career development.

We currently have an opportunity for a Regional Business Development Manager to join us! Achieve sales in a given geographical area by working with specific surgical practices. Uphold company policies, procedures, and image. Call on accounts directly to achieve sales goals. Attend courses and shows as necessary.

Essential Duties and Responsibilities include but are not limited to: (Other duties may be assigned)

Selling and Implementing Plasma Disc Decompression (PDD) and the DiscoCare Model within an assigned territory, which includes establishing networks of surgeons, pain physicians, facilities and MRI centers that meet the criteria for treating PDD patients. Essential tasks include: ensuring that clients from targeted law firms suffering from back, leg or neck pain as a result of an injury from targeted law firms are referred into this network; ensuring that clients are seen by surgeons in a timely manner and the treatment algorithm followed; ensuring that appropriate candidates (as determined by the surgeon) are scheduled for and receive a PDD procedure and that all appropriate paperwork is turned in; ensuring all documentation needed to settle/close cases is turned in to the law firms in a timely manner. Call points include:

- o Physicians office – Educate the surgeon and staff on PDD benefits, procedure, technique, how to identify potential PDD candidates, correct documentation for approval for the PDD procedure with maximum reimbursement, billing, patient flow and referral patterns).
- o Facility Staff -- Educate the staff on PDD benefits, procedure, procedure protocol, technique, correct documentation pre/post procedure, billing, patient flow and referral patterns).

Equal Opportunity Employer
www.ArthroCare.com



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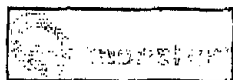
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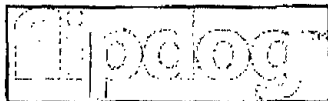
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AFFIDAVIT OF COLIN PHIPPS

STATE OF FLORIDA
COUNTY OF Orange

BEFORE ME, the undersigned authority, the affiant personally appeared and being first duly sworn, deposes and says that:

1. My name is Colin Phipps and I have personal knowledge of the matters set forth herein.
2. I am a Certified Process Server and a licensed Private Investigator. I am an independent contractor and I am legally authorized to execute process in the State of Florida.
3. I was hired by ROIG, KASPEROVICH, TUTAN & WOODS, P.A. to serve a Subpoena for Deposition on Mark Izydore, 145 Victorian Lane, Jupiter, FL 33456.
4. On February 5, 2008 I set out to serve the aforementioned Subpoena for Deposition of Mark Izydore.
5. I arrived at Mr. Izydore's home address of 145 Victorian Lane, Jupiter, Florida 33458, which is located in a gated community called North Fork, at approximately 6:45 a.m.
6. I observed Mr. Izydore's 2007 Black BMW 745i bearing the license plate number P06-IDQ parked in the driveway and I set up surveillance approximately 100 yards away from the subject residence.
7. At approximately 7:30 a.m. I observed a person exiting the house and I approached that individual. I identified myself, explained why I was there, and inquired as to Mark Izydore's whereabouts.
8. The individual, later to be identified as co-resident Tracy McTeer, said that Mr. Izydore was not home and that he might be "back tonight, sometime".
9. Due to Mr. Izydore's vehicle being parked in the driveway, I was unconvinced that he was not at the subject residence. I returned to my vehicle, drove away from the residence to make it appear as if I was leaving, and parked a short distance away in a neighboring cul de sac. I was no longer able to view the driveway of the residence but I could observe vehicles coming to or leaving from the residence.

EXHIBIT "C"

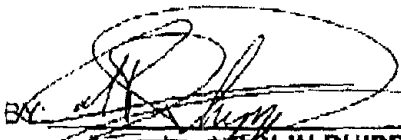
10. At approximately 8:45 a.m. I received a telephone call from Fred Fields, P.I., who was conducting surveillance outside the gate at the front of Mr. Izydore's neighborhood. Investigator Fields advised that he had just observed Mr. Izydore's black BMW 745i exit the neighborhood.
11. At that time I abandoned my surveillance of the residence and awaited further instruction.
12. Approximately 1 ½ - 2 hours later I was advised by Investigator Fields that Mr. Izydore's black BMW 745i was parked behind the office of Jeffery Kugler, M.D.
13. At approximately noon I arrived at the office of Jeffrey Kugler, M.D., 3618 Lantana Road, Lantana, Florida. I drove to the back of the building and located Mr. Izydore's black BMW 745i bearing the license plate number P08-IDQ indicating his presence therein.
14. I parked my vehicle towards the rear of Mr. Izydore's vehicle, while being careful not to block his vehicle in.
15. I entered the office of Dr. Kugler and approached the receptionist whom I believe to be "Kelli". I identified myself to Kelli, explained that I had a Subpoena to serve on Mark Izydore, and I asked her if she could get him.
16. Thereafter, Kelli and I had a discussion regarding whether the Subpoena was for the business and who was authorized to accept the Subpoena on Mr. Izydore's behalf. I explained to Kelli that I needed to serve Mr. Izydore personally and once again asked her to get him.
17. She left the front desk and returned a few minutes later and advised me that Mark Izydore was not at Dr. Kugler's office.
18. I explained to Kelli that I had identified Mr. Izydore's vehicle outside of the office indicating his presence and I once again requested that she get him.
19. Kelli again left the front desk and returned with another employee who identified herself as the office manager. The office manager advised that Mr. Izydore was not there. I once again explained that Mr. Izydore's car was outside. The office manager said that Mr. Izydore could have left the premises and left the vehicle behind. I was told that I would need to leave the office or they would call the police.
20. I was under the impression that Dr. Kugler's office staff was calling the police so at that time I called the Palm Beach Sheriff's Office and the Lantana Police Department to advise them of the situation and that I was a Certified Process Server attempting to serve a subpoena.
21. Approximately 15-20 minutes later I asked the office manager if she had indeed called the police and she said "no".

22. At this time I again telephoned the Palm Beach County Sheriff's office and requested their presence at Dr. Kugler's office at the aforementioned address in an effort to serve the Subpoena on Mr. Izydore, whom I believed to be in Dr. Kugler's office.
23. I waited for the Palm Beach County Sheriff's Officer(s) outside the front of Dr. Kugler's office. It should be noted that Investigator Fields was conducting surveillance at the back of the building where Mr. Izydore's car and my vehicle were parked during this time.
24. At approximately 1:00 p.m. Palm Beach County Sheriff's officer Robert Mangold arrived on the scene. I was in the process of explaining the situation to Officer Mangold as we walked to the rear of the building when Investigator Fields called my cell phone and advised that Mark Izydore, whom he identified from prior surveillance, had exited the back door of Dr. Kugler's office, approached my vehicle, and proceeded to kick the passenger side door of my vehicle.
25. At that time I ran to turn the corner to the back of the building only to see the back door closing and Mr. Izydore nowhere in sight, indicating he had gone back inside Dr. Kugler's office.
26. I approached my vehicle, a 2005 Hyundai Elantra, and Officer Mangold and I discussed the situation and surveyed the damage to my vehicle. At this time I advised Officer Mangold that I wanted to file a property damage report against Mr. Izydore regarding the damage to my vehicle.
27. We walked to the front of the building to fill out the report at which time a female Officer arrived on the scene. I advised her that I was attempting to serve a Subpoena on a person named Mark Izydore who was believed to be inside Dr. Kugler's office.
28. The female Officer went to the back of the building to survey the damage to my vehicle and entered Dr. Kugler's office through the back door.
29. Officer Mangold and I entered the lobby of Dr. Kugler's office and approached front desk where the office manager and Kelli were standing. Officer Mangold asked to speak with Mark Izydore and the office manager advised Officer Mangold that he was "not here at the moment".
30. At this time the female Officer who had entered through the back door of Dr. Kugler's office came into the lobby with two gentlemen, a man who identified himself as Mark Nathanson and produced identification to the female Officer to that effect and a man who I later identified as William (Bill) Tracy.
31. Thereafter, Officer Mangold and myself exited Dr. Kugler's office and went approximately 1 block away from Dr. Kugler's office where Investigator Fields appeared and gave a statement to the Officer regarding the damage to my vehicle.

- 32. I was given a case number and initial report regarding the damage and then the Palm Beach County Sheriff's Officers left the scene.
- 33. Over the course of the next few hours I observed several individuals from Dr. Kugler's office, including Kelli, William (Bill) Tracy, and Mark Nathanson display actions that can only be described as attempting to aid Mark Izydore in exiting the location and evade service of process.
- 34. These individuals circled the building suspiciously in different directions in their perspective vehicles in an attempt to distract my focus and finally William (Bill) Tracy entered Mark Izydore's black BMW 745i and drove away. I am not aware how Mr. Tracy obtained the key to Mr. Izydore's vehicle.
- 35. On February 26, 2008 I returned to Mark Izydore's residence at 145 Victorian Lane, Jupiter, FL 33458 and served the subpoena for Mark Izydore on Tracy McTeer as a co-resident.

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 02 day of April, 2008


 (Signature) COLIN PHIPPS

STATE OF FLORIDA

SS:

COUNTY OF Orange

BEFORE ME, the undersigned authority, this 02 day of April, 2008 personally appeared Colin Phipps who is personally known _____ or produced identification X (type of identification produced FLDL P120116664600), and upon being first duly sworn according to law, deposes and says that he executed the foregoing Affidavit and that the statements and allegations contained therein are true and correct to the best of his knowledge and belief.

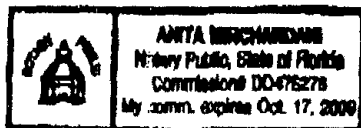
Notary Public

Anita Mirchandani

Printed Name of Notary

ANITA MIRCHANDANI

My Commission Expires: Oct 17th 2009



AFFIDAVIT OF FRED FIELDS

STATE OF FLORIDA
COUNTY OF _____

BEFORE ME, the undersigned authority, the affiant personally appeared and being first dually sworn, deposes and says that:

1. My name is Fred Fields and I have personal knowledge of the matters set forth herein.
2. I am a licensed Private Investigator and I own Fields Investigative Services.
3. I was hired by ROIG, KASPEROVICH, TUTAN & WOODS, P.A. to conduct surveillance on Mark Izydore on February 5, 2008. Prior to February 5, 2008, I had conducted surveillance on Mr. Izydore on more than one occasion.
4. At approximately 6:20 a.m. on February 5, 2008, I arrived at Mr. Izydore's home address of 145 Victorian Lane, Jupiter, Florida 33458, which is located in a gated community called North Fork.
5. After confirming that Mr. Izydore's vehicle, a 2007 black BMW 745i bearing the license plate number P06-IDQ was parked in the driveway, I set up surveillance outside the gate in front of the North Fork community.
6. I was aware that a Process Server, Colin Phipps, would be attempting to serve a Subpoena for Deposition on Mr. Izydore and I was in possession of Mr. Phipps contact information so as to coordinate our efforts.
7. At approximately 8:45 a.m. I observed Mr. Izydore's black BMW 745i departing his residential neighborhood. At that time I contacted Mr. Phipps and advised him that Mr. Izydore had left his residence.
8. I proceeded to follow Mr. Izydore to continue my surveillance.
9. Mr. Izydore operated his vehicle in a very suspicious manner. His driving was indicative of someone who was attempting to determine if they were being followed. After departing the vicinity of his residence, Mr. Izydore made repetitive u-turns, drove into residential neighborhoods, and drove behind a shopping mall for no apparent reason.

EXHIBIT "D"

10. Mr. Izydore also drove at high rates of speed before finally separating himself from the surveillance vehicle.
11. Based upon prior surveillance I have conducted on the subject, Mark Izydore, I was aware of several locations that he frequented on a regular basis.
12. At this time I repeatedly drove back and forth between the office of Jeffrey Kugler, M.D., 3618 Lantana Road, Lantana, Florida and Palm Beach Lakes Surgical Center, 2047 Palm Beach Lakes Boulevard, West Palm Beach, Florida.
13. At approximately 10:30 a.m. I observed Mr. Izydore's black BMW 745i, bearing the license plate number P06-IDQ, behind the office of Jeffrey Kugler, M.D., 3618 Lantana Road, Lantana, Florida.
14. I contacted the Process Server, Colin Phipps, and advised him of Mark Izydore's current location.
15. At this time I set up surveillance approximately 150 feet east of the back door of Dr. Kugler's office.
16. A short time later Mr. Phipps contacted me and advised that he was at Dr. Kugler's office attempting to serve the Subpoena on Mark Izydore. He also advised that the police department may have been called by Dr. Kugler's office staff.
17. At 12:13 p.m. I personally observed Mark Izydore briefly exiting and re-entering the rear office door. His demeanor indicated that he was agitated and/or frustrated.
18. I then observed Mr. Izydore quickly exit the rear office door and approach Mr. Phipps personal vehicle, a 2005 Hyundai Elantra, and kick the front passenger door of said vehicle, denting and scratching it.
19. Upon observing Mr. Izydore damaging Mr. Phipps vehicle I contacted Mr. Phipps by cell phone and advised him of the incident.
20. At the time that I called Mr. Phipps he was approaching the rear of the building with a Palm Beach County Sheriff's Officer (male).
21. Mr. Phipps rounded the corner of the building as Mr. Izydore re-entered the building through the back door. After Mr. Phipps and the Palm Beach County Sheriff's Officer observed the damage to his vehicle they left the rear of the building.
22. I continued my surveillance of the back door and a short time later another Palm Beach County Sheriff's Officer (female) came to the back of the building and appeared to survey the damage to Mr. Phipps vehicle.

23. At that time, an unidentified male exited the rear door of Dr. Kugler's office. After a brief discussion, the unidentified male and the Palm Beach County Sheriff's Officer (female) entered Dr. Kugler's office through the back door.
24. Later in the afternoon, I spoke with Mr. Phipps and the Palm Beach County Sheriff's Officer (male) who advised that they were unsuccessful in identifying Mark Izydore at Dr. Kugler's office.
25. I was also advised that while inside Dr. Kugler's office an individual identified himself as Mark Nathanson and allegedly produced identification to that effect.
26. At that time, I filled out a witness statement with the Palm Beach County Sheriff's Officer (male) regarding the incident and damage to Mr. Phipps vehicle. I advised him that based upon prior surveillance of Mr. Izydore and my surveillance of Mr. Izydore that same day, I was 100% positive that it was Mark Izydore who exited the rear of Dr. Kugler's office and physically assaulted Mr. Phipps vehicle.
27. A case number was issued to Mr. Phipps regarding the incident at which time the Palm Beach County Sheriff's Officers left the premises.
28. I continued to conduct surveillance of the back of Dr. Kugler's office.
29. Between 5:00 p.m. and 6:25 p.m. activity occurred at this location which I believe to be indicative of the subject attempting to exit the office unseen so as to avoid service of process.
30. I observed several employees of Dr. Kugler's office, including Mark Nathanson and William (Bill) Tracy, whom I identified based upon prior knowledge, circle the complex in their respective vehicles, going from front to rear, in what I believe to be an apparent attempt to sneak the subject out of the building.
31. Multiple vehicles during this time would park behind the Process Server's vehicle so as to block the view of the front door possibly enabling the subject to depart the office unseen.
32. Also during this time I observed these same vehicles attempt to distract attention from the building by driving conspicuously in different directions, forcing the investigator to pursue these vehicles to determine whether the subject was in that vehicle and leaving the front view of the office unattended as a result.
33. Due to these events I am not aware of exactly when the subject, Mark Izydore, vacated the premises.
34. Prior to these events on this day, I observed William (Bill) Tracy enter Mark Izydore's 2007 black BMW 745i and drive away from the building. It is not known how Mr. Tracy obtained a key to Mr. Izydore's vehicle.

- 35. At 6:33 p.m. I terminated surveillance as it appeared at that time that all employees had left the premises and Mark Izydore was no longer present.
- 36. That matters contained herein are true and correct to the best of my knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 25 day of March, 2008

BY: Fred Fields
(signature) FRED FIELDS

STATE OF FLORIDA

COUNTY OF Broward

ss:

BEFORE ME, the undersigned authority, this 25 day of March, 2008 personally appeared Fred Fields who is personally known _____ or produced identification X (type of identification produced FL Driver License), and upon being first duly sworn according to law, deposes and says that _____ executed the foregoing _____ and that the statements and allegations contained therein are true and correct to the best of _____ knowledge and belief.

Notary Public

Denise M Blaine

Printed Name of Notary

Denise M Blaine

My Commission Expires:

