



4. For several years prior to 1999, Arthur Andersen had been my personal accountants and the corporation's accountants. I dealt primarily with Phillip Miles, whom I came to trust greatly.

5. Arthur Andersen was involved in the sale of my business to Matria Healthcare, and in the course of that transaction, Mr. Miles advised me that Arthur Andersen might be able to find a way to reduce my tax liability from the transaction.

6. Attached hereto as Exhibit "A" is a letter from Mr. Miles dated March 29, 1999, confirming such a conversation.

7. Mr. Miles became seriously ill thereafter, and my primary contact with Arthur Andersen became Michael Marx.

8. Arthur Andersen, my long-time and trusted accounting firm, actively attempted to interest me in the tax shelter strategy. Andersen repeatedly emphasized the fact that I would get an opinion letter from the prestigious law firm of Brown & Wood verifying that the tax deductions to be claimed from implementation of the strategy were more likely than not to be upheld in an IRS audit. I was also advised that Merrill Lynch would assist in effectuating the program.

9. The document attached hereto as Exhibit "B" was furnished to me some time around October of 1999. As reflected by the document, it was represented to me that implementation of the strategy would reduce the taxes I personally owed by over \$17 million dollars.

10. I authorized Defendants to proceed with implementing the proposed tax planning strategy. It was specifically agreed that Arthur Andersen's fees would be refunded if a "more likely than not" opinion letter from a qualified attorney was unobtainable. Mr. Marx advised me that such an opinion letter would be issued by Brown & Wood.

11. Thereafter, Defendants orchestrated a series of complex transactions involving numerous entities, loans, transfers of interests, and shifts of money. I did not understand the mechanics or details of the transactions. I merely did what my trusted advisors told me to do. Defendants caused the transactions involved in the strategy to be implemented. They told me I needed to do certain things to realize the personal tax savings they had promised, and they prepared the documents and told me to sign them. I trusted them to be giving me sound advice, and did what they told me to do.

12. As part of the process, at the direction of Defendants, I placed at least \$4.5 million of my own money into the bank account of one of the entities, in addition to transferring my interests in various entities according to the directions of Defendants.

13. While the transactions were being implemented, I was furnished a draft “more likely than not” opinion letter from Brown & Wood.

14. After the transactions were implemented, Brown & Wood delivered the promised final “more likely than not” opinion letters. These opinion letters were addressed to me, personally, as well as to the corporations and were sent to me at my home address in Florida.

15. Andersen prepared the tax returns that claimed the deductions supposedly resulting from the transactions involved in implementing the strategy. My wife and I signed the returns.

16. Defendants Sidley Austin (successor to Brown & Wood), Arthur Andersen, and Merrill Lynch charged me millions of dollars in legal, accounting, and professional fees for the advice that the transactions were legitimate means to reduce my capital gains tax liability and would more likely than not survive IRS scrutiny.

17. The IRS challenged the deductions claimed as a result of implementation of the strategy, and as a result, I personally paid the IRS \$17 million dollars in taxes and

interest after the advice for which I had paid Defendants over two million dollars proved to be false and fraudulent.

18. Although the IRS refused to allow me to deduct the losses purportedly caused by implementation of the strategy, the IRS did permit me to personally deduct the fees paid to Andersen, Sidley and Merrill Lynch on my amended return.

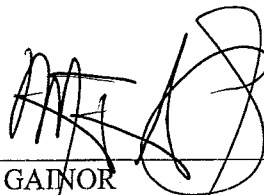
19. Defendant Mark Klopfenstein controlled TranStar, (n/k/a Palladium, Inc.) the purchaser in the transactions, and his participation in the scheme caused me damage in excess of \$1.1 million.

20. But for Defendants' actions, I would not have agreed to sell Bryan Medical and Lucor to TranStar for the price paid. The result of following Defendants' advice was an additional loss of over \$1.1 million, which was Defendant Klopfenstein's fee for doing the transactions.

21. Defendants' fees were paid with funds to which I would have been entitled if they had not been used to pay to the Defendants as fees. Prior to implementation of the strategy, none of my companies had any unpaid creditors.

22. If Defendants had told me to pay the fees of Andersen, Sidley Austin, Merrill Lynch and Mr. Klopfenstein directly from my personal funds, I would have done so; just like I put \$4.5 million of my own funds into one of the corporate bank accounts when Defendants told me to. My money was used to pay Defendants' fees. The reason Defendants' fees were paid the way they were is because that is what Defendants told me to do.

FURTHER AFFIANT SAYETH NAUGHT.



MARK J. GAINOR

SWORN TO AND SUBSCRIBED before me this 22 day of August, 2007, by Mark J. Gainor, who is personally known to me or who has produced FL DL# G560-550-56-093-D as identification.

Beatriz Munoz  
Notary Public-State of Florida  
Print, type or stamp name:  
My Commission Expires:



**EXHIBITS A and B**

**TO AFFIDAVIT OF MARK GAINOR  
ARE BEING FURNISHED TO COUNSEL OF RECORD BY U.S.  
MAIL, AND FORWARDED TO THE COURT BY FEDERAL  
EXPRESS WITH A REQUEST THAT THEY BE  
FILED UNDER SEAL**