

Case No. 06-21748-CIV-MARTINEZ-BANDSTRA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 06-21748-CIV-MARTINEZ-BANDSTRA

MARK J. GAINOR and ELYSE GAINOR,

Plaintiffs,

v.

SIDLEY AUSTIN, LLP, a Delaware limited liability Partnership, f/k/a BROWN & WOOD, R.J. RUBLE, an individual, ARTHUR ANDERSEN, LLP, an Illinois limited liability partnership, MICHAEL S. MARX, an individual, P. ANTHONY NISSLEY, an individual, MERRILL LYNCH & CO., INC., a Delaware corporation, and MARK C. KLOPFENSTEIN, an individual,

Defendants.

**DEFENDANT SIDLEY AUSTIN LLP'S RESPONSE TO PLAINTIFFS'
STATEMENT OF FACTS**

Case No. 06-21748-CIV-MARTINEZ-BANDSTRA

Defendant Sidley Austin LLP (“Brown & Wood”) hereby submits its Response to Plaintiffs’ Statement of Facts. Plaintiffs did not file a separate Statement of Facts as Local Rule 7.5(B) suggests. Instead, they included a section in their Opposition Memorandum entitled Statement of Facts. Even assuming all of the Plaintiffs’ statements of facts were true and supported by admissible evidence, they are immaterial to the outcome of the pending Motion for Partial Summary Judgment.

I. RESPONSE TO PLAINTIFFS’ STATEMENT OF FACTS

Plaintiffs’ Statement of Facts and <i>Supporting Evidence</i>	Brown & Wood’s Response
1. Prior to 1998, Plaintiff Mark Gainor was the president and principal shareholder of Gainor Medical USA, a family medical supply business. (<i>Gainor Aff.</i> ¶ 2)	Undisputed for purposes of this motion.
2. In 1998, Gainor began discussing selling the medical business to Matria Healthcare. (<i>Gainor Aff.</i> ¶ 3)	Undisputed for purposes of this motion.
3. For several years prior to 1999, Arthur Andersen had been Gainor’s personal accountants and the corporation’s accountants. (<i>Gainor Aff.</i> ¶ 4)	Undisputed for purposes of this motion.
4. Arthur Andersen was involved in the sale of Gainor’s business to Matria Healthcare, and in the course of that transaction, Phillip Miles of Andersen advised Gainor that Arthur Andersen might be able to find a way to reduce Gainor’s tax liability from the transaction. (<i>Gainor Aff.</i> ¶ 5)	Undisputed for purposes of this motion.

Case No. 06-21748-CIV-MARTINEZ-BANDSTRA

Plaintiffs' Statement of Facts and Supporting Evidence	Brown & Wood's Response
<p>5. Thereafter, in the Spring of 1999, there was a series of emails among Andersen and others, including R.J. Ruble, a partner in the tax department of Defendant Sidley's predecessor firm, Brown & Wood regarding a possible tax loss transaction. (<i>Candelora Dec. Composite Ex. 10</i>)</p>	<p>Brown & Wood does not dispute that in the Spring of 1999, there was a series of emails among Andersen and others, including R.J. Ruble, a partner in the tax department of Defendant Sidley's predecessor firm, Brown & Wood regarding a possible tax loss transaction called <i>CARDS</i>, which has <i>nothing</i> to do with Plaintiffs or their transaction and was never consummated.</p>
<p>6. In July of 1999, Brown & Wood opened a file naming Andersen as the client for "structuring tax advantaged transactions." (<i>MacKinnon depo., Ex. 5 and p. 84; Candelora Dec. Exs. 12 and 14</i>)</p>	<p>Undisputed for purposes of this motion but there is no evidence the opening of this file has anything to do with Plaintiffs.</p>
<p>7. On August 5, 1999, Ruble sent Marx of Andersen a sample opinion letter that described a situation and contained an analysis strikingly similar to the opinion letters ultimately issued to Gainor. (<i>MacKinnon depo., Ex. 2 and pp. 56 and 94-95; Candelora Dec. Exs. 6 and 14</i>)</p>	<p>Undisputed for purposes of this motion that "on August 5, 1999 Ruble sent Marx of Andersen a sample opinion letter."</p> <p>The supporting evidence, however, does not support the statement that the sample letter "described a situation strikingly similar to the opinion letters ultimately issued to Gainor." Plaintiffs have not submitted any evidence that this letter had anything to do with the Gainor transaction.</p>
<p>8. Andersen passed the tax shelter strategy on to Gainor. Andersen repeatedly emphasized the fact that Gainor would get an opinion letter from Brown & Wood, Defendant Sidley's predecessor, a prestigious Wall Street law firm, verifying that the tax deductions to be claimed from implementation of the strategy would more likely than not be upheld in an IRS audit. Gainor was also advised that Merrill Lynch would assist in effectuating the program. (<i>Gainor Aff. ¶ 8</i>)</p>	<p>Undisputed for purposes of this motion except to the extent that this statement of fact implies that Andersen passed the tax shelter strategy on <i>from</i> Brown & Wood. Plaintiffs submit no evidence the strategy originated from Brown & Wood or that Andersen passed anything from Brown & Wood to Gainor. Gainor's Affidavit ¶ 8 says no such thing.</p>

Case No. 06-21748-CIV-MARTINEZ-BANDSTRA

Plaintiffs' Statement of Facts and Supporting Evidence	Brown & Wood's Response
<p>9. Gainor was furnished a "Transaction Summary" detailing pre and post strategy taxes, reflecting that implementation of the strategy would reduce Gainor's personal taxes from \$37.1 million to \$19.7 million, a savings of over \$17 million in taxes. It also reflected fees of approximately 2.1 million to Brown & Wood, Andersen, Merrill Lynch, and Transtar, an entity of Defendant Klopfenstein. (<i>Gainor Aff.</i> ¶ 9 and Ex. B)</p>	<p>Undisputed that Andersen furnished Gainor with the "Transaction Summary." The "Transaction Summary" itself contains a fax header showing it came from Arthur Andersen.</p>
<p>10. Gainor authorized Defendants to proceed with implementing the proposed tax planning strategy. (<i>Gainor Aff.</i> ¶ 10)</p>	<p>For purposes of this motion Brown & Wood does not dispute that Gainor authorized Andersen to proceed with implementing the proposed tax planning strategy.</p> <p>Plaintiffs do not submit any evidence, however, that they authorized <i>Brown & Wood</i> to proceed with implementing the strategy. To the extent Gainor's Affidavit implies Gainor authorized Brown & Wood, it is contrary to his deposition testimony that he had no communications with Brown & Wood until <i>after</i> the transaction was completed. <i>See</i> May Decl., Ex A; <i>See Wallace v. Public Health Trust of Dade County</i> 370 F.Supp.2d 1247, 1250 (S.D.Fla. 2005) (J. Martinez) (plaintiff cannot attempt to defeat summary judgment by submitting an affidavit that contradicts deposition testimony).</p> <p>Brown & Wood also objects to ¶ 10 of Gainor's Affidavit for the reasons set forth in its Objections filed concurrently herewith.</p>

Case No. 06-21748-CIV-MARTINEZ-BANDSTRA

<p align="center">Plaintiffs' Statement of Facts and Supporting Evidence</p>	<p align="center">Brown & Wood's Response</p>
<p>11. Thereafter, Defendants orchestrated a series of complex transactions involving numerous entities, loans, transfers of interests and shifts of money. Gainor did not understand or direct the mechanics or details of the transactions. He merely did what his advisors, the Defendants, told him to do. Defendants caused the transactions involved in the strategy to be implemented. They told Gainor what he needed to do to realize the personal tax savings they had promised, and they prepared the documents and told Gainor to sign them. Gainor trusted them to be giving him sound advice, and did what they told him to do. (<i>Gainor Aff.</i> ¶ 11)</p>	<p>Brown & Wood objects to ¶ 11 of Gainor's Affidavit for the reasons set forth in its Objections filed concurrently herewith.</p> <p>Gainor's Affidavit ¶ 11 only refers to the "Defendants" collectively and does not state specific facts to support his conclusions. "[C]onclusory allegations without specific supporting facts have no probative value." <i>Spoerr v. Manhattan Natl. Life Ins. Co.</i>, 2007 WL 128815, at *5 (S.D.Fla. 2007) (J. Martinez).</p> <p>To the extent Gainor's Affidavit implies Brown & Wood was involved in these communications and acts, his Affidavit is contrary to his deposition testimony that he had no communications with Brown & Wood before the transaction was completed and that Brown & Wood's role in the transaction was to provide an opinion letter. <i>See</i> May Decl., Ex A; <i>Wallace</i>, 370 F.Supp.2d at 1250.</p>
<p>12. As part of the process, at the direction of Defendants, Gainor placed at least \$4.5 million of his own money into the bank account of one of the entities, in addition to transferring all his interests in the various entities according to the directions of Defendants. (<i>Gainor Aff.</i> ¶ 12)</p>	<p>Brown & Wood objects to ¶ 12 of Gainor's Affidavit for the reasons set forth in its Objections filed concurrently herewith.</p> <p>Gainor's Affidavit ¶ 12 only refers to the "Defendants" collectively and does not state specific facts to support his conclusions. <i>Spoerr</i>, 2007 WL 128815, at *5.</p> <p>To the extent Gainor's Affidavit implies that he did things at the direction of Brown & Wood, his Affidavit is also contrary to his deposition testimony that he had no communications with Brown & Wood before the transaction was completed and that Brown & Wood's role in the transaction was to provide an opinion letter. <i>See</i> May Decl., Ex A; <i>Wallace</i>, 370 F.Supp.2d at 1250.</p>

Case No. 06-21748-CIV-MARTINEZ-BANDSTRA

Plaintiffs' Statement of Facts and Supporting Evidence	Brown & Wood's Response
13. While the transactions were being implemented, Gainor was furnished a draft "more likely than not" opinion letter from Brown & Wood. (<i>Gainor Aff.</i> ¶ 13)	Undisputed for purposes of this motion.
14. In December of 1999, before implementation of the strategy was completed, the Internal Revenue Service issued Notice 99-59, which ruled that losses resulting from transactions such as the ones contemplated by the strategy would not be considered tax deductible because the transactions lacked economic substance; the strategy was simply a fraudulent tax scheme. (<i>Candelora Dec. Ex. 13</i>)	Undisputed for purposes of this motion except that the referenced evidence does not support the statement that "the strategy was simply a fraudulent tax scheme."
15. Although aware of this IRS ruling (indeed, it is referenced in the final opinion), Sidley nonetheless allowed Plaintiffs, who were not aware of it, to complete the transaction. (<i>Candelora Dec. Exs. 8 and 9</i>)	Undisputed for purposes of this motion that Sidley at some point became aware of IRS Notice 99-59, that the Notice is referenced in the final opinion that was prepared after the transaction was completed, and that Plaintiffs completed the transaction. The supporting evidence does not establish that Plaintiffs were not aware of this IRS Notice or that Sidley "allowed Plaintiffs ... to complete the transaction."
16. After the transactions were implemented, Brown & Wood delivered the promised final "more likely than not" opinion letters. The opinion letters were addressed to Gainor, personally, as well as to the corporations and were sent to Gainor at his home address in Florida. (<i>Gainor Aff.</i> ¶ 14)	Undisputed for purposes of this motion.
17. Andersen prepared the tax returns that claimed the deductions supposedly resulting from the transactions involved in implementing the strategy. Gainor and his wife signed the returns. (<i>Gainor Aff.</i> ¶ 15)	Undisputed for purposes of this motion.

Case No. 06-21748-CIV-MARTINEZ-BANDSTRA

Plaintiffs' Statement of Facts and Supporting Evidence	Brown & Wood's Response
<p>18. Defendants Sidley Austin, Arthur Andersen, and Merrill Lynch charged Gainor over two million one hundred thousand dollars in legal, accounting, and professional fees to implement the transactions that Sidley, though its predecessor Brown & Wood, opined were legitimate means to reduce Gainor's capital gains tax liability and would more likely than not survive IRS scrutiny. (<i>Gainor Aff.</i> ¶ 16)</p>	<p>All of the invoices sent by Brown & Wood, Andersen and Merrill Lynch for their fees were charged directly to Bryan Medical and Lucor. <i>See Sanchez Decl.</i> ¶¶ 16-21, Exs O - T.</p> <p>Plaintiffs do not dispute that the fees charged by Brown & Wood, Arthur Andersen and Merrill Lynch were all paid by Bryan Medical, Inc. and Lucor, Inc. <i>See Opp.</i> at pg. 4.</p>
<p>19. The IRS rejected the deductions claimed as a result of implementation of the strategy, and as a result, Gainor personally paid the IRS \$17 million dollars in taxes and interest after the advice for which Gainor had paid Defendants over two million dollars proved to be false and fraudulent. (<i>Gainor Aff.</i> ¶ 17)</p>	<p>Brown & Wood objects to ¶ 17 of Gainor's Affidavit for the reasons set forth in its Objections filed concurrently herewith.</p> <p>Gainor's statement that Defendants' advice proved to be false and fraudulent is a legal conclusion, not supported by specific facts. <i>Spoerr v. Manhattan Natl. Life Ins. Co.</i>, 2007 WL 128815, at *5.</p> <p>For purposes of this motion, Brown & Wood does not dispute that Gainor personally paid the IRS \$17 million dollars in taxes and interest.</p>
<p>20. Although the IRS refused to allow Gainor to deduct the losses purportedly caused by implementation of the strategy, the IRS did permit Gainor to personally deduct the fees paid to Andersen, Sidley and Merrill Lynch on his amended return. (<i>Gainor Aff.</i> ¶ 18)</p>	<p>Undisputed for purposes of this motion.</p>
<p>21. Defendant Mark Klopfenstein controlled Tran Star, (n/k/a Palladium, Inc.) the purchaser in the transactions, and his participation in the scheme caused Gainor additional damage in excess of \$1.1 million. (<i>Gainor Aff.</i> ¶ 19)</p>	<p>Brown & Wood does not dispute for purposes of this motion that Defendant Mark Klopfenstein controlled Tran Star, (n/k/a Palladium, Inc.) the purchaser in the transactions.</p> <p>Plaintiffs submit no evidence, however, to support the conclusion that Klopfenstein's participation in the scheme caused Gainor additional damage in excess of \$1.1 million. <i>Spoerr v. Manhattan Natl. Life Ins. Co.</i>, 2007 WL 128815, at *5.</p>

Case No. 06-21748-CIV-MARTINEZ-BANDSTRA

<p align="center">Plaintiffs' Statement of Facts and Supporting Evidence</p>	<p align="center">Brown & Wood's Response</p>
<p>22. But for Defendants' actions, Gainor 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. (<i>Gainor Aff.</i> ¶ 20)</p>	<p>Brown & Wood objects to ¶ 20 of Gainor's Affidavit for the reasons set forth in its Objections filed concurrently herewith.</p> <p>Plaintiffs do not identify which "Defendants" they are referring to, nor which actions they are talking about. Plaintiffs' statement that "the result of following Defendant's advice was an additional loss of over \$1.1 million" is a conclusion, unsupported by any facts and is entirely vague as to which Defendant he is referring to and what advice. <i>Spoerr v. Manhattan Natl. Life Ins. Co.</i>, 2007 WL 128815, at *5.</p> <p>For purposes of this motion, Brown & Wood does not dispute that Gainor agreed that MJG Partners should sell Bryan Medical and Lucor to Transtar.</p>
<p>23. Defendants' fees were paid with funds to which Gainor would have been entitled if they had not been used to pay to the Defendants as fees. (<i>Gainor Aff.</i> ¶ 21)</p>	<p>Brown & Wood objects to ¶ 21 of Gainor's Affidavit for the reasons set forth in its Objections filed concurrently herewith.</p> <p>This is a legal conclusion for which Plaintiffs provide no supporting evidence. <i>Spoerr v. Manhattan Natl. Life Ins. Co.</i>, 2007 WL 128815, at *5. To the contrary, the undisputed facts are that Klopfenstein owned and still own Bryan Medical and Lucor. Fact. Nos.16, 17, 18, & 20.</p>

Case No. 06-21748-CIV-MARTINEZ-BANDSTRA

<p align="center">Plaintiffs' Statement of Facts and Supporting Evidence</p>	<p align="center">Brown & Wood's Response</p>
<p>24. The reason Defendants' fees were paid the way they were if because that is what Defendants told Gainor to do. If Defendants had told Gainor to pay the fees of Andersen, Sidley Austin, Merrill Lynch and Mr. Klopfenstein directly from his personal funds, Gainor would have done so; just like he injected \$4.5 million of his personal funds, more than enough to pay all Defendants' fees, into one of the corporate bank accounts when Defendants told him to. The fact that Mark Gainor did things the way Defendants told him to do them does not change the fact that Mark Gainor's money was used to pay Defendants' fees. (<i>Gainor Aff.</i> ¶ 22)</p>	<p>Brown & Wood objects to ¶ 22 of Gainor's Affidavit for the reasons set forth in its Objections filed concurrently herewith.</p> <p>Gainor's Affidavit ¶ 22 only refers to the "Defendants" collectively and does not state specific facts to support his conclusions. <i>Spoerr v. Manhattan Natl. Life Ins. Co.</i>, 2007 WL 128815, at *5.</p> <p>To the extent Gainor's Affidavit implies that he did things at the direction of Brown & Wood or that Brown & Wood told him to do something, his Affidavit is also contrary to his deposition testimony that he had no communications with Brown & Wood before the transaction was completed, and that Brown & Wood's role in the transaction was to provide an opinion letter, and that all of his communications with Brown & Wood after the transaction concerned making changes to the opinion letters. <i>See</i> May Decl., Ex A; <i>Wallace</i>, 370 F.Supp.2d at 1250.</p>

II. REPLY TO PLAINTIFFS' OBJECTIONS TO BROWN & WOOD'S SEPARATE STATEMENT OF FACTS

Plaintiffs state they agree with all of Brown & Wood's Statement of Facts except for Numbers 3 and 11. (Opp. at p. 4). Brown & Wood's reply to Plaintiffs' disagreements to these two Statements of Fact are set forth in the table below.

Case No. 06-21748-CIV-MARTINEZ-BANDSTRA

Brown & Wood's Statement of Fact and Supporting Evidence	Plaintiffs' Response	Brown & Wood Reply
<p>3. Gainor asked Arthur Andersen, his longtime financial advisors, if a strategy existed that could help him reduce his taxes. (<i>Sanchez Decl. Ex. B [Gainor Dep. 81:12-82:2]</i>)</p>	<p>The cited references do not support this assertion. To the contrary, in his affidavit filed simultaneously herewith, Mr. Gainor having had his recollection refreshed by a letter from Phillip Miles of Andersen ... states that Andersen approached him with the proposal. <i>Gainor Aff. ¶ 6.</i> (Opp. at p.4)</p>	<p>Gainor's Affidavit at ¶6 does not state that Andersen approached him. It only states that he is attaching a letter. Gainor's deposition testimony is that "I'm sure I asked him [Miles of Andersen] did he have a strategy on how I could minimize the tax exposure on this." <i>Sanchez Decl. Ex. B [Gainor Dep. 81:12-14]</i></p>
<p>11. Bryan Medical, not Gainor, entered into a Loan and Collateral Account Agreement with Merrill Lynch on or about September 28, 1999 for a credit facility of up to \$48 million. (<i>Sanchez Decl., Ex. B at 565:7-568:7, 567:10-24 [Gainor Dep.]; Ex. K at GAINO 004104-004132 [Bryan Loan]; Ex. E at A+P 0578 [Statement to IRS]; Ex. U at GAINO 000586 [Bryan Security Interest].</i>)</p>	<p>Sidley's Statement of Facts suggests that Mark Gainor did not contract with Merrill Lynch in his individual capacity. This is incorrect. See letter from Erin Frederick dated August 20, 1999 signed by Mark Gainor on August 20, 1999. (<i>Candelora Dec. Ex. 11</i>) (Opp. at p.4)</p>	<p>The Loan and Collateral Account, Exhibit K, expressly states it is entered into by Bryan Medical. <i>Sanchez Decl., Ex. K, GAINO 4131.</i> Gainor testified that he signed this on behalf of Bryan Medical, Inc. <i>Sanchez Decl. Ex. B, [Gainor Dep. 567:10-20].</i> Gainor also told the IRS under oath this loan was entered into by Bryan Medical. <i>Sanchez Decl., Ex E at A+P0578.</i> Further, the Merrill Lynch Account was in Bryan Medical's name, not Gainor's. <i>Sanchez Decl., Ex. R.</i></p> <p>The Erin Frederick letter itself states that is in regards to the "Line of Credit for Bryan Medical, Inc." and refers to obligations of "Bryan Medical, Inc." not those of Gainor personally. Nowhere does it state the Gainor contracted with Merrill in his individual capacity.</p>

Case No. 06-21748-CIV-MARTINEZ-BANDSTRA

DATED: September 7, 2007

By: 
Aaron M. May

Aaron M. May (admitted *pro hac vice*)
MUNGER, TOLLES & OLSON LLP
355 S. Grand Ave., 35th Floor
Los Angeles, CA 90071
(213) 683-9100 / Fax (213)687-3702
Email: Aaron.May@mto.com

Katherine W. Ezell (SBN 114771)
PODHURST ORSECK, P.A.
City National Bank Building
25 West Flagler Street, Suite 800
Miami, Florida 33130
(305) 358-2800 / Fax (305) 358-2382
Email: kezell@podhurst.com

Attorneys for Sidley Austin LLP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy was sent via the Southern District of Florida's CM/ECF System and/or electronic mail to all counsel of record on the attached Service List this ___ day of September, 2007.

Respectfully submitted,

PODHURST ORSECK, P.A.
25 West Flagler Street, Suite 800
Tel. (305) 358-2800 / Fax (305) 358-238
kezell@podhurst.com

By: *Katherine W. Ezell*
KATHERINE W. EZELL
Fla. Bar No. 114771

And

MUNGER, TOLLES & OLSON, LLP
Jonathan E. Altman, Esq.
jonathan.altman@mto.com
Aaron M. May, Esq.
Aaron.may@mto.com
Gabriel P. Sanchez, Esq
gabriel.sanchez@mto.com
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560
(613) 683-9100/Fax (613) 683-5136

Attorneys for Defendant Sidley Austin, LLP

SERVICE LIST

Richard Benjamin Wilkes, Esq.
Richard W. Candelora, Esq.
Richard Benjamin Wilkes, P.A.
600 South Magnolia Avenue, Suite 200
Tampa, FL 33606
Tel. #: (813) 254-6060
Fax #: (813) 254-6088
E-Mail: rwilkes@rbwilkes.com
Attorneys for Plaintiffs

Stephen J. Anderson, Esq.
2002 Summit Blvd., Suite 1250
Atlanta, GA 30319
Tel. #: (404) 442-1800
Fax #: (404) 442-1820
E-mail: Anderson@andersondailey.com
Attorneys for Mark C. Klopfenstein

Richard A. Morgan, Esq.
E-mail: richard.morgan@bipc.com
Kelly A. McGovern, Esq.
E-mail: kelly.mcgovern@bipc.com
Buchanan Ingersoll & Rooney, PC
Bank of America Tower, 34th Floor
100 Southeast Second Street
Miami, FL 33131
Tel. #: (305) 347-4080
Fax #: (305) 347-4089
Attorneys for Mark C. Klopfenstein

Bennett Falk, Esq.
E-mail: bfalk@bressler.com
Coren Harris Stern, Esq.
E-mail: cstern@bressler.com
Bressler, Amery & Ross
2801 S.W. 149th Ave.
Miramar, Fl 33027
Tel #: (954) 499-7979
Fax #: (954) 499-7969
Attorneys for Merrill Lynch & Co., Inc.

Douglas E. Whitney, Esq.
McDermott Will & Emery
227 West Monroe Street
Chicago, IL 60606-5096
Tel. #: (312) 372-2000
Fax #: (312) 984-7700
E-mail: dwhitney@mwe.com
Attorneys for Arthur Andersen, LLP,
P. Anthony Nissley and Michael S. Marx

Michael G. Austin, Esq.
McDermott Will & Emery
201 South Biscayne Boulevard, Suite 2200
Miami, FL 33131
Tel. #: (305) 347-6517
Fax #: (305) 347-6500
E-mail: maustin@mwe.com
Attorneys for Arthur Andersen, LLP,
P. Anthony Nissley and Michael S. Marx

Jocelyn d. Francoeur, Esq.
McDermott Will & Emery, LLP
227 W. Monroe St., Suite 4400
Chicago, IL 60606-5096
Tel. #: (312) 372-2000
Fax #: (312) 984-7700
E-mail: jfrancoeur@mwe.com
Attorneys for Arthur Andersen, LLP,
P. Anthony Nissley and Michael S. Marx

Stuart E. Abrams, Esq.
Frankel & Abrams
230 Park Avenue, Suite 3330
New York, NY 10169
Tel. #: (212) 661-5000
Fax #: (212) 661-5007
E-mail: sabrams@frankelabrams.com

William F. Jung, Esq.
Jung & Sisco, P.A.
100 S. Ashley Dr., Suite 1240
Tampa, FL 33602
Tel. #: (813) 225-1988
Fax #: (813) 225-1392
E-mail: wjung@jungandsisco.com
Attorney for R.J. Ruble