

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

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

MARK J. GAINOR and ELYSE GAINOR,

Plaintiffs,

vs.

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.

**DECLARATION OF AARON M. MAY
IN SUPPORT OF DEFENDANT SIDLEY AUSTIN LLP'S
RESPONSE TO PLAINTIFFS' STATEMENT OF FACTS**

DECLARATION OF AARON M. MAY

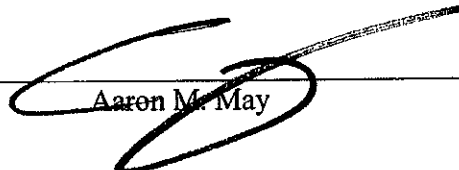
I, Aaron M. May, declare as follows:

1. I am an attorney at the law firm of Munger, Tolles & Olson LLP, counsel of record for Sidley Austin LLP (successor in interest to Defendant Brown & Wood) ("Brown & Wood"). I have personal knowledge of the matters stated herein, and if called and sworn as a witness, I could and would testify competently thereto.

2. Attached hereto as Exhibit A is a true and correct copy of excerpts from the transcript of the Deposition of Plaintiff Mark Gainor taken in this litigation on March 1 and 2, 2007.

3. I am submitting these excerpts of Mr. Gainor's deposition because they contradict the statements he makes in his Affidavit filed with this Court on August 23, 2007 and used by Plaintiffs' to support their Statement of Facts.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed this 7th day of September 2007, at Los Angeles, California.



Aaron M. May

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1 A. They made the original pitch to me, and
2 then -- and then subsequently highly recommended
3 Merrill Lynch, and then recommended Brown & Wood as
4 legal counsel for the transaction to issue the opinion
5 letters.

6 Q. What was TranStar's role?

7 A. Oh, I forgot TranStar's role. I guess we
8 needed some company to sell these assets to. I don't
9 know the specifics. But Mike Klopfenstein and
10 TranStar. I knew I forgot some names.

11 Q. And what was Merrill Lynch's role in the
12 transaction?

13 A. I don't know specifically, but we needed a
14 financial institution to do things, and they were
15 chosen.

16 Q. And what was Brown & Wood's role in the
17 transaction?

18 A. To issue the opinion letters.

19 Q. Now, we'll keep talking about the transaction
20 or transactions. You actually did two separate
21 transactions, is that right? One for --

22 A. Yes.

23 Q. -- GMUSA and one for Bryan Medical?

24 A. Yes.

25 Q. Why did you do two separate transactions?

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1 the -- or somewhere in the -- there was a lot of
2 paperwork in this -- that I've looked at and seen. And
3 if you show me something, it would help me jog my
4 memory. But I don't remember specifically if you're
5 not going to show me anything.

6 Q. I'll show you something later. I'm asking
7 before I show you the documents what your understanding
8 was of the tax benefits.

9 A. Without seeing the documents, I don't recall
10 at this moment.

11 Q. Do you recall if you asked anyone to explain
12 to you the tax benefits of the transaction?

13 A. I was dealing with, you know, the Arthur
14 Andersen people, and they were my, at that time, my
15 trusted advisors. And I -- I know at some point I
16 talked to -- I spoke to Ruble about his opinion.

17 Q. When did you speak to Mr. Ruble?

18 A. I'm not sure when exactly.

19 Q. Before or after you did the transaction?

20 A. Oh, definitely -- I'm fairly positive it was
21 after the transaction.

22 Q. Can you give me -- like 2004, 2005, 2003 --

23 A. No, no.

24 Q. -- 2002?

25 A. I think it was -- there was an issue with the

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1 opinion letters, and -- and -- which I was trying to
2 get corrected. And I called him, and I talked to him,
3 and he never -- he never did it.

4 Q. So this was after you received the final
5 opinion letters?

6 A. Yes. I'm not -- I received the opinion
7 letters, and I'm not sure the point in time I got
8 those. I'm pretty confident it was after the
9 transaction, several months after the transaction or a
10 period of time after the transaction. And we were
11 trying to -- trying to get them finalized -- or I
12 wasn't trying to. I was -- I received them, and they
13 were -- there was a lot of errors, grammar errors, in
14 it. And I called him up about it.

15 Q. And why did you call him up?

16 A. To fix it.

17 Q. Why did you want it fixed?

18 A. Because I thought it should be correct for,
19 you know -- for the amount of money I paid, I thought
20 the two opinion letters should have been done right in
21 the first place, and they weren't.

22 Q. You had already done the transaction at that
23 time, right?

24 A. Yeah, I'm positive, yes.

25 Q. And what was the purpose of having the

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1 Brown & Wood to you, had you heard of it?

2 A. I think so, yes.

3 Q. In what context?

4 A. I don't remember.

5 Q. What do you remember knowing about the firm
6 before Arthur Andersen mentioned it to you?

7 A. I don't remember.

8 Q. Did you discuss Brown & Wood with anybody
9 else?

10 A. I think only Arthur Andersen, I think.

11 Q. Was it Mr. Bokman?

12 A. I may have, but I don't recall the
13 conversation.

14 Q. Other than the conversation you had with
15 Mr. Ruble that we talked about earlier, have you had
16 any other oral communications with Brown & Wood?

17 A. Not that I recall, no.

18 Q. And what were the written communications you
19 had with Brown & Wood?

20 A. I don't remember any written correspondence
21 with them via letter or e-mail, but I don't, you
22 know --

23 Q. So you don't recollect ever e-mailing anyone
24 at Brown & Wood?

25 A. I remember I was frustrated with the opinion

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1 and the grammar problems. And I know I called them.
2 And I'm assuming if I called them, I probably hit them
3 with some e-mails, but I don't remember.

4 Q. Okay. Before -- at some point in time, you
5 received an opinion -- final opinion letters from
6 Brown & Wood?

7 A. Yes. I remember them arriving in the mail
8 one day.

9 Q. Okay. Where were you?

10 A. In Florida.

11 Q. In Florida.

12 A. I had moved there, remember?

13 Q. Thank you.

14 And before you received those opinion
15 letters, had you -- had you had any direct
16 communications with anyone at Brown & Wood?

17 A. I don't think so.

18 Q. Did you ever see draft opinion letters from
19 Brown & Wood?

20 A. I think we discussed that earlier.

21 MR. WILKES: It's asked and answered more
22 times than I can think of.

23 BY MR. MAY:


24 Q. Okay. Other than what was previously marked
25 as Exhibit 19, do you recall seeing anything other

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,

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