

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

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 SIDLEY AUSTIN
BROWN & WOOD, 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.

CONTINGENT MOTION FOR LEAVE TO ADD PARTIES

Plaintiffs, Mark J. Gainor and Elyse Gainor, by and through their undersigned counsel and pursuant to Rules 19 and 21 of the Federal Rules of Civil Procedure, hereby file this contingent motion requesting leave to add additional parties to this action. As grounds for this motion, Plaintiffs state:

1. By Order dated June 13, 2007, the Court imposed a deadline of September 14, 2007 for filing motions to add parties.
2. In its motion for partial summary judgment, Defendant, Sidley Austin, LLP has challenged Plaintiffs' standing to sue for some – but not all¹ – of the damages sought in

¹ Sidley's motion does not challenge Plaintiffs' right to recover fees paid in connection with dealing with the Internal Revenue Service. Accordingly, this aspect of the case will continue to go forward without need of additional parties irrespective of the Court's ruling on Sidley's motion for partial summary judgment.

the Amended Complaint, saying that entities other than Plaintiffs wrote the checks to pay the fees sought to be recovered herein.

3. Plaintiffs are confident that they do have standing and the motion will be denied. The facts are that the fees were paid for services rendered to the Plaintiffs - Sidley admits that Mark Gainor was its client, and the opinion letters were addressed to Mark Gainor himself; and payment was arranged by Plaintiffs. How Plaintiffs arranged to pay these fees is irrelevant. If third parties wrote the checks as a result of some arrangement with the Plaintiffs, that is between the Plaintiffs and those third parties. This is no different from a buyer paying for merchandise with a credit card, or the check for a home purchase being issued by the mortgagee.

4. However, the motion for partial summary judgment remains pending, and the deadline for filing motions to add parties is today.

5. Accordingly, as a contingency, should the Court determine that one or more of the corporate entities involved in the transaction, such as Bryan Medical, Lucor, MJG Partners, etc., should be made parties to this action, Plaintiffs request leave to add such entities as Plaintiffs or Defendants or Involuntary Plaintiffs, as the case may be.

WHEREFORE, Plaintiffs respectfully request that this Court allow Plaintiffs to add additional parties, and for such other and further relief as the court deems just and proper under the circumstances.

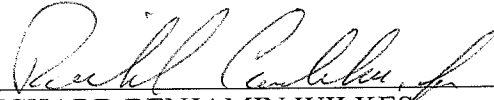
**MEMORANDUM IN SUPPORT OF
CONTINGENT MOTION FOR LEAVE TO ADD PARTIES**

Rule 19 of the Federal Rules of Civil Procedure provides that if the Court determines that a Just Adjudication of the matter (as defined therein) requires the Court to

exercise jurisdiction over a person who is not a party to the action, then “[i]f the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.” Further, Fed. R. Civ. P. 21 empowers the Court to add parties to an action on its own initiative or upon the motion of any party. Accordingly, should the Court determine, in connection with its decision on Defendant Sidley Austin, LLP’s motion for partial summary judgment on damages, that one or more of the corporate entities involved in the transaction, such as Bryan Medical, Lucor, MJG Partners, etc., should be a party to this action, the Court should order Plaintiffs to add such entities as Plaintiffs or Defendants or Involuntary Plaintiffs, as may be appropriate, and allow Plaintiffs a specified period of time from the date of entry of the order to do so.

CERTIFICATE OF COMPLIANCE

Undersigned counsel hereby certifies that he has sent written communication to counsel for all present parties asking if they would agree to or oppose this motion, and has received the following responses: counsel for Defendant Sidley Austin, LLP has advised that Sidley opposes the motion; counsel for Defendant R.J. Ruble has responded saying that Defendant Ruble takes no position on the motion; counsel for Defendant Merrill Lynch & Co., Inc. has responded, but the response does not set forth a position on the motion; and no response has been received from counsel for Defendant Mark C. Klopfenstein.



RICHARD BENJAMIN WILKES
Florida Bar No. 267163
RICHARD BENJAMIN WILKES
ATTORNEYS AT LAW
600 South Magnolia Avenue, Suite 200
Tampa, Florida 33606
E-Mail: rwilkes@rbwilkes.com
Telephone: (813) 254-6060
Facsimile: (813) 254-6088

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of September, 2007, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.



Attorney

SERVICE LIST

Richard Gilbert, Esquire
rgilbert@dgfirm.com
de la Parte & Gilbert
101 East Kennedy Boulevard, Suite 3400
Tampa, FL 33601
Co-counsel for Plaintiffs

William F. Jung, Esquire
WJung@jungandsicso.com
Jung & Sisco, P.A.
100 South Ashley Drive
Suite 1240
Tampa, FL 33602
Counsel for Ruble

Katherine W. Ezell, Esq.
KEzell@podhurst.com
Podhurst Orseck, P.A.
25 W. Flagler Street, Suite 800
Miami, FL 33130
Counsel for Sidley Austin

Stephen J. Anderson, Esq.
Anderson@andersondailey.com
Anderson Dailey LLP
2002 Summit Boulevard, Suite 1250
Atlanta, GA 30319
Counsel for Klopfenstein

Jonathan E. Altman, Esq.
Jonathan.Altman@mto.com
Aaron May, Esq.
Aaron.May@mto.com
Munger, Tolles & Olson LLP
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071
Counsel for Sidley Austin

Richard A. Morgan, Esq.
Richard.Morgan@bipc.com
Buchanan Ingersoll & Rooney, P.C.
Bank of America Tower
100 S.E. 2nd Street, 34th Floor
Miami, FL 33131
Counsel for Klopfenstein

Coren Stern, Esq.
CStern@bressler.com
Bennett Falk, Esq.
BFalk@bressler.com
Bressler, Amery & Ross
2801 S.W. 149th Avenue
Miramar, FL 33027
Counsel for Merrill Lynch