

## **COMPOSITE EXHIBIT "A"**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

- - - - -x

MARK J. GAINOR,

Plaintiff,

-against-

Case No.  
06-21748

SIDLEY, AUSTIN, BROWN & WOOD,

Defendant.

- - - - -x

February 22, 2007  
9:09 a.m.

Deposition of JOHN A. MACKINNON, taken by  
Plaintiff, at the office of Sidley, Austin,  
Brown & Wood, 787 Seventh Avenue, New York,  
New York, before Linda A. Marino, Registered  
Professional Reporter, Certified Shorthand  
Reporter, and Notary Public within and for the  
State of New York.

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2 on at least one of the opinions. So, on the  
3 basis of that, if the opinion were delivered,  
4 then I would think Mr. Gainor would have been  
5 a client.

6 Q. Was Arthur Andersen a client of  
7 the firm's?

8 MR. ALTMAN: Vague as to time.

9 A. Yeah, it would be -- what's the  
10 time period, please?

11 Q. In 1999.

12 A. In 1999, I could not find any  
13 evidence that they were a client.

14 Q. On this new matter sheet, isn't  
15 Arthur Andersen identified as the client?

16 A. They are listed at the top as the  
17 client the way the form has been completed.

18 Q. And that would be a true  
19 statement?

20 Were they a client?

21 A. I did not find any evidence that  
22 we gave advice to Arthur Andersen on this or  
23 other matters during this time period. My  
24 suspicion, and this is really -- is that Mr.  
25 Ruble opened this as a matter of convenience

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2 to have a sort of aggregate account.

3 Q. Was there a file number  
4 associated with this account?

5 A. Yes, there was.

6 Q. What was the file number?

7 A. It would probably be on that new  
8 matter memo.

9 Otherwise, I can get it. I do  
10 not have it.

11 Q. Okay.

12 When the bills were paid, were  
13 they credited to that file?

14 MR. ALTMAN: Foundation.

15 A. Let me try to walk through what I  
16 understand in terms of the --

17 Q. Let me start earlier, then.

18 A. Okay.

19 Q. Were any bills rendered?

20 A. I, during my review, I could not  
21 find evidence that -- copies of any bills that  
22 were rendered.

23 Having said that, when I was  
24 doing my review, I spoke with someone at the  
25 firm who has been responsible for collecting

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2 Who at Sidley, Austin -- I don't  
3 understand the question.

4 Can you try to rephrase it?

5 Q. Does Sidley, Austin have a  
6 position in this litigation with respect to  
7 whether or not those opinion letters are  
8 valid?

9 And that is to say were written  
10 in accordance with your own standards.

11 MR. ALTMAN: It's beyond the  
12 scope.

13 A. I did not review that for  
14 purposes of this deposition.

15 I am not aware of any position  
16 where the firm has taken and whether those  
17 opinions comply or do not comply with at the  
18 present time.

19 Q. Did Sidley, Austin do anything to  
20 find out about Mr. Gainor or his businesses?

21 A. I, for purposes of this, my  
22 review, I do not know what efforts may have  
23 been undertaken.

24 I have not had access to Mr.  
25 Ruble. And as far as I can ascertain, he was

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2 the sole partner, sole lawyer in the firm  
3 involved in this matter. Without being able  
4 to talk with him, I really don't know what the  
5 firm did in terms of Mr. Gainor.

6 Q. Did Mr. Ruble keep time records  
7 with respect to his activities in connection  
8 with the work on these opinion letters?

9 A. There are some records that I  
10 believe were turned over to you yesterday that  
11 reflected the time spent in this umbrella  
12 Andersen account. To the extent there's any  
13 record of Mr. Ruble having worked on the  
14 transactions, it would be in that account, to  
15 my knowledge.

16 Q. And would you agree that that  
17 would be the best information available to  
18 Sidley, Austin with respect to such efforts as  
19 Mr. Ruble may have made in connection with his  
20 work on these opinion letters?

21 A. I just don't know.

22 I mean, there is that record. I  
23 don't know what else he did. I haven't been  
24 able to talk with him.

25 Q. What I'm -- my question is: Are

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2 matter with respect to this category of  
3 transactions.

4 So, I think those e-mails would  
5 all be -- be all that I'm aware of.

6 Q. The opinion letters -- were there  
7 any e-mails that you were able to find that  
8 pertain to Mr. Ruble's work on the opinion  
9 letters issued to Mr. Gainor?

10 A. I believe -- I'd have to look at  
11 the documents that were produced, but my  
12 recollection is the only e-mail that I recall  
13 right now is one that was dated, I believe,  
14 March 10, 2000.

15 It was an e-mail to Arthur  
16 Andersen, indicating that he was -- Mr. Ruble,  
17 was attaching a near final draft of the  
18 opinions and asking if there were any  
19 corrections in the factual information.

20 Q. March 10 of 2000?

21 A. I believe that was 2000.

22 And I believe there were two  
23 attachments for each of the two transactions,  
24 I understand.

25 Q. Are you familiar with a 1999

1 J. A. MACKINNON  
2 e-mail from Mr. Ruble to Mr. Marx attaching an  
3 opinion letter from another transaction that  
4 he could use as a format for structuring Mr.  
5 Gainor's transactions?

6 A. I am familiar with an e-mail of  
7 the type you describe. I'm not sure that Mr.  
8 Gainor was referenced there.

9 When I was talking in my previous  
10 response about addressed or related to the  
11 Gainor opinion, that one was specific.

12 There was an opinion -- an  
13 e-mail, I believe, from Mr. Ruble that you  
14 described, I believe it was in perhaps August  
15 of 1999, attaching a generic, sort of redacted  
16 opinion, but I don't believe there was any  
17 reference to Mr. Gainor in those -- in that  
18 cover memo or in the actual opinion that was  
19 attached. It seemed to be a generic type  
20 opinion that covered a transaction that seems  
21 similar in many respects to the ones that were  
22 then described in the opinions to Mr. Gainor.

23 Q. And am I correct in saying that  
24 as far as you know, Mr. Ruble's dealings with  
25 Mr. Marx were limited to the Gainor



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2 transactions?

3 A. I would have to check that.

4 There were e-mails that were  
5 turned over that involved a call in which Mr.  
6 Ruble was a participant, and there were  
7 several Arthur Andersen people on the call. I  
8 don't know whether Mr. Marx was one of the  
9 people that was referenced in that series of  
10 e-mails where they were trying to have a time  
11 to talk about particular transactions.

12 Other than that, I did not see --  
13 I do not recall any specific correspondence  
14 with Mr. Ruble and Mr. Marx.

15 Q. You've indicated that you have  
16 not been able to speak with Mr. Ruble.

17 A. That's correct.

18 Q. Why is that?

19 A. His counsel, Stuart Abrams, I  
20 have spoken with on at least two occasions,  
21 and he has indicated -- and he says this  
22 reluctantly -- that he cannot make Mr. Ruble  
23 available because of Mr. Ruble's other issues  
24 right now in terms related to these  
25 transactions.

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2 Q. When was the last time you spoke  
3 with Mr. Abrams about that?

4 A. I did not speak with him in  
5 preparation of this deposition. I don't know  
6 the timing precisely of the other  
7 depositions. I'm guessing it was probably in  
8 the range of twelve to eighteen months.

9 Q. Has there been any change in the  
10 last twelve to eighteen months that you know  
11 of that would effect or could effect Mr.  
12 Abrams' position with respect to making Mr.  
13 Ruble available?

14 A. Not that I'm aware of.  
15 That's why I did not contact him  
16 now. Last time when I did speak with him, he  
17 said that there was -- Mr. Ruble had been  
18 indicted, there was a pending trial. That  
19 trial has not taken place yet.

20 Q. And is it your understanding that  
21 he has been indicted for work that he  
22 performed while rendering services on behalf  
23 of your law firm?

24 MR. ALTMAN: Beyond the scope.

25 A. Yeah, I did not review the

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2 specifics on the indictment, so I'm not really  
3 prepared as corporate representative to talk  
4 about those.

5 Q. Have you read the indictment?

6 MR. ALTMAN: Beyond the scope.

7 A. If I did, it was more than twelve  
8 months ago or it would have been the time it  
9 came out, but I did not read it in preparation  
10 for this.

11 Q. Based on your recollection of  
12 what you have read in the indictment, could  
13 you tell at that time whether or not it  
14 related to work that Mr. Ruble performed for  
15 your law firm?

16 MR. ALTMAN: Beyond the scope,  
17 best evidence.

18 A. My recollection is that it did,  
19 but I don't recall the specifics.

20 Q. Have you also read the  
21 superseding indictment?

22 MR. ALTMAN: Beyond the scope.

23 A. No, I don't believe -- if I read  
24 one -- I think I've only read one. So,  
25 whether it was the original or the

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2 Q. Is there anyone at Sidley, Austin  
3 who would know the answer to that question?

4 And just so we're not lost  
5 between your answer and my question, is there  
6 anyone at Sidley, Austin who would know  
7 whether or not the opinion letters issued to  
8 Mr. Gainor were S Corp. 301 letters?

9 MR. ALTMAN: Foundation.

10 A. I did not review that for  
11 purposes of preparation. I would assume that,  
12 you know, tax partners would be able to  
13 analyze the contents of the opinions to see if  
14 they did deal with Section 301 and they were S  
15 Corporations.

16 Q. Did anyone from Sidley, Austin  
17 have any dealings with Merrill Lynch  
18 pertaining to Mr. Gainor's transactions?

19 A. No, my investigation did not  
20 reveal any context of Merrill Lynch. I did  
21 see Merrill referred to in the opinion, but I  
22 didn't see any participation by a Brown & Wood  
23 lawyer.

24 Q. Did Sidley, Austin have anything  
25 to do with arranging for Merrill Lynch to be a

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2 part of the Gainor transactions?

3 A. My investigation did not indicate  
4 that.

5 Again, I did not have access to  
6 Mr. Ruble, who would have been aware of the  
7 facts. But the documents that I did see did  
8 not reflect that.

9 Q. How is it that Sidley, Austin  
10 came to issue these opinion letters to Mr.  
11 Gainor?

12 MR. ALTMAN: Vague and  
13 ambiguous.

14 A. My review of the records did not  
15 indicate the process in terms of how it came  
16 about. Again, without access to Mr. Ruble,  
17 it's hard to understand the facts.

18 I did mention that I had spoke  
19 with Mr. Humphreys if he had known anything,  
20 any reference to the names that I had provided  
21 him in terms of Mr. Gainor and the affiliated  
22 entities as indicated in this outline I gave  
23 to you earlier. I also sent an e-mail to  
24 partners of Sidley who were Brown & Wood  
25 partners asking if they had any familiarity

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2 been marked as Exhibit 4 to your deposition,  
3 and this is a two-page document Bates stamped  
4 Gainor 2029 and Gainor 2034, and ask if you've  
5 ever seen that document before.

6 A. Not to my knowledge.

7 Q. Do you have any understanding as  
8 to how either page of this document relates to  
9 any of the services provided by your firm in  
10 connection with the opinion letters issued to  
11 Mr. Gainor?

12 MR. ALTMAN: Vague and ambiguous,  
13 it's beyond the scope.

14 A. I'm not sure. I obviously  
15 haven't read this before. I'm not sure  
16 exactly of the question. I think what I see  
17 is a Brown & Wood fee listed here, but it does  
18 not list -- I don't believe it lists the  
19 transaction's name or the recipients or who  
20 our client was.

21 Q. You can see at the top of the  
22 page in the upper left-hand corner of both  
23 pages, it says: From Arthur Andersen tax.

24 Do you see that?

25 A. Yes, I do.

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2 Q. Do you know if Exhibit 4 was  
3 prepared by Sidley, Austin and provided to  
4 Arthur Andersen?

5 A. I have no knowledge on how it was  
6 prepared.

7 Q. Did Mr. Ruble assist in any way  
8 in connection with the preparation of Exhibit  
9 4?

10 A. Based on my preparation for this,  
11 I have no knowledge of his role with Arthur  
12 Andersen.

13 Q. Do you know how it is that a fee  
14 was quoted of \$200,000 on the two transactions  
15 described in Exhibit 4, \$200,000 apiece?

16 MR. ALTMAN: Foundation.

17 A. No, I have no knowledge. Again,  
18 I don't have access to Mr. Ruble.

19 Q. Are there any records in the firm  
20 that would reflect how he calculated his fees  
21 in connection with these tax-oriented  
22 transactions?

23 MR. ALTMAN: Vague and  
24 ambiguous.

25 A. I did not prepare on that for

1 J. A. MACKINNON  
2 understanding what the Plaintiff was  
3 alleging.

4 Q. Is Exhibit 2 to your deposition  
5 the redacted opinion letter that Mr. Ruble  
6 furnished to Mr. Gainor's accountants, is that  
7 a plan?

8 THE WITNESS: This gets to be --  
9 what do I...

10 MR. ALTMAN: I think you can  
11 answer. If you understand the question,  
12 you can answer it.

13 A. This probably is semantics in  
14 terms of what's a plan in a capitalized plans  
15 concept.

16 This seemed to me to be a simple  
17 e-mail saying here's a version of an opinion  
18 for a particular type of transaction related  
19 to these sections. It didn't seem to be  
20 saying here's a term sheet for transactions or  
21 here's this or that or I've developed a  
22 transaction for you. I didn't sense that kind  
23 of relationship from that e-mail.

24 Q. Do you know if this August 5,  
25 1999 e-mail from Mr. Ruble to Mr. Gainor's



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2 accountant was used by them to structure the  
3 transactions that are referred to in the  
4 Complaint as the Sidley plan?

5 A. No, I do not know the linkage.

6 I know that there was this in  
7 August, I know there was a draft opinion that  
8 Mr. Ruble sent to Arthur Andersen in March  
9 which would have been -- let's call it seven  
10 or eight months later that has real  
11 similarities to the approach here.

12 But in terms of what happened in  
13 between, I could not tell that from our  
14 records.

15 Q. Do you have any reason to deny  
16 that the transactions described in Mr. Ruble's  
17 letter of -- contained in Exhibit 2 dated  
18 August 5, 1999 were -- was the first step in  
19 terms of Arthur Andersen's presentation of a  
20 plan to Mr. Gainor?

21 A. How did you frame that question?  
22 Do I have a reason to deny or do  
23 I agree?

24 Q. Do you have any reason not to  
25 believe that this Exhibit 2 was not the basis

1 J. A. MACKINNON  
2 for the plan presented by Arthur Andersen to  
3 Mr. Gainor later that month?

4 A. There was a couple negatives  
5 there.

6 Let me just say that I have no  
7 knowledge of what this was used for and  
8 whether it led to the other opinion.

9 Q. Because Exhibit 4 to your  
10 deposition, which is a portion of a fax from  
11 Arthur Andersen listing transaction costs, is  
12 Exhibit 4 based on the transactions described  
13 in Exhibit 2?

14 MR. ALTMAN: Foundation, beyond  
15 the scope, best evidence.

16 A. I'm not sure I can speak to  
17 that.

18 There's certain elements in terms  
19 of the costs that would have been incurred in  
20 this, but whether this was a separate  
21 transaction or whether Arthur Andersen knew  
22 about all this earlier, I can't speak to that  
23 for the face of this Exhibit 4.

24 I mean, there were some items  
25 here that would have been present like

1 J. A. MACKINNON  
2 various accounting firms, such as Arthur  
3 Andersen, Ernst & Young, and KPMG?

4 MR. ALTMAN: Beyond the scope,  
5 foundation.

6 A. Yeah, I have not seen anything  
7 that would talk about whether it was his idea  
8 or what discussions he had with the accounting  
9 firms. Obviously, not having access to him, I  
10 don't know what his plans were, what his  
11 conduct was. I did not see anything in the  
12 record that talked about it.

13 Q. What is your understanding of how  
14 these transactions came about?

15 MR. ALTMAN: Vague and ambiguous,  
16 vague as to time, beyond the scope.

17 A. If these transactions is  
18 reference to Mr. Gainor's, as I said earlier,  
19 I can see the e-mail in August and I can see  
20 the draft opinion in March, the following  
21 March. What transpired in between, I don't  
22 know. Our records just don't give any  
23 indication.

24 Q. Without being specific to Mr.  
25 Gainor but including Mr. Gainor, what's your

1 J. A. MACKINNON  
2 understanding of how these types of  
3 transactions came about with respect to the  
4 involvement of your law firm?

5 MR. ALTMAN: Vague and ambiguous,  
6 and beyond the scope.

7 A. I did not prepare on that issue.  
8 There were situations in other  
9 transactions in which I have given depositions  
10 where the accounting firm in question would, I  
11 believe, indicate that Mr. Ruble could act or  
12 give a concurring legal opinion, I believe the  
13 situation I saw, where the accounting firm  
14 would have an opinion and said that if the  
15 client wanted to request a concurring opinion,  
16 that Mr. Ruble would provided that. In that  
17 situation, I believe the accounting firm was  
18 not our client but did tell its clients that  
19 they could arrange for Mr. Ruble to give that  
20 opinion.

21 But, again, I have not talked  
22 with Mr. Ruble about that. That's really what  
23 I learned during the course of the earlier  
24 depositions.

25 Q. Now, in this particular case

1 J. A. MACKINNON  
2 involving the issuance of the opinion letters  
3 to Mr. Gainor, Mr. Ruble's opinions were not  
4 what you refer to as concurring opinions.

5 Correct?

6 A. To my knowledge, I did not see in  
7 the record either an opinion by Arthur  
8 Andersen nor did I see a reference in Mr.  
9 Ruble's draft opinion saying he was concurred  
10 with another opinion, so I didn't see  
11 reference to second opinion.

12 Q. And was it the practice of Sidley  
13 Austin at that time to charge more when Mr.  
14 Ruble was doing an opinion letter that was not  
15 a concurring letter but was going to be the  
16 primary opinion?

17 MR. ALTMAN: Beyond the scope.

18 A. Yeah, I didn't review that for  
19 this.

20 I don't know enough about the fee  
21 arrangements to line up how they would match  
22 in terms of, you know, the different  
23 scenarios.

24 Q. Was it your understanding that  
25 with respect to the concurring opinions, Mr.

1 J. A. MACKINNON  
2 of the -- where I've seen the fees or the  
3 exhibits you've given me, in your Complaint  
4 you mentioned it, they were mentioned as flat  
5 numbers of each of these cases, but I don't  
6 know based on -- I don't know on what they  
7 were based.

8 Q. How many hours did Mr. Ruble work  
9 on the Gainor opinion letters?

10 A. I could not tell that from the  
11 billing records.

12 I believe you were given a copy  
13 yesterday.

14 Q. Yes, sir.

15 A. There are hours that were there,  
16 they were entered as of, I think, December  
17 31. There was a significant number of hours.  
18 I don't know where he recorded his time. I  
19 really don't know how much in terms of what  
20 his role was prior to the time that account  
21 was opened -- I think that was July 29 or  
22 something like that -- whether he had done  
23 work before that or not thinking about the  
24 proposed structure or if he had no role  
25 thinking about it. I just don't know what his

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2 they, in fact, had made such a request?

3 MR. ALTMAN: Calls for  
4 speculation, vague and ambiguous,  
5 incomplete hypothetical.

6 A. Yeah, I don't know how to address  
7 that.

8 I assume people wouldn't be  
9 getting an opinion unless someone had -- they  
10 had asked in some form or through someone. I  
11 just don't know, is the answer.

12 Q. Did Mr. Ruble authorize Arthur  
13 Andersen to interact with Mr. Gainor, Bryan  
14 Medical, and Gainor Medical in connection with  
15 the opinions that were issued by Brown & Wood  
16 in this case?

17 A. In my review, I saw no evidence  
18 of any kind of appointment of Arthur Andersen  
19 in any way to act on behalf of the firm.

20 Q. You're talking about any written  
21 appointment?

22 A. Written appointment or even a  
23 reference.

24 I mean, the limited documents I  
25 saw did not refer to any arrangement with

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2 Arthur Andersen pursuant to which it was  
3 acting on behalf of the firm.

4 Q. If Sidley, Austin did not have  
5 any direct communications with Bryan Medical  
6 and Mr. Mark Gainor, how would they have  
7 gotten the information upon which to base  
8 these opinions?

9 MR. ALTMAN: Calls for  
10 speculation.

11 A. Again, without access to Mr.  
12 Ruble, I really don't have a way to know that.

13 Q. Do you have any reason to -- now,  
14 the records you did review showed that Mr.  
15 Ruble's communications with third parties in  
16 this matter were exclusively with Arthur  
17 Andersen.

18 Is that correct?

19 A. In terms of written  
20 communications that I saw and the documents  
21 that have been produced, there have been a few  
22 limited communications with Arthur Andersen  
23 written, and that was all I saw.

24 Again, I obviously don't know  
25 what oral conversations took place.



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2 to this?

3 MR. ALTMAN: Vague and ambiguous

4 as to this.

5 Q. When I say this, the work that  
6 was done in connection with the Gainor opinion  
7 letters.

8 A. My understanding is the search  
9 was done in a very broad way. The database  
10 searchable with the key names, like Mr. Gainor  
11 and others related to the transaction. So, it  
12 would have identified documents in any file  
13 that related to him that would have been then  
14 produced.

15 Q. As I understand it, Matter No.  
16 00023 related to opinion letters that were  
17 issued for persons other than Mr. Gainor as  
18 well.

19 Is that correct?

20 A. I believe there was more than  
21 just Mr. Gainor's in that account.

22 Q. So, how did Sidley, Austin  
23 differentiate between different matter numbers  
24 for Arthur Andersen?

25 In other words, what went into

1 J. A. MACKINNON

2 one matter number versus another matter  
3 number?

4 A. I don't know the answer to that.

5 Q. The manual says that: The form,  
6 scope, and substance of any opinion which the  
7 firm will be called upon to deliver should, to  
8 the extent reasonably practicable, be agreed  
9 upon in advance so that any party entering  
10 into any agreement or taking any action in  
11 reliance upon the expectation of the delivery  
12 of such opinion.

13 Was that done in this case?

14 A. As I indicated, I have no  
15 evidence that I have reviewed as to  
16 communications between Mr. Ruble and Mr.  
17 Gainor, so I don't know what Mr. Gainor saw or  
18 was told by Mr. Ruble or otherwise.

19 Q. Did Mr. Ruble carry this out --

20 (Knock at door)

21 (Pause in proceedings)

22 Q. Did Mr. Ruble make this agreement  
23 with Arthur Andersen in advance?

24 MR. ALTMAN: Vague and  
25 ambiguous.

1 J. A. MACKINNON

2 A. We're talking as to these  
3 opinions to Mr. Gainor?

4 Q. Yes.

5 A. As I indicated earlier, I saw no  
6 evidence of any agreement between Mr. Ruble  
7 and Arthur Andersen.

8 Q. The policy says that: Partners  
9 in charge are encouraged to review the form  
10 and substance of each firm opinion with firm  
11 opinions previously rendered in a similar  
12 context.

13 Was that done by Mr. Ruble or  
14 whoever was the partner in charge in  
15 connection with the issuance of the Gainor  
16 opinion letters?

17 A. I can't really answer that since  
18 I don't have access to Mr. Ruble.

19 Q. Do you agree that the obligations  
20 of Sidley, Austin to its clients and to those  
21 who may act in reliance on firm opinions  
22 require that in the preparation of firm  
23 opinions, lawyers exercise great care,  
24 diligence, and sensitivity to ethical  
25 considerations?

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2 MR. ALTMAN: Beyond the scope.

3 A. Yeah, I didn't review that for  
4 purposes of this deposition.

5 Q. I'll be specific with respect to  
6 the Gainor opinion letters.

7 Do you agree that Sidley, Austin,  
8 in connection with its issuance of the opinion  
9 letters to Mr. Gainor, required that in the  
10 preparation of those opinions that its lawyers  
11 exercised great care, diligence, and  
12 sensitivity to ethical considerations?

13 A. Sorry, were you speaking in the  
14 past tense as to whether they did exercise?

15 That's something without access  
16 to Mr. Ruble, I can't address.

17 Q. Do you agree, though, whether  
18 they did it or not, they were required to do  
19 it?

20 A. As to whether they did it is a  
21 factual question I can't answer.

22 As to the requirement that they  
23 do it is probably a legal issue that I did not  
24 consider for purposes of this deposition.

25 Q. Weren't they required to do it by

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2 of the files that were furnished. And, again,  
3 I did not have access to Mr. Ruble nor -- and  
4 I did not contact Arthur Andersen.

5 Q. Would you consider Exhibit 28 to  
6 be such a document, indicating that Arthur  
7 Andersen was authorized by Sidley, Austin to  
8 receive and review -- and distribute these  
9 opinion letters?

10 MR. ALTMAN: Asked and answered.

11 A. I have no basis to make a  
12 conclusion based -- without having -- there's  
13 a reference to a conversation with Mr. Ruble.  
14 I don't know what that conversation was. I  
15 really cannot answer that question.

16 Q. Does Sidley, Austin deny that  
17 Arthur Andersen was its agent for purposes of  
18 dealing with Mr. Gainor and his entities?

19 MR. ALTMAN: Beyond the scope.

20 A. In my review of the documents for  
21 this deposition, I saw no evidence of an  
22 agency relationship.

23 Q. I appreciate your answer, but I  
24 don't -- my question is: Does Sidley, Austin  
25 deny it, or are you not in a position one way

1 J. A. MACKINNON

2 or the other to answer the question?

3 MR. ALTMAN: It's beyond the  
4 scope.

5 A. Yeah, I did not review that for  
6 purposes of this deposition, and I do not know  
7 any of the facts concerning the relationship.

8 Without access to Mr. Ruble,  
9 without having spoken to Arthur Andersen, I  
10 cannot know the nature of the relationship.

11 Q. And, so --

12 MR. ALTMAN: It's beyond -- he  
13 can't testify about it. It's beyond the  
14 scope. He's not the corporate  
15 representative on that issue.

16 MR. WILKES: This is one of the  
17 issues that is covered specifically in  
18 this notice.

19 Item 38, Arthur Andersen's  
20 authority to act on Sidley, Austin's  
21 behalf in connection with the  
22 implementation of the Sidley plan.

23 MR. ALTMAN: His answer will  
24 stand, his answer will stand.

25 MR. WILKES: I don't know if that

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2 I have seen other invoices, but I  
3 don't know whether they came from our  
4 accounting department or from the recipient  
5 opinions. So, I have seen invoices, they were  
6 on Brown & Wood invoice paper, but, again, I'm  
7 not sure exactly where they had been  
8 produced.

9 Q. Do you know if Sidley, Austin  
10 ever disclosed to Mr. Gainor the fact that  
11 Arthur Andersen was a client of theirs?

12 MR. ALTMAN: Foundation.

13 A. I did not review that for  
14 purposes of this deposition.

15 I did not see any reference to  
16 that in the limited correspondence I saw in my  
17 review, and, again, I did not have access to  
18 Mr. Ruble.

19 Q. Would it be fair to say that you  
20 have no personal knowledge, and, in addition,  
21 you have no knowledge as the corporate  
22 representative, of any disclosures made by  
23 Sidley, Austin to Mr. Gainor separate and  
24 apart from the contents of the opinion letters  
25 themselves?

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2 A. Right, I had no knowledge whether  
3 or not information was given to Mr. Gainor.

4 Q. One of the topics that we have in  
5 this notice is any affirmative defenses that  
6 Sidley, Austin believes it has to the claims  
7 asserted in this action.

8 Do you have any knowledge about  
9 that?

10 MR. ALTMAN: It's beyond the  
11 scope.

12 That was something that we did  
13 tell you we would not prepare him on,  
14 and we heard no objection from you.

15 MR. WILKES: We'll let the  
16 correspondence speak for itself.

17 And in the meanwhile, let me just  
18 ask him.

19 MR. ALTMAN: It's beyond the  
20 scope.

21 A. I did not prepare on that, and I  
22 do not have personal knowledge of what  
23 defenses -- affirmative defenses we would  
24 raise.

25 Q. But based on the review you have



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2 Q. Yes.

3 A. I guess it depends on the  
4 question.

5 I have read 230, but I am not an  
6 expert in -- I'm not sure what your question  
7 is now.

8 In terms of asked in 1999?

9 Q. Yes, as to how it would apply to  
10 the opinion letters issued to Mr. Gainor.

11 A. Yes, that's correct, that's  
12 correct.

13 Q. Look at all those questions we  
14 avoided.

15 And is the same thing true with  
16 respect to the ABA Formal Opinion 346 as it  
17 was in effect in 1999, that you're not  
18 prepared to answer those questions on behalf  
19 of the corporation?

20 A. Yes, that's correct.

21 Q. Is it fair to say that it's your  
22 understanding that there was an agreement  
23 under which Sidley, Austin would provide  
24 services to Mr. Gainor and his companies but  
25 that you are not aware of the specific terms

1 J. A. MACKINNON

2 of that engagement?

3 A. You mean an engagement letter?

4 Q. An agreement, oral or -- I gather  
5 you're aware of no written agreement under  
6 which Sidley, Austin was to provide services  
7 for Mr. Gainor or his companies.

8 A. That's correct, I have not seen  
9 any written agreement.

10 Q. Is it your understanding that  
11 there was an oral agreement to provide those  
12 services?

13 A. I don't know the terms of the  
14 arrangement generally, whether there were oral  
15 understandings or not. I don't know what  
16 discussions Mr. Ruble may or may not have had  
17 with Mr. Gainor.

18 Q. Did you understand that whatever  
19 the specifics may have been with respect to  
20 the engagement of Sidley, Austin that resulted  
21 in the issuance of these opinion letters that  
22 Sidley, Austin would use reasonable care in  
23 connection with the provision of the services  
24 that it was rendering?

25 A. I don't know what was

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2 Gainor?

3 A. I did not see evidence.

4 I believe the representation  
5 section said that you have represented the  
6 following or you represented as follows, but I  
7 did not see anything signed by Mr. Gainor or  
8 presented by Mr. Gainor on those  
9 representations.

10 Q. And, normally, in connection with  
11 the issuance of such opinion letters is there  
12 such a document?

13 MR. ALTMAN: Beyond the scope.

14 A. I did not review that issue  
15 here.

16 As a matter of practice, it does  
17 not have to be signed. It could be shown to  
18 the clients a draft saying this opinion is  
19 premised on these representations and the  
20 client agreeing that, yes, those are  
21 representations that underlie the opinion.

22 Q. Was that done here?

23 A. Without having access to Mr.  
24 Ruble and without having spoken to other  
25 parties, I don't know what happened here.

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2 Q. Normally, is that kind of  
3 confirmation reflected in the file in some  
4 form of documentation?

5 MR. ALTMAN: Beyond the scope,  
6 asked and answered.

7 A. I did not see anything. As a  
8 matter of opinion practice, I don't think  
9 there's any one way it has to be done.

10 Q. Should the file reflect some  
11 effort by the lawyer to verify the facts  
12 provided by the client?

13 MR. ALTMAN: Asked and answered,  
14 beyond the scope.

15 A. Again, I didn't prepare for it  
16 here.

17 I don't know if it has to be  
18 reflected in the file, it could be a  
19 discussion, or somehow having a basis for  
20 assuming those representations are true.

21 Q. Do you have any reason to believe  
22 Mr. Ruble thought those representations were  
23 true, the representations cited in this  
24 opinion letter?

25 A. Without having spoken with him, I

1 J. A. MACKINNON

2 have no idea whether or not or how he  
3 confirmed the representations.

4 Q. Do you have Mr. Ruble's current  
5 address?

6 A. While he was here, I know he  
7 lived in Long Island. I don't know where he  
8 lives now.

9 Q. Do you have a last known address  
10 for him?

11 A. I assume the firm does, but I  
12 don't know it.

13 MR. WILKES: If you just give me  
14 one moment to check my notes, I'm not  
15 sure that I have anything further.

16 THE WITNESS: That's fine.

17 MR. WILKES: Mr. MacKinnon,  
18 subject to the certified questions and  
19 the issues regarding the scope of the  
20 corporate representative deposition and  
21 such other discovery issues as may come  
22 up, at this point we have no further  
23 questions of you.

24 Thank you very much for your  
25 time.