

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 PRELIMINARY RESPONSE TO PLAINTIFFS' CONTINGENT MOTION FOR LEAVE TO ADD PARTIES


On September 14, 2007, Plaintiffs' Mark and Elyse Gainor ("Plaintiffs") filed a "Contingent Motion For Leave To Amend Parties." Plaintiffs argued that if this Court grants Sidley Austin LLP's pending Motion For Partial Summary Judgment, which seeks an adjudication that Plaintiffs cannot recover fees paid by certain corporate entities, then the Court should allow Plaintiffs to join those corporate entities as indispensable parties. Fed. R. Civ. P. 19.

On September 17, 2007, this Court issued an Order indicating that it "will postpone any further action on Plaintiffs' Contingent Motion for Leave To Add Parties until after the October 18, 2007 Hearing [on the Motion for Partial Summary Judgment]." (Order of Sept, 17, 2000 ¶ 3.) Accordingly, Sidley plans to file a complete response to Plaintiffs' Motion after the October 18, 2007 hearing, when this dispute becomes ripe for determination. As a preliminary matter, however, Sidley notes that it intends to oppose Plaintiffs' Motion because, among other

things, (1) Sidley does not believe Plaintiffs have identified indispensable parties to this litigation other than Plaintiffs themselves; (2) Plaintiffs' Motion never addresses the criteria set forth in Rule 19 for determining indispensable parties, nor proffers facts from which the Court could make a determination under Rule 19; (3) Plaintiffs' Motion fails to state which corporate entities Plaintiffs actually seek to add under Rule 19 (*see* Motion, at 3 (referring to "one or more of the corporate entities involved in the transaction, such as Bryan Medical, Lucor, MJG Partners, etc.")); and (4) Plaintiffs have known for years about the legal impediments surrounding their claimed right to collect as damages fees paid by corporate entities, and have waited until the last possible moment to attempt joinder, potentially prejudicing Sidley and the other Defendants.

DATED: September 28, 2007

Respectfully Submitted,

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