



ing in multiple trips during a week to the facility. Billing is to Medicare, Medicaid, and private insurers.

Snyder also asserts that the advent of digital radiology has increased the costs of entering the business of providing mobile x-ray services. Film x-ray machines could be purchased for \$6,000 to \$8,000, and they would last up to 15 years. Digital systems cost approximately \$80,000. The system requires the purchase of extended warranty coverage, a system for storing digital images and disaster recovery of those images, and online ordering and viewing. There are more rigorous state paperwork and inspection regulations for portable x-ray providers.

Defendants argue that the Snyder affidavit should be excluded because it is not signed and because he was not disclosed as an expert. Each argument is considered below.

Unsigned. Relator's counsel represented that an unsigned rather than the signed version of the affidavit was filed due to a clerical error. Relator has always been prepared to file the signed affidavit, but did not to do so while awaiting judicial resolution of this dispute. I accept those representations. It is ORDERED that relator file the signed version of the affidavit that was inadvertently not submitted with the original filing.

Untimely expert opinion. Relator argues that the affidavit should be stricken because it expresses expert opinions and Snyder did not make timely Rule 26(a)(2) disclosures. However, relator persuasively argues that he was not aware that defendants would argue that the provision of mobile x-ray services to prisons is comparable to

providing those services to skilled nursing facilities.

As defendants argue, once their experts' opinions were disclosed, relator could have retained rebuttal experts but did not do so. Consequently, Snyder may not offer expert opinions. However, I view his affidavit as mainly making factual assertions relevant to whether the provision of mobile expert services to prisons and skilled nursing facilities are comparable and to the costs of entry into the mobile x-ray services business. Relator had no obligation to disclose Snyder as a fact witness because he did not foresee that these facts would be at issue for trial.

It is ORDERED that counsel consult and reach agreement as to an amended affidavit by Snyder limited solely to facts put at issue by defendants' experts' reports. Failing to reach agreement, counsel are DIRECTED to call my office (614.719.3370) to schedule a telephone conference to resolve the dispute.

**Sanderson declaration.** Margaret Sanderson is Mobilex's Manager of Sales Administration. Her affidavit authenticates "win-loss" summaries offered to support defendants' motion for summary judgment. Relator offered to withdraw his motion to strike if defendants would agree that the declaration be amended to omit the phrase "in competitive bidding". Defendants agreed to the amendment. The admissibility of those summaries under Evid. Rule 902(11) is a question for Judge Marbley.

s/Mark R. Abel \_\_\_\_\_  
United States Magistrate Judge