

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

IN RE: AMERICAN MEDICAL SYSTEMS, INC.
PELVIC REPAIR SYSTEM PRODUCTS LIABILITY
LITIGATION

MDL No. 2325

THIS DOCUMENT RELATES TO ALL CASES

DEFENDANT'S OMNIBUS RESPONSE TO MOTIONS TO QUASH SUBPOENAS

I. INTRODUCTION

Recently, Defendant American Medical Systems, Inc. ("AMS") propounded third-party subpoenas upon Otto Fisher, One Point Orthopedic and Neurosurgical Group, MedStar Funding, and Daniel Christensen. The subpoenas seek discovery about an apparent scheme to create fraudulent medical records specifically for vaginal mesh cases before this Court. Somewhat surprisingly, Plaintiffs have moved to quash all four subpoenas, though all were directed to third parties.¹ In addition, Christensen and his MedStar Funding (collectively, "Christensen") have moved to quash the subpoenas addressed to them. AMS files this omnibus brief to respond to both pending motions.²

Though the motions differ in some respects, their core arguments are the same: both argue that the subpoenas seek information that is irrelevant, burdensome, and protected. As

¹ Plaintiffs have standing to object to subpoenas issued to third parties only to the extent that they assert privilege with respect to the documents and testimony sought by the subpoenas. *See, e.g., Bare v. Brand Energy & Infrastructure Services*, 2013 WL 5285374 at *3 (D. Utah Oct. 25, 2012). Plaintiffs' relevance and burden arguments should therefore be disregarded.

² Fisher, through his counsel, has agreed to a date for his deposition, and his One Point Orthopedic and Neurosurgical Group has not moved to quash the subpoena directed to it.

explained in detail below, the events that provoked the subpoenas leave no doubt that AMS seeks relevant, producible information and documents. Movants' arguments are without merit, and the Motions to Quash should be denied.

II. FACTUAL BACKGROUND

Contrary to movants' apparent misunderstanding, AMS is not simply seeking discovery related to so-called "litigation funding," or to agreements to purchase the accounts receivable of surgeons who have already performed mesh revision procedures. Instead, the subpoenas that are the subjects of the pending motions were prompted by a phone call AMS's counsel received one day in late August.

On August 30, AMS's outside counsel received a call from Andrew Cassidenti, M.D., a urogynecologist who, on certain occasions, has functioned as a consultant to AMS.³ Dr. Cassidenti reported that, on approximately July 15, 2013, he received an e-mail from info@Doc-Net.org bearing the subject line, "Vaginal mesh removal cases" and seeking surgeons experienced and interested in vaginal mesh removal.⁴ Dr. Cassidenti responded to the e-mail, stating that he was very experienced in mesh removal and seeking further information. In response, Dr. Cassidenti received an e-mail from Otto Fisher, providing a phone number and asking that he call to "discuss this opportunity."⁵

Dr. Cassidenti was on vacation, and called Mr. Fisher when he returned on August 5. Asked if he was a doctor or a lawyer, Mr. Fisher responded, "I am neither. I am an entrepreneur." He explained that he needed a surgeon in southern California and in Las Vegas to

³ Dr. Cassidenti's affidavit ("Cassidenti aff.") is attached as Exhibit A.

⁴ Cassidenti aff., Ex. A., at ¶ 3. The e-mails to and from Dr. Cassidenti are attached collectively as Exhibit 1 to his affidavit.

⁵ Cassidenti aff., ¶ 4.

perform mesh removal surgery at outpatient surgery centers. He would pay \$2,500.00 per case, “whether it took five minutes or two hours,” and whether mesh was found or not.⁶

It was Mr. Fisher’s next statement that prompted the subpoenas at issue. Mr. Fisher stated, “*There is a federal judge in West Virginia that needs to see key phrases in the operative report like ‘defective mesh,’ ‘bunched-up mesh,’ and ‘mesh erosions.’*”⁷ Dr. Cassidenti immediately asked, “You are not telling surgeons what to dictate in an operative report, are you?” Fisher responded, “No, but it’s just a game and we have to play it.” Dr. Cassidenti stated that he did medical-legal work for both plaintiffs and defendants in malpractice cases, and Fisher responded, “So then you know it’s just a game.”⁸ Fisher asked for Dr. Cassidenti’s CV, and told Dr. Cassidenti that Dan Christensen, Fisher’s funding arm attorney, would be calling him.⁹ Concerned that Fisher was engaged in a scheme that could harm women, Dr. Cassidenti decided to continue corresponding with Fisher to gather further information.¹⁰

Fisher immediately began pressuring Dr. Cassidenti to become involved in his scheme.¹¹ From August 6 through August 12, Fisher sent several texts and e-mails seeking Dr. Cassidenti’s CV, asking for referrals to other Las Vegas surgeons, and demanding that Dr. Cassidenti speak to Mr. Christensen, the funding arm attorney.¹² Though Fisher had previously mentioned a one-page contract, he now stated, “There is no contract.” In a text message, he warned, “I’m holding on to these Vegas patients by a thread. Don’t delay too long,” and promised, “It’s \$50,000 to u

⁶ Cassidenti aff., ¶¶ 5 – 7.

⁷ Cassidenti aff., ¶ 8.

⁸ Cassidenti aff., ¶ 8.

⁹ Cassidenti aff., ¶ 11.

¹⁰ Cassidenti aff., at 12.

¹¹ Cassidenti aff., ¶ 15.

¹² Cassidenti aff., ¶¶ 15 – 17.

(sic) just waiting there ready.”¹³

On August 15, Daniel Christensen called Dr. Cassidenti.¹⁴ He stated that his company, MedStar funding, was in the business of funding mesh lawsuits through a process called “factoring.”¹⁵ Christensen confirmed that patients were referred by plaintiffs’ attorneys involved in mesh litigation, and that his business involved funding mesh removal surgeries in exchange for contingent returns in the event that plaintiffs won their lawsuits.¹⁶

Dr. Cassidenti told Mr. Christensen that he was troubled by Fisher’s requirement that Dr. Cassidenti include specific phrases in his operative report for the benefit of “the federal judge in West Virginia,” and Fisher’s comment that “it’s just a game.” Mr. Christensen responded that Dr. Cassidenti must have misunderstood, but Dr. Cassidenti responded that “Otto was very clear” and that he “did not misinterpret him.”¹⁷

Dr. Cassidenti stated that he was not comfortable having lawyers dictate the language of his operative notes, and emphasized that he would not include anything that was not truthful. Mr. Christensen responded, “*You would not be helping the patients if you fix them but don’t help them win their mesh lawsuits,*” and reiterated that Dr. Cassidenti “*needed to get his head around what the patient wants, which is to win the lawsuit.*”¹⁸ Mr. Christensen concluded that Dr. Cassidenti was not a “good fit” for the “program,” and Dr. Cassidenti agreed.¹⁹

¹³ Cassidenti aff., at ¶ 19.

¹⁴ Dr. Cassidenti’s contemporaneous notes of his conversation with Mr. Christensen are attached as Exhibit 2 to his affidavit.

¹⁵ Cassidenti aff. ¶ 20.

¹⁶ Cassidenti aff. ¶23.

¹⁷ Cassidenti aff., ¶ 24.

¹⁸ Cassidenti aff., ¶ 25.

¹⁹ Cassidenti aff. ¶¶ 26-27.

Dr. Cassidenti had no further contact with Fisher or Christensen after the August 15 call.²⁰ On September 17, Dr. Cassidenti learned that his name and office address were listed on the web site Surgicalassistance.com²¹, which advertised surgeons who agreed to perform mesh removal surgery without compensation until the patient won a mesh lawsuit. Dr. Cassidenti called the phone number listed on the web site, learned that Otto Fisher given his name to the site owner, and demanded that his name immediately be removed.²²

III. ARGUMENT

Plaintiffs and Christensen argue that AMS's subpoenas should be quashed because they seek information that is irrelevant and protected, and because compliance with the subpoenas would be unduly burdensome. In addition, Christensen argues that he was served too late to allow adequate time to respond. None of these arguments has merit, and the Motions to Quash should be denied.

A. The Subpoenas Seek Information That Is Unquestionably Relevant

Under Rule 26 of the Federal Rules of Civil Procedure, “[u]nless otherwise limited by court order, . . . [p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense. . . .” Fed. R. Civ. P. 26(b)(1).

Simply put, if any notation in any plaintiff’s medical record resulted from any “deal” with the treating physician, this fact is critical to AMS’s defense, and AMS is entitled to discovery to learn whether this is the case and for which plaintiffs. The explanation is obvious: Plaintiffs’ suits are based on their claims of mesh-related injury. These claims depend on the

²⁰ Cassidenti aff., ¶ 28.

²¹ Surgicalassistance.com has a YouTube video promoting vaginal mesh revision/removal performed under a “Letter of Protection” – no fee collected until a lawsuit is won. This is a link to the video: http://m.youtube.com/watch?v=D0FUM3UyHmo&desktop_uri=%2Fwatch%3Fv%3DD0FUM3UyHmo

²² Cassidenti aff., ¶ 30.

Plaintiffs' medical records and on experts' opinions based on those records. If a plaintiff's record is tainted by comments the treating physician was instructed to include in order to be paid for his services, the credibility of the records is destroyed, expert opinions based on the record lose weight, and the merits of the Plaintiff's claim are diminished. If this is the case for any plaintiff, AMS must know it to defend against that plaintiff's claim. If it is the case for many plaintiffs, the implications for this MDL are far more sweeping. Moreover, contrary to Plaintiffs' argument, privacy concerns are not implicated, as the subpoenas seek information about Plaintiffs who have already placed their medical conditions at issue before this Court.

In addition, the deal proposed to Dr. Cassidenti raises questions about the propriety of the contemplated surgeries. Offering a flat fee regardless of the length (five minutes or two hours) or result (mesh retrieved or not) of the surgery suggests that women whose treating physicians have not recommended revisions are being funneled to "mass revision" providers, where surgery is performed on them whether they need it or not, after which they can sport revisions and tainted medical records to raise the value of their litigation claims. The details of these referrals, including payment arrangements and lists of involved physicians and patients, are essential to AMS's defenses to claims involving revisions.

In short, Mr. Fisher's and Mr. Christensen's statements to Dr. Cassidenti have raised critical and troubling questions. AMS and this Court are entitled to know the answers, and Rule 26 clearly permits the discovery AMS seeks.

B. The Subpoenas Do Not Seek Protected Information

1. Work Product

Plaintiffs argue that AMS is not entitled to obtain any responsive documents that are in the possession of Christensen or MedStar Funding, as all are either available from other sources

or were obtained from Plaintiffs' counsel and are therefore protected work product. In particular, Plaintiffs argue that documents they provided to MedStar Funding contain their impressions of the merits of particular cases and are therefore entitled to heightened protection as "opinion work product."

The work product doctrine protects documents prepared by or for a party "in anticipation of litigation or for trial." Fed.R.Civ.P. 26(b)(3). In order for a document to be protected, "the primary motivating purpose" behind the creation of the document must be to aid in pending or impending litigation. *Hoover v. Trent*, 2009 WL 484875 at *2 (N.D.W.Va. Feb. 25, 2009). Work product protection is not absolute. Even if it is established, it can be overcome if the party seeking the materials shows: (1) a substantial need for the materials, and (2) an inability to obtain the substantial equivalent of the information without undue hardship. *See, e.g., BRC Rubber & Plastics, Inc. v. Continental Carbon Co.* 2013 WL 1281835 at *2 (N.D.Ind. March 26, 2013).

As AMS has explained, it is not seeking Plaintiffs' evaluations of the merits of their cases. AMS is seeking documents related to the possibility that Fisher, Christensen and their companies, at Plaintiffs' behest, have arranged to funnel women seeking mesh removal surgeries to a select group of surgeons, and to pay a flat fee for those surgeries in return for the surgeons' agreement to include particular phrases in their operative notes. Such documents, even if prepared by Plaintiffs' counsel, were not prepared "to aid in litigation" – they were created to subvert it. However, even if there were an argument that such documents were work product, the protection would be overcome by the critical need for AMS and this Court to understand the existence, nature, extent and effect of the "deals" of the sort offered to Dr. Cassidenti, and the identities of the surgeons and patients involved.

2. Attorney-Client Privilege

Plaintiffs' "attorney-client privilege" argument similarly lacks merit. Plaintiffs argue that communications from their attorneys to Fisher, Christensen and their companies are protected by the attorney-client privilege because these third parties have a "common interest" in the outcome of the litigation.

Traditionally, the "common interest doctrine" permits parties to the same or related litigations, represented by separate counsel, to be shielded by a common privilege "umbrella" while they work toward shared litigation goals. *See, e.g., Hunton & Williams v. U.S. Dept. of Justice* 590 F.3d 272, 277 -278 (4th Cir. 2010) ("The common interest doctrine permits parties whose legal interests coincide to share privileged materials with one another in order to more effectively prosecute or defend their claims."). Plaintiffs cite one case -- *Devon IT, Inc. et al., v. IBM Corp.*, 2012 U.S. Dist. LEXIS 166749 (E.D. Pa. Sept. 27, 2012) -- in which the United States District Court for the Eastern District of Pennsylvania held that plaintiff and a litigation funding company shared a common interest in the outcome of the litigation. This novel extension of the attorney-client privilege finds no support in the Southern District of West Virginia or in the Fourth Circuit. Moreover, in *Devon IT*, the Court made clear that "[l]itigation strategy, matters concerning merits of claims and defenses and damages would be revealed if the documents were produced," *id.* at *5, and that it was invoking the doctrine to "protect[] communications between parties with a shared common interest in litigation strategy." *Id.*

The *Devon I.T.* case is distinguishable for a very simple reason: AMS does not seek documents related to litigation strategy or the merits of plaintiffs' claims. It seeks discovery related to apparent attempts to procure tainted medical records through financial arrangements with physicians, and to possible schemes to "manufacture" mesh removal/revision cases where

treating physicians did not recommend such surgeries. There is no colorable argument that Plaintiffs and the subpoena recipients share any legitimate “common interest in litigation strategy” that would be revealed by the subpoenaed documents and information. To the extent that Plaintiffs’ attorneys have communicated with Fisher, Christensen or their companies, these are communications with non-parties and are not protected by the attorney-client privilege.

The Crime/Fraud Exception

Even if there were arguments that responsive documents were protected by the attorney-client privilege (which there are not), the crime/fraud exception would prevent Plaintiffs and Christensen from invoking this protection.

Under the crime/fraud exception, the attorney-client privilege offers no protection where there is a prima facie showing that (1) the ‘client’ was engaged in or planning a criminal or fraudulent scheme when he sought the advice of counsel to further the scheme; and (2) the documents containing the privileged materials bear a close relationship to such a scheme. *Chaudhry v. Gallerizzo*, 174 F.3d 394, 403 (4th Cir. 1999). In this case, even if Plaintiffs did share a legitimate “common interest” with Fisher, Christensen and their companies, the account set forth in Dr. Cassidenti’s affidavit makes a prima facie showing of an apparent fraud, satisfying the Fourth Circuit’s test. Thus, even if this illusory attorney-client relationship did exist, the crime/fraud exception would destroy any privilege for the documents and communications AMS seeks.²³

3. Trade Secret

Christensen and MedStar argue that its funding formulas are trade secrets, protected from discovery. The details of the proprietary formulas MedStar uses to value cases for funding purposes are not necessarily responsive to the subpoenas. To the extent that such formulas are

²³ The exception applies with equal force to the work product doctrine. *See, e.g., Chaudhry*, 174 F.3d at 403.

reflected in otherwise-responsive documents, they can be redacted if appropriate.

C. THE BENEFIT OF THE SUBPOENAS OUTWEIGHS ANY BURDEN THEY IMPOSE

Movants argue that searching for documents related to all plaintiffs would impose an undue burden. Under Rule 45(c)(3)(A)(iv), determining whether a subpoena imposes undue burden requires “weighing a subpoena's benefits and burdens” and “consider[ing] whether the information is necessary and whether it is available from any other source.” *Maxtena, Inc. v. Marks*, 289 F.R.D. 427, 439 (D.Md.,2012), citing 9A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2463.1 (3d ed. 2008). *See also, e.g., Thompsons Film, LLC v. Does 1-6*, 2013 WL 4805021 at *2 (N.D.Ill. Sept. 6, 2013) (to evaluate whether a subpoena imposes an undue burden, the court asks whether “the burden of compliance would exceed the benefit of production of the material).

In this case, AMS has learned of the possible existence of an insidious and fraudulent scheme, but has no idea how many plaintiffs have participated, how they have been induced to participate, which physicians are involved, and how many sets of medical records have potentially been tainted. If AMS and the Court are to gain this knowledge, there is no alternative to searches by the subpoena recipients for responsive documents related to every plaintiff. The discovery is essential, it is not available from any other source, and the benefit of production therefore outweighs any burden imposed by compliance with the subpoenas.²⁴

CONCLUSION

As Dr. Cassidenti has documented, surgeons are apparently being offered “deals”

²⁴ Christensen’s final argument is that he and MedStar were served too late, with only days left before the compliance dates on the subpoenas. In fact, Christensen evaded numerous attempts at service before he was finally served, substantially reducing his time to comply. Nevertheless, AMS will work with Christensen and his counsel to arrange an extension of the production deadline and a new date for Christensen’s deposition

involving referrals and payments in exchange for including specific phrases in plaintiffs' operative reports. The relevance to AMS's defenses, and the broader implications for the litigation, are beyond dispute, as is the necessity for all involved parties to ensure the protection of women who may be the ultimate casualties of such an 'entrepreneurial' scheme. AMS is entitled to the discovery it seeks, and the movants' arguments are without merit. The Motions to Quash should be denied.

Respectfully submitted,

/s/ Rachel B. Weil

Barbara R. Binis, Esquire (PA Bar #62359)
Rachel B. Weil, Esquire (PA Bar #49844)
REED SMITH LLP
2500 One Liberty Place, 1650 Market Street
Philadelphia, PA 19103-7301
(215) 241-7948 (Telephone)
bbinis@reedsmith.com
jkwuon@reedsmith.com
Lead Counsel for Defendants – MDL 2325

/s/ Michael J. Farrell

Michael J. Farrell, Esquire (WVSB # 1168)
Erik W. Legg, Esquire (WVSB # 7738)
FARRELL, WHITE & LEGG PLLC
914 Fifth Avenue
P.O. Box 6457
Huntington, WV 25772-6457
(304) 522-9100 (Telephone)
mjf@farrell3.com
ewl@farrell3.com

*Attorneys for Defendant American Medical
Systems, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2013, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

/s/ Rachel B. Weil

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

IN RE: AMERICAN MEDICAL SYSTEMS, INC.
PELVIC REPAIR SYSTEMS PRODUCTS LIABILITY
LITIGATION

MDL No. 2325

THIS DOCUMENT RELATES TO ALL CASES

AFFIDAVIT OF ANDREW CASSIDENTI, M.D.

Andrew Cassidenti, M.D., being first duly sworn upon oath, deposes and states as follows:

1. I have personal knowledge of the facts stated herein, and could and would competently testify thereto if called as a witness.
2. I am a urogynecologist practicing at St. Joseph Hospital in Orange, CA. I am board certified in obstetrics and gynecology, three year fellowship trained in urogynecology and pelvic reconstructive surgery and board certified in female pelvic medicine and reconstructive surgery. I have been practicing medicine for over 25 years.
3. On or around July 15, 2013 I received an email from info@Doc-Net.org with the "Subject: Vaginal mesh removal cases." The email was from a group looking for surgeons experienced and interested in vaginal mesh removal cases. I was curious and responded by email July 15, 2013 that "I am a fellowship trained Urogynecologist in Orange County CA very experienced in the management of

vaginal mesh exposure removal and the management of all vaginal mesh complications. Please send me further information about your program. Thank you.”

4. Later that day I received an email back from Otto Fisher with Matt Lister copied, stating “Hi Doc Please call me when you can to discuss this opportunity otto fisher 732 501-0000.” Emails are attached.
5. I was on vacation with my family that week and waited until I returned home to call Otto Fisher.
6. On August 5, 2013 I had a phone call with Otto Fisher. I started the conversation asking him if he was a doctor or an attorney and he told me “ I am neither, I am an entrepreneur.” I asked him what was he looking for. He told me that he needed a doctor in my area in southern California as well as in Las Vegas to do mesh removal cases. He told me he pays \$2500 per surgery “whether it took 5 minutes or 2 hours” and that they were done at outpatient surgery centers. He stated that office consultation, cystoscopy and urodynamics if needed were paid at a set rate. I asked him what outpatient surgery centers were being used and he said he contracts with certain centers. I told him I work at and am a partner at La Veta surgery center very close to my office which would be very convenient for me and if I agreed to do surgeries, could they be done there? He said he would be happy to contact them to discuss this and I gave him the name and phone number of the contact person there.
7. He told me that “some of the patients are crazy but most are reasonable.” He told me I would get paid whether I removed mesh or not. He stated that he has paid a

- doctor who operated on a women who found no mesh at surgery and he paid him anyway.
8. He told me "there is a federal judge in West Virginia that needs to see key phrases in the operative report like defective mesh, bunched up mesh and mesh erosions." I immediately asked Otto that " you are not telling surgeons what to dictate in an operative report, are you?" He said "no, but it's just a game and we have to play the game." I told him I do a lot of medical legal work for both defense and plaintiffs in malpractice cases and he responded "so then you know it's just a game." He told me that he has many "reputable surgeons" working with him whose names he would share with me later.
 9. I told him that I do not think that vaginal mesh used for urinary stress incontinence (USI) and pelvic organ prolapse (POP) is defective
 10. He told me there is "a simple one page contract" with him in that phone call and at a later date told me there is no contract.
 11. He told me Dan Christensen, his funding arm attorney would be calling me and to take his phone call.
 12. Otto Fisher asked me to email him my CV and I did. At this time, I became concerned and suspicious that Otto Fisher and his associates were engaged in a scheme that could be harmful to women. I decided to continue my correspondence with him to gather further information about his business plan.
 13. He asked me if I knew any experienced mesh surgeons in Las Vegas because he

had a back load of cases in Las Vegas and "the lawyers were getting on him." I told him I would speak with a colleague Dr Geoff Hsieh I knew in Las Vegas and get back to him. I did speak with Dr Geoff Hsieh, board certified in Female pelvic medicine and reconstructive surgery, who is a colleague and friend of mine about Otto and he told me Otto had contacted him previously and spoke with his partner and practice attorney and they decided they did not want to work with Otto.

14. At the end of my conversation with Otto he told me "welcome aboard" and I told him I was not on board and needed to speak with Dan Christensen first and my practice attorney.
15. Otto immediately started pressuring me to sign on with him. He texted me after our phone call at 940 am PST on August 6, 2013 his contact information and the message "Great to speak to you! Welcome to the team!" At 1014 am PST he texted "Just remember to Email me ur CV Ottofisher@gmail.com. And Contact Jeff Shay for me Pls." At 1049 am PST I texted back "Let me look into getting a Nevada medical license. It may make sense for me to fly to Vegas to do a full day of surgeries as needed." He responded "True."
16. Same day 406 pm PST text from Otto "Did you email me ur cv yet." I responded "Not yet. Still seeing patients. Will do later tonite when I get home." Otto responded "I forgot I'm est time."
17. He texted me August 12, 2013 at 747 am PST " Drew Make sure you speak to Dan from my office He left u a message last week He runs my funding arm and is my attorney point man Thanks Otto." I replied "Will do."

18. August 14, 2013 834 am PST Otto texts me "Drew I also need a specific contact person within ur office to work with the patient scheduler at my office whom has been assigned to send u new patients Send me her name Phone email And tell her Amanda will be her contact person Thanks."
19. I responded at 902 am PST " Let me speak with your attorney first, see a contract and run it by my practice attorney as well before we have Amanda start working with my staff. Thanks." Otto immediately responded " There r no contracts as I said Feel free to speak to my lawyers I'm holding on to these Vegas patients by a thread Don't delay too long ;)) It's \$50,000 to u just waiting there ready."
20. On August 15, 2013, I was contacted by phone by a man who introduced himself at Daniel Christiansen of MedStar Funding in Austin, TX. My contemporaneous notes of this conversation are attached. He informed me that he was an attorney from Austin, Texas and that he was working in conjunction with Otto Fisher. He told me that MedStar Funding was in the business of funding mesh lawsuits and he used the term "factoring" to describe this process.
21. I asked him that I did not understand why the patients were not going back to the doctors who put in the mesh to have them manage the mesh complications. He told me that there are thousands of women with mesh complications who don't have insurance to get care now. He stated that many providers don't want to take managed care rates. He stated that even if the patients do have insurance, they act as a facilitator to have them see a provider. He stated they provide travel to the doctors qualified to do the surgeries.
22. He stated that patients tell him "I don't have confidence in my doc" and that their

"Doc says they are fine, just live with this."

23. I told him that I was trying to understand his business model. I asked him if it was the case that patients were being referred to him by the plaintiff attorneys in the mesh lawsuits. He said yes. I asked him if his business plan is that he was going at risk funding the patients mesh removal surgery and travel in advance assuming he would get paid back a premium on his investment if and when the mesh lawsuits were won. He said yes "it's called factoring." He told me the lawsuits were against the manufacturers of the mesh products, not the doctors.
24. I told him I was troubled when Otto Fisher told me of the needed language in my operative report that the federal judge in West Virginia needs to see and that "it's just a game." . He told me that " Otto must have misspoke or you misinterpreted him." I told him that Otto was very clear and that I did not misinterpret him. He also told me that he was a practicing attorney and would not want to be involved in anything that could threaten his law license.
25. In the course of this conversation, I told Mr. Christiansen that I do not hold the opinion that mesh used to treat urinary stress incontinence or pelvic organ prolapse is defective. I also told him that I was not comfortable with having lawyers tell me the language to be included in my operative notes. I repeated that I would never dictate anything in my operative report that was not truthful, that I believed the mesh is not defective. He told me that "you would not be helping the patient if you fix them but you don't help them win their mesh lawsuits cases." He told me I " needed to get my head around what the patient wants which is to win the lawsuit."
26. He stated that I likely "was not a good fit" for his team.


27. I told him he was probably right.
28. I have had no contact with Otto or Dan since that conversation.
29. Copies of my email correspondence are attached.
30. I found out the afternoon of September 17, 2013 that my name and office address are listed on a website Surgicalassistance.com which I had never heard of before nor would ever agree to work with. I looked at the website and discovered it advertised surgeons who agreed to do the mesh removal surgery without compensation unless a mesh lawsuit is won. I called the phone number listed on the website and spoke with a Mr. Blake Barber the next day. I told him I was very upset that my name was placed on this website without my knowledge or permission and he asked me if I knew Otto Fisher. I said I did and he told me he works with Otto Fisher and that Otto told him to put my name up. I told him I never gave Otto permission to do this nor am I going to work with Otto in any way. Mr Blake asked me if I did not want to work with Otto, would I still be willing to work with him. I said no and asked him to immediately remove my name from the website or my personal attorney would be contacting him. He said he would remove my name.
31. I am sharing this information with the attorneys representing pelvic mesh manufacturers and this Court because I believe that the scheme described above wrongfully promises to allow certain "entrepreneurs" and the surgeons they employ to profit for performing unnecessary surgeries on women. I fear plaintiff attorneys may be using this scheme to get what they feel is needed testimony from surgeons to win their mesh lawsuits. I do not believe that pelvic mesh devices for

the treatment of stress urinary incontinence or pelvic organ prolapse are defective and I strongly support their continued use. The above-described actions do not fairly and honestly represent women who have had these devices implanted and certainly threaten to cause unnecessary harm.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on the 26th day of September 2013, in the County of Orange, CA.


Andrew Cassidenti, M.D.

State of California County of ORANGE
Subscribed and sworn to (or affirmed) before me on this
26 day of Sept, 2013, by
ANDREW CASSIDENTI
proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.
Signature 

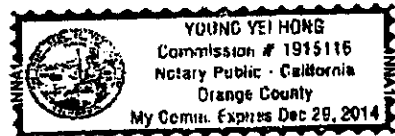


Exhibit 1

Sep 18 13 11:06a Cassidenti

9494965834

p.2

Re: Vaginal mesh removal cases

Page 1 of 1

From: otto fisher <ottofisher@gmail.com>
To: Matt Lister <aeaa1031@aol.com>; Andrew Cassidenti <abruin4ev@aol.com>
Subject: Re: Vaginal mesh removal cases
Date: Mon, Jul 15, 2013 11:27 am

Hi Doc

Please call me when you can to discuss this opportunity

otto fisher
732-501-0000

On Mon, Jul 15, 2013 at 12:08 PM, Matt Lister <aeaa1031@aol.com> wrote:

This is what I have from the doctor. I guess you gonna have to email him first to get a phone number

Sent from my iPhone

Begin forwarded message:

From: Andrew Cassidenti <abruin4ev@aol.com>
Date: July 15, 2013, 1:45:25 AM EDT
To: "info@Doc-Net.org" <info@Doc-Net.org>
Subject: Vaginal mesh removal cases

I am a fellowship trained Urogynecologist in Orange County CA very experienced in the management of vaginal mesh exposure removal and the management of all vaginal mesh complications. Please send me further information about your program.
Thank you,

Andrew Cassidenti, MD
Director, Female Pelvic Medicine and Reconstructive Surgery
St Joseph's Hospital, Orange, CA
Clinical Professor OB/GYN
Keck/USC School of Medicine, Los Angeles, CA

Sent from my iPad

OTTO FISHER
ONE POINT ORTHOPEDICS
AND NEUROSURGICAL GROUP
732-501-0000 MOBILE

Re: Cassidenti CV attached

Page 1 of 1

From: otto fisher <ottofisher@gmail.com>
To: Drew Cassidenti <abruin4ev@aol.com>
Subject: Re: Cassidenti CV attached
Date: Mon, Aug 12, 2013 8:58 am

Drew

I've reached out to Dr Ruhland at the sx ctr.

My attorney liaison Dan Christensen will be contacting you also to introduce himself

Dan's cell number is 512-695-6677

pls accept his call when you can

I will also need from you a specific contact person within your practice to handle the booking of each patient. Send me that person's contact and make her aware that Amanda from my office will be contacting her as well.

and Welcome to our group as our California surgeon !!!!!!!

otto

On Tue, Aug 6, 2013 at 11:14 PM, Drew Cassidenti <abruin4ev@aol.com> wrote:
Otto,

My CV attached.

Thanks,
Andrew Cassidenti, MD
abruin4ev@aol.com

—
OTTO FISHER
ONE POINT ORTHOPEDICS
AND NEUROSURGICAL GROUP
732-501-0000 MOBILE

Re: Cassidenti CV attached

Page 1 of 2

From: otto fisher <ottofisher@gmail.com>
To: Andrew Cassidenti <abruin4ev@aol.com>
Subject: Re: Cassidenti CV attached
Date: Mon, Aug 12, 2013 10:01 am

sure thing Drew

our company name is
Physicians Surgical Group

our attorneys name is

Jeff Cohen
Board Certified by the Florida Bar in Health Law

Florida Healthcare Law Firm
The Gulfstream Bank Building
909 S.E. 5th Avenue, Suite 200
Delray Beach, FL 33483
(561) 455-7700 (office)
(561) 455-7701 (fax)
(888) 455-7702 (toll free)

jcohen@floridahealthcarelawfirm.com
www.floridahealthcarelawfirm.com
Twitter: [@FLHealthLawFirm](https://twitter.com/FLHealthLawFirm)
feel free to ask him any thing

otto

On Mon, Aug 12, 2013 at 12:43 PM, Andrew Cassidenti <abruin4ev@aol.com> wrote:
Let me speak with your attorney first, see a contract and run it by my practice attorney as well before we
have Amanda start working with my office staff.
Thanks.

Best,

Drew Cassidenti, MD
Director, Female Pelvic Medicine and Reconstructive Surgery
St. Josephs Hospital, Orange, CA
Clinical Professor OB/GYN
Keck/University of Southern California School of Medicine, Los Angeles, CA

On Aug 12, 2013, at 8:58 AM, otto fisher <ottofisher@gmail.com> wrote:

Drew

Re: Cassidenti CV attached

Page 2 of 2

Ive reached out to Dr Ruhland at the sx ctr.

My attorney liaison Dan Christensen will be contacting you also to introduce himself

Dan.s cell number is 512-695-6677

pls accept his call when you can

I will also need from you a specific contact person within your practice to handle the booking of each patient. Send me that persons contact and make her aware that Amanda from my office will be contacting her as well.

and Welcome to our group as our California surgeon !!!!!!!

otto

On Tue, Aug 6, 2013 at 11:14 PM, Drew Cassidenti <abruin4ev@aol.com> wrote:
Otto,

My CV attached.

Thanks,
Andrew Cassidenti, MD
abruin4ev@aol.com

—
**OTTO FISHER
ONE POINT ORTHOPEDICS
AND NEUROSURGICAL GROUP
732-501-0000 MOBILE**

—
**OTTO FISHER
ONE POINT ORTHOPEDICS
AND NEUROSURGICAL GROUP
732-501-0000 MOBILE**

Mesh cases

Page 1 of 1

From: Dan Christensen <Dan@medstarfunding.com>
To: abruin4ev <abruin4ev@aol.com>
Cc: ottofisher <ottofisher@gmail.com>; Lisa Christensen <Lisa@medstarfunding.com>
Subject: Mesh cases
Date: Tue, Aug 13, 2013 5:07 pm

Dr. Cassidenti:

I left a message on your phone last week. I am working with Otto Fischer as part of this network of providers servicing mesh cases. We are the funding arm to the network. I would like to speak to you soon about how to get you some patient flow. When is good for you?

Dan Christensen, Esq.
Founder and President

MedStar Funding

7301 RR 620 N, Ste. 155-334

Austin, Texas 78726

(512) 266-0097 (o)

(866) 468-5043 (f)

(512) 695-6677 (c)

www.medstarfunding.com

dan@medstarfunding.com



CONFIDENTIALITY NOTICE: This transmission may be subject to Federal and state privacy laws, HIPAA regulations and/or may contain proprietary and privileged information. If you are not the intended recipient of this message, you may not disclose, print, copy or disseminate this information. If you have received this in error, please reply and notify only the sender and delete the message. Unauthorized interception of this e-mail is a violation of Federal criminal law.

Exhibit 2

8-15-13 Dan Christensen
PL

1. How does it work, why does
not pt see her own doctor
to repair her complaint, at
the local hospital using
her ^{med.} insurance?

2. Contract

1,000,000 of I ~~money~~ ^{money} ~~don't~~ ^{don't} have consumer
to get card now

money providers don't want
to tell wrong card
rates

even if they do have
insurance, they
not as a facilitator
to be a provider. —

they provide fraud to the
doctors ^{qualitatively} & do

MS 10/11 I don't have confidence
in my doc's
a true doc says they
are fine, just lost
c'tri's^{ca}