

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

GENERAL ADMINISTRATIVE ORDER 12-1
STANDARD HIPAA QUALIFIED PROTECTIVE ORDER

Effective immediately, all Qualified Protective Orders, entered pursuant to the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") shall conform to the attached standard approved format, in Room 2005, as well as on all motion and individual calendar calls.

Pursuant to Law Division General Administrative Order 03-4, all motions and orders for HIPAA Qualified Protective Orders shall be presented in Room 2005 and on all motion and individual calendars as "Routine Motions," with proper notice, and must be specifically labeled and contain a specific reference to the HIPAA statute.

Any objections to the entry of HIPAA Qualified Protective Orders shall be submitted in accordance with the routine motion rules and/or standing orders of motion judges and calendar judges.

IT IS HEREBY ORDERED that this Order is effective September 19, 2012, and will be spread upon the records of this court.

Dated at Chicago, Illinois, this 19th day of September, 2012.

ENTER:

William D. Maddux
HON. WILLIAM D. MADDUX
Presiding Judge
Law Division

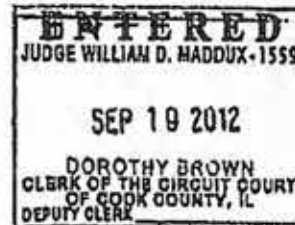


Exhibit "A"

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Plaintiff(s)

-v-

Defendant(s)

)
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)
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) NO:
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)
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)

HIPAA QUALIFIED PROTECTIVE ORDER

This cause coming to be heard on the Motion of _____, for entry of a Qualified Protective Order pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA,"), due notice having been given, and the Court being fully advised in the premises:

IT IS HEREBY ORDERED AS FOLLOWS:

- (1) The current parties (and their attorneys) and any future parties (and their attorneys) to the above-captioned matter are hereby authorized to receive, subpoena, and transmit "protected health information ("PHI") pertaining to _____, to the extent and subject to the conditions outlined herein;
- (2) For purposes of this Qualified Protective Order, "protected health information" or "PHI" shall have the same scope and definition as set forth in 45 CFR 160.103 and 160.501. Without limiting the generality of the foregoing, "PHI" includes, but is not limited to, health information, including demographic information, relating to either:
 - (a) the past, present or future physical condition of an individual;
 - (b) the provision of care to an individual; and/or
 - (c) the payment for care provided to an individual, which identifies the individual or which reasonably could be expected to identify the individual.
- (3) All "covered entities" (as defined by 45 CFR 160.13) are hereby authorized to disclose "PHI" pertaining to _____ to all attorneys, now of record, or who may become of record in the future of this litigation;
- (4) The parties and their attorneys shall be permitted to use the "PHI" of

_____ in any manner reasonably connected with the above-captioned litigation. This includes, but is not limited to, disclosure to the parties, the attorneys' firm (i.e., attorneys, support staff, agents and consultants), the parties' insurers, experts, consultants, court personnel, court reporters, copy services, trial consultants, jurors, venire members and other entities involved in the litigation process;

- (5) At the conclusion of the litigation as to any defendant (defined as the point at which final orders disposing of the entire case as to any defendant have been entered, or the time at which all trial and appellate proceedings have been exhausted as to any defendant), that defendant, and any person or entity in possession of "PHI" received pursuant to Paragraph 4, *supra*, shall destroy any and all copies of "PHI" pertaining to _____, *except*:
- (a) the defendant that is no longer in the litigation may retain "PHI" generated by him/her/it; and
 - (b) the remaining defendants in the litigation, and persons or entities receiving "PHI" from those defendants, pursuant to Paragraph 4, *supra*, may retain "PHI" in their possession;
- (6) This order shall not control or limit the use of "PHI" pertaining to _____ that comes into possession of any party, or any party's attorney, from a source *other than* a "covered entity" (as defined in 45 CFR 160.103);
- (7) Nothing in this order authorizes defense counsel to obtain medical records or information through means *other than* formal discovery requests, subpoena, depositions, patient authorization, or through attorney-client communications;
- (8) Nothing in this order relieves any party from complying with the requirements of:
- (a) the Illinois Mental Health & Developmental Disabilities Confidentiality Act (740 ILCS 110/1 *et. seq.*);
 - (b) the Aids Confidentiality Act (410 ILCS 305/1 *et. seq.*); or
 - (c) state and federal law which protects certain drug and alcohol records (20 ILCS 301/30-5; 42 USC 290dd-3, 290ee-3 and 42 CFR Part 2).

Name/#: _____
Atty for: _____
Address: _____
City/State: _____
Phone: _____

ENTER:

JUDGE

NO.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

GREGORY FRANKLIN,

Plaintiff,

v.

PACE SUBURBAN BUS DIVISION OF THE
REGIONAL TRANSPORTATION AUTHORITY,
a Municipal Corporation, et.al.,

Defendants.

No.: 14 M1 302527

In re: HIPAA

ORDER

This matter coming to be heard on the Court's own motion, and the Court having been fully advised in the premises, the Court hereby states:

Motion Section Judges are being presented with a large number of motions challenging the language of the standard Law Division HIPAA order, on the basis that it's terms, which require the return or destruction of the protected health information ("PHI"), conflict with an insurers' federal and state statutory obligation to "maintain a complete record of all books, records and accounts." 215 Ill. Comp. Stat. Ann. 5/133. Therefore, in the interests of justice and judicial economy, one judge, Judge John Ehrlich, is designated to hear these motions on a consolidated basis.

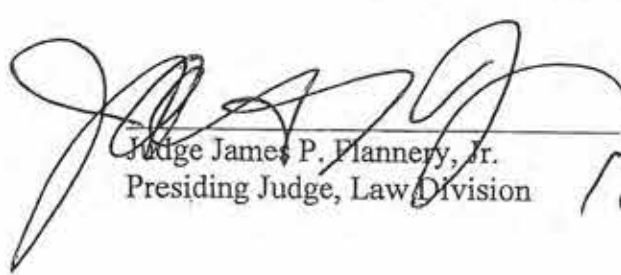
IT IS HEREBY ORDERED:

1. All pending and subsequently filed motions challenging the terms of the standard Law Division HIPAA order, are hereby consolidated.
2. Judge John Ehrlich is designated to hear the consolidated motions, and has set a general status for all pending motions on August 9, 2016, at 10:00 a.m. in Room 2209.
3. All cases shall remain before their assigned Judges for all other issues, and all other court dates, including case management dates, trial setting dates, and trial call dates shall stand.

JUDGE JAMES P. FLANNERY

JUL 13 2016

Circuit Court-1505


Judge James P. Flannery, Jr.
Presiding Judge, Law Division

1505

Exhibit "B"

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

MARC SHULL,

Plaintiff,

v.

ERIC ELLIS,

Defendant.

No.: 15 L 9759

In re: HIPAA

AMENDED ORDER

This matter coming to be heard on the Court's own motion, by agreement of the parties, and the Court having been fully advised in the premises, the Court hereby states:

Motion Section Judges are being presented with a large number of motions challenging the language of the standard Law Division HIPAA order, on the basis that its terms, which require the return or destruction of the protected health information ("PHI"), conflict with an insurers' federal and state statutory obligation to "maintain a complete record of all books, records and accounts." 215 Ill. Comp. Stat. Ann. 5/133. Therefore, in the interests of justice and judicial economy, one judge, Judge John Ehrlich, is designated to hear these motions on a consolidated basis.

The case originally assigned regarding this issue, *Gregory Franklin v. Pace Suburban Bus Division Of The Regional Transportation Authority, a Municipal Corporation, et.al.*, 14 M1 302527, having been dismissed.

IT IS HEREBY ORDERED:

1. All pending and subsequently filed motions challenging the terms of the standard Law Division HIPAA order, are hereby consolidated.
2. Judge John Ehrlich having been designated to hear the consolidated motions, the above captioned case is assigned to Judge Ehrlich, Calendar H, for the limited purpose of addressing this issue.
3. All cases shall remain before their assigned Judges for all other issues, and all other court dates, including case management dates, trial setting dates, and trial call dates shall stand.

JUDGE JAMES P. FLANNERY

MAR 27 2017

Judge James P. Flannery, Jr.
Presiding Judge, Law Division
Circuit Court - 1500

Exhibit "C"

[Header or Reference]

STIPULATED QUALIFIED PROTECTIVE ORDER

Plaintiff _____ (“Plaintiff”) and Defendant _____ (“Defendant”),
by and through their respective attorneys, hereby stipulate as follows:

PURPOSE AND DEFINITIONS

The purpose of this Stipulated Qualified Protective Order (“Order”) is to facilitate the release and/or use of Plaintiff’s health and medical information obtained with Plaintiff’s HIPAA-compliant authorization and/or pursuant to Rule 26(a) of the Hawaii Rules of Civil Procedure, and/or otherwise voluntarily produced and marked confidential (collectively and interchangeably “Health Information”), for purposes of the above-captioned case, while protecting Plaintiff’s privacy right under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) described in 45 C.F.R. § 164.512(e), and under the Right of Privacy under Article I, Section 6 of the Hawaii State Constitution, by limiting the use of that Health Information. Plaintiff’s Health Information protected under this Order shall not include any of Plaintiff’s health or medical information that is otherwise publicly available.

STIPULATED ORDER

The parties stipulate that Plaintiff’s Health Information is protected, and, therefore, the disclosure and use of that Health Information shall be conducted pursuant to the following conditions:

1. Non-Disclosure Requirement: Except as provided herein, none of Plaintiff’s Health Information obtained from any source shall be disclosed or used by anyone or by any entity for any purpose, without Plaintiff’s explicit written consent.

(a) Specifically Precluded Uses: It is specifically understood and agreed that

none of Plaintiff's Health Information shall be used/disclosed for or to ISO (f.k.a. Insurance Services Office, Inc.) or any data base, index or similar compilation maintained by any person or entity. It is specifically understood and agreed, however, that the foregoing shall not prohibit Defendant or his/her/its attorney or insurer from summarizing or compiling Plaintiff's Health Information for use in this claim only.

(b) Specifically Allowable Uses, Disclosures, and Maintenance: It is specifically understood and agreed that Plaintiff's Health Information may be used, and/or disclosed, and/or maintained, without Plaintiff's consent as may be required to comply with state or federal laws/rules, and court, arbitrator, or administrative orders (including subpoenas duces tecum), and in relation to any claim, litigation, and/or proceeding arising out of the accident/incident of _____ ("Subject Accident"), including the following:

- (1) for the subject case, including for evaluation, investigation, negotiations, mediation, arbitration, litigation and/or claims handling;
- (2) for Defendant's and/or his/her/their/its insurer's internal review and/or auditing, including the handling and disposition of any claim or matter related to the Subject Accident, communication between Defendant and his/her/its insurer/underwriter/agent relating to the review and/or audit of claims for the purpose of setting premiums, calculating reserves, calculating loss experience, and/or procuring additional coverage, it being understood and agreed that information will not be used for any record compilation or database of Plaintiff's claim history;
- (3) for external review and/or auditing, such as by reinsurers, the Insurance Commissioner, or external auditors;

(4) for subrogation and reimbursement matters concerning the Subject Accident, such as subrogation or reimbursement claims for workers' compensation liens, medical liens, or other insurers' claims for subrogation, reimbursement, or contribution relating to the Subject Accident;

(5) for fraud prevention, investigation, reporting, or action relating to the Subject Accident;

(6) for any legally required reporting to governmental health or medical insurance organizations or their private contractors for Plaintiff's health care and expenses related to the Subject Accident;

(7) for statistical or analytical purposes, provided that Plaintiff's personal identification information (e.g., name, specific street address, specific birth date, Social Security number, driver's license number) is not included in such review or use of Health Information; and

(8) for any record keeping requirements or obligations relating to any of the forgoing, and pertaining to the Subject Accident.

The above-noted permissible uses, disclosures, and maintenance provisions are not intended to circumvent the intent of this Order to protect Plaintiff's Health Information, and are not intended to unreasonably limit a party's or their counsel's or insurer's record-keeping obligations or requirements. Defendant or his/her/its agents, attorneys, or insurers may request that additional permissible categories of uses, disclosures, or maintenance be added. Plaintiff shall not unreasonably withhold consent, provided that the additional categories requested are consistent with the intent of this Order.

2. **Acknowledgment Requirement:** In order to protect Plaintiff's Health Information under this Order, any counsel, employee of Defendant, or agent or employee of any recipient who intends to disclose Plaintiff's Health Information to anyone other than Plaintiff or Defendant, or their attorneys or employees ("Others"), for substantive purposes, shall first provide such Others a complete copy of this Order and shall obtain from such Others a signed Acknowledgment of the requirements of this Order in the form attached as Exhibit "A". With respect to the Defendant's insurer, an Acknowledgment signed by an authorized representative shall suffice. A signed Acknowledgment is not required for disclosure to the court, mediator, arbitrator, or jury as related to any case, claim, or proceeding arising out of the Subject Accident.

3. **Order Compelling Compliance with Subpoena Duces Tecum:** In the event that a non-party refuses to release Plaintiff's Health Information, pursuant to a subpoena duces tecum, it is hereby ORDERED that such non-party produce the information identified in the subpoena duces tecum in its custody, possession, or control, to the counsel of record in this action or proceeding and/or their designated court reporting company, without the need for a separate Court Order or further authorizations signed by Plaintiff. This paragraph shall not apply if an objection is timely raised or a motion to quash is timely filed.

4. **Procedures for Filing Health Information:** In the event that Defendant intends to file or disclose Plaintiff's Health Information in any public filing, he/she/it will give Plaintiff ten (10) days' notice of such intention, including identification of the specific Health Information Defendant intends to file or disclose. This Order does not require or preclude the sealing of Health Information. If Plaintiff believes that the identified Health Information requires the additional protection of filing with the Court under seal, Plaintiff shall identify the specific Health Information to Defendant as soon as practicable, but no later than ten (10) days after such

notice. If within two (2) weeks after Plaintiff's identification the parties are unable to agree as to the extent of additional protection, if any, to be applied, Plaintiff shall file an appropriate motion with the Court for a determination as to whether, and to what extent, the Health Information identified by Plaintiff shall be sealed or otherwise further protected. The parties shall exercise good faith efforts to carry out the provisions of this Order.

It is further agreed that Health Information submitted for purposes of Arbitration, Mediation, and/or Evidence Rule 408 settlement communications are not to be considered public disclosures of Health Information.

5. **Return or Destruction of All Copies:** Within ninety (90) days after the final conclusion of the above-captioned case by fully-executed non-litigation settlement agreement, filed stipulation for dismissal with prejudice, or final judgment (i.e., a judgment as to which the time for appeal has run), Defendant, at his/her/its counsel's option, shall either return to Plaintiff's counsel or destroy the Health Information. Counsel for Defendant shall provide written confirmation to Plaintiff's counsel that counsel for Defendant has destroyed and/or returned all copies of Plaintiff's Health Information, and made a good faith effort to confirm that Others have destroyed all copies of Plaintiff's Health Information .

This paragraph shall not apply to Health Information retained by insurance carriers, law firms, courts, and court reporters for the specifically allowable uses, disclosures, and maintenance stated in paragraph 1(b), above, and such Health Information need not be returned or destroyed.

6. **Jurisdiction and Governing Law:** The Court of the Circuit in which the above-captioned case arose shall have jurisdiction to enforce and/or modify this Order under Hawaii law. Subject to any contrary provision of Hawaii or federal law, no citation, contempt or other

sanction shall be imposed pursuant to Hawaii law without a hearing and proof, to the satisfaction of the Court, of a material breach of this Order.

7. **Continuing Enforceability**: All provisions of this Order shall continue to be binding after the conclusion of the above-entitled case, unless otherwise agreed by the parties or ordered by a Court.

DATED: _____, Hawaii _____.

Attorney for Defendant

Attorney for Plaintiff

APPROVED AND SO ORDERED:

JUDGE OF THE ABOVE-ENTITLED COURT
[or]
ARBITRATOR

ACKNOWLEDGMENT OF STIPULATED QUALIFIED PROTECTIVE ORDER

Re: _____ v. _____; Civil No.: _____

I have read and I understand the Stipulated Qualified Protective Order ("Order") regarding the use and disclosure of Plaintiff's Health Information. I understand that I (and my agents and employees) am/are bound to comply with the terms of the Order.

Dated: _____

(Signature)

NAME

BUSINESS ADDRESS

CITY, STATE ZIP CODE

BUSINESS TELEPHONE NUMBER

EXHIBIT "A"

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

CAPTION

HIPAA QUALIFIED PROTECTIVE ORDER

This court explicitly finds that this court order is necessary to:

1. protect a party's right to privacy as guaranteed by article I, section 6 of the Illinois constitution for each party in this lawsuit;
2. ensure the parties' compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying rules and regulations governing the disclosure, maintenance, use, and disposal of protected health information (PHI), *see generally* 45 C.F.R. 160.103 & 160.501,
3. require covered entities, *see* 45 C.F.R. 160.103, to disclose a party's PHI for use in this litigation without a separate disclosure authorization;
4. permit insurance companies to receive PHI or what would otherwise be considered PHI from covered entities, business associates, and parties in litigation and to use, maintain, and dispose of PHI or what would otherwise be considered PHI in conformity with the Illinois Insurance Code and its accompanying rules and regulations; and
5. further the interest of the State of Illinois in regulating the business of insurance.

A party disclosing PHI explicitly stipulates that she or he:

1. read this court order before signing their name to be bound by it;
2. discussed the contents of this court order with their attorney of record in this litigation and had the opportunity to ask questions;
3. were informed of and fully understand the consequences of the entry of this court order; and
4. freely and without reservation stipulate to the entire contents of this court order.

Based on these findings and stipulations, this court orders the following:

1. The PHI of any party in this lawsuit may not be disclosed for any reason without that party's prior written consent and an order of this court.
2. A party that has disclosed PHI and agreed (as indicated by signature) to the entry of this court order explicitly waives the right to privacy over the disclosed

materials but only to the extent provided in this court order. The only disclosures explicitly waived and expressly permitted are those:

A. to insurance companies to comply with current and future applicable federal and state statutes, rules, and regulations for purposes including:

1. reporting; investigating; evaluating, adjusting, negotiating, arbitrating, litigating, or settling claims;
2. compliance reporting or filing;
3. reporting criminal or unlawful conduct;
4. required inspections and audits;
5. legally required reporting to private, federal, or state governmental health or medical insurance organizations, including, but not limited, to the Centers for Medicare and Medicaid Services (CMS);
6. rate setting and regulation;
7. reserve and actuarial determination;
8. calculating loss;
9. workers' compensation; and
10. determining the need for and procuring excess or umbrella coverage or reinsurance;

B. ordered by this or another court or arbitral body or by subpoena for purposes of subrogation, reimbursement, or payment of liens arising out of or related to this lawsuit;

C. necessary to comply with any other federal or state laws, rules, or regulations, but only with the party's express consent and entry of an appropriate court order.

3. Any covered entity over which this court has jurisdiction that fails or refuses to disclose PHI in accordance with this court order is subject to all sanctions authorized by the Code of Civil Procedure and the Illinois Supreme Court rules.

4. A party to this lawsuit may provide PHI to an undisclosed consulting expert or controlled expert witness as defined in Illinois Supreme Court Rule 213(f)(3) but only after receiving acknowledgement that each such expert or witness agrees to be bound by the terms of this order.

5. No PHI or what would otherwise be considered PHI disclosed during the course of this lawsuit and received by an insurer may be re-disclosed to any business associate, *see* 45 C.F.R. § 160.103, including Verisk Analytics, Inc. or any of its parent, subsidiary, related companies, or successors, including the Insurance Services Office, Inc., unless the records re-disclosed have been de-identified pursuant to federal regulations. *See* 45 C.F.R. §§ 164.502(d)(1)-(2) & 164.514(a)-(b).

6. Immediately after the conclusion of this lawsuit, as indicated by a court-entered order of dismissal, all parties and other persons or entities subject to this court

order possessing PHI shall by agreement either return it to the party or non-party about whom it concerns or their attorney of record in this lawsuit or destroy it by shredding, pulverizing, melting, incinerating, or degaussing. This provision does not apply to insurers who possess what would otherwise be considered PHI under HIPAA but only to the extent as limited in paragraph 2.

7. No parties or their attorneys, agents, or representatives are permitted to request, obtain, or disclose PHI or any other type of medical bills, records, or related information other than through the formal discovery procedures authorized by the Code of Civil Procedure, Illinois Supreme Court rules, and orders of this court.

8. The parties are prohibited from including or attaching PHI to any document filed with the Clerk of the Circuit Court. PHI necessary for the court's consideration of any matter must be provided separately.

9. This court retains jurisdiction to enforce the terms of this order after the conclusion of this litigation.

Printed Name

Dated: _____

Signed by Plaintiff / Defendant / Legally Designated
Representative / Other (circle one)

Dated: _____

Counsel for Plaintiff / Defendant / Legally Designated
Representative / Other (circle one)

Circuit Court Judge

Adams, Phyllis v. Campione, Gloria; Campione, Joseph	2015 L 005968
Alexander, Michael v. Jackson, Thomas; Jackson, Ray; Jackson, Beatrice; Chaimberlain Group, Inc. & AR BE Garage Doors Inc.	2016 L 000508
Arreguien, Maria, et al v. Garcia, Francisco et al.	2015 L 012112
Attard, John v. Deitcher, Linnea	2015 L 009281
Berrong, Crystal, et al. v. Patel, Dipali Arvind, et al	2016 L 010345
Birholz-Benter, Irene v. Schermerhorn Commercial, et al.	2016 L 063029
Carpenter, Larry v. Niemiec, Felicjan	2016 L 000195
Cutts, Laura v. Endick, Lauren, et al.	2014 L 012461
Griffin, John and Griffin, Debra v. Dugan, Joseph; L&S Cartage Co., Inc.; Howled, Ethel; Watkins, Christopher; and Bluford, Jennifer	2016 L 010120
Hennagin, Donald v. Amato, William	2014 L 007935
Hernandez, Luis v. Gutwillig, Bradley	16 L 007556
Karsten, Maureen v. Kwon, Jun, et al.	2016 L 003990
Luna, Marlene v. McCain, Sandra	2016 L 002401 Consolidated with 2015 L 008576
Lurie, Tierni v. Futures, Inc., et al.	2015 L 012989
Marek, Marleen v. Peninsula Chicago; Peninsula Chicago Hotel; Peninsula Chicago LLC; Adams, Jimmy; Arnswald, James; Arnswald Mandy; Ghast, Thomas; Ghast Valerie; Rosenfeld, Bridget Bean; Rosenfeld, Jay Bean; Tosiou, Athena; Tosiou, Gloria; Tosiou, Mary Margaret; and Wolotka, Julianne Tosiou	2015 L 012272
McNair, Sandra Williams v. Cotton, Kenisha and McNair, Larry	2016 L 010933
Mishigian, Tamara v. Abrams, Jonathan	2016 L 005256 (2011 L 001303)
Nizami, Syed v. Haskins, Patrick, et al.	2014 L 012611
Noel, Marilyn v. Brown, Steven	2016 L 001931
Nosko, Gary v. C&E Outdoor Services, et al.	2016 L 001792
Parker, Milton, et al v. Nagornov, Alexander, et al	2016 L 009031
Podszus, Rodney v. Kenwood's Dorchester Condo; Clement, Katrina; Kenwood's Dorc Condomin; Podszus, Matthew	2017 L 000554
Proctor, Carolyn v. Muhammad, Fahir and Rodriguez, Rigoberto	2016 L 012021
Punavela, Allison v. Tirol, Dennis; Madrigal, Jose; and Saithan Satha LLC	2015 L 006088
Rivera, Teresa et al. v. Flatley, William, et al.	2011 L 002578
Salek, Krzysztof v. Hagle, Todd; Rekuliakas, Valentinas; Taskin Construction, Inc.; Val's Construction Inc.	2016 L 12318

Smith, Jalyssa v. Allen, Thomas and Russell, Lisa	2016 L 010307
Stevenson, Scott v. Loots, Fredrick; Bjelejac, Dragan; Charles, William; Papalucas, Robbin; and Fedex Ground Package System	2016 L 008193
Trudell, Lee v. Checker Taxi, et al.	2015 L 012939
Williams, Vetra v. Monroe, Nicole, et al	2016 L 009849
Gayford, Noreen R. v. Nordstrom Inc., SBEMCO International, Inc., an Iowa Corporation dba Matting by Design and Munoz Flooring, Inc.	2017 L 001034