

**SUPREME COURT – STATE OF NEW YORK
TRIAL TERM, PART 20 NASSAU COUNTY**

PRESENT:

Honorable Karen V. Murphy
Justice of the Supreme Court

X

**ONE BEACON INSURANCE GROUP and any
and all of its subsidiaries and affiliates, including,
but not limited to AUTOONE INSURANCE
COMPANY, GENERAL ASSURANCE COMPANY,**

Index No. 4055/06

Plaintiff(s),

-against-

Motion Submitted: 11/12/08

Motion Sequence: 006

**MIDLAND MEDICAL CARE, P.C., NUCARE
MEDICAL, P.C., ACUCARE ACUPUNCTURE, P.C.,
MOUNT SINAI DENTAL SURGERY, P.C., CPN
CHIROPRACTIC, P.C., GILRAY D. BANAWIS, P.T.,
P.C., PDG PSYCHOLOGICAL, P.C., DELTA
EXECUTIVE SERVICES, INC., HENRY VALEVICH,
RITA KUCHEROVSKY URMAN, ALEX URMAN,
DOUGLAS SPIEL, M.D., MATTHEW MILLER, M.D.,
PHILIP DAUBER, GOLDSTEIN, PhD., DAVID GAVLIN,
D.D.S., VICTORIA ZAKHAROV, GILRAY D. BINAWIS,
GUARDIAN MEDICAL CARE, P.C., CATALINA
ANCA GRIGORESCU, PROSCAN IMAGING, P.C.,
RAPID MANAGEMENT, INC., DAVID
HUGH STEMERMAN, M.D., CHARLES
NGUYEN, WALTER (VLADIMIR) LIBES, SERGE
GAYETSKY, EUGENE VINDERMAN,**

Defendant(s).

X

The following papers read on this motion:

- Notice of Motion/Order to Show Cause.....X
- Answering Papers.....X
- Reply.....X
- Briefs: Plaintiff's/Petitioner's.....
- Defendant's/Respondent's.....

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Defendants Delta Executive Services, Inc., Henry Valevich, Rita Kucherovsky Urman, Alex Urman, Vladimir Libes, Eugene Vinderman, Rapid Management, Inc. and Serge Gayetsky move for a protective order pursuant to CPLR § 3103 with respect to discovery of their financial records and tax returns. Plaintiff One Beacon Insurance Group LLC and its subsidiary AutoOne Insurance Company oppose the requested relief.

Plaintiff commenced an action to recover money paid to the defendants, including the moving defendants, for no-fault bills. Plaintiff alleges that defendants have engaged in a scheme to defraud AutoOne by submitting bills for services rendered by fraudulently incorporated entities. By Order dated July 10, 2008, this Court compelled the moving defendants to produce items documenting the actual costs of the operation and management of the defendant professional corporations and management companies. Such discovery included cancelled checks, bank statements, tax returns, invoices, balance sheets, ledgers, income statements and payment receipts. Plaintiff argues that by requesting a protective order with respect to the aforementioned documents, defendants are merely attempting to prevent AutoOne from using information in this case to defend itself against actions brought by the same defendants in other jurisdictions. Plaintiff further argues that a protective order would needlessly burden the resources of the Plaintiff. Additionally, Plaintiff argues this case has an overriding public interest in full public disclosure in that it is alleged the moving defendants may have fraudulently incorporated defendant professional corporations and thereby may post a public danger.

Moving Defendants assert they are not seeking to avoid disclosure of these documents pursuant to the Discovery Order but instead want such material disclosed limited to the present action, to provide the sealing of any records of disclosed documents, and to provide for the return of such confidential documents following the conclusion of this action.

CPLR § 3103(a) provides that a court may at any time on its own initiative, or on motion of any party or of any person from whom discovery is sought, make a protective order denying, limiting, conditioning, or regulating the use of any disclosure device. The determination as to the terms and provisions of discovery as regulated to prevent abuse by protective orders under CPLR § 3103(a) rests in the sound discretion of the court to which application is made. (See *U.S. Pioneer Electronics Corp. v. Nikko Elec. Corp of America*, 47 N.Y.2d 914, 393 N.E.2d 478, 419 N.Y.S.2d 484 [1979]). In making a determination as to whether disclosure is warranted, the Court shall employ a test of usefulness and reason, balancing the importance to the plaintiff's claim of the information sought versus the consequences of disclosure. See *Feger v. Warwick Animal Shelter*, 870 N.Y.S.2d 124, 2008 N.Y. Slip Op. 10122 (2d Dept., 2008) citing *Scalone v. Phelps Memorial Hosp. Ctr.*, 184 A.D.2d 65, 591 N.Y.S.2d 419 [2d Dept., 1992]).

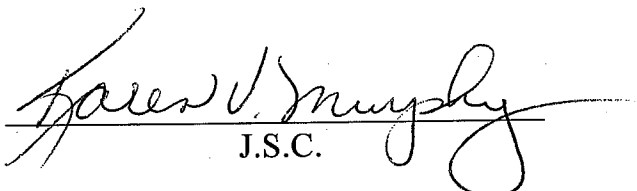
A court may order the production of income tax returns when, under the circumstances, those documents were deemed relevant and necessary. (See *Kovacs v. Bloom*, 267 A.D.2d 357, 699 N.Y.S.2d 922 (2d Dept., 1999); see also *McCarthy v. Klein*, 238 A.D.2d 552, 656 N.Y.S.2d 395 (2d Dept., 1997); see also *Otto v. Triangle Aviation Services, Inc.*, 258 A.D.2d 448, 684 N.Y.S.2d 612 [2d Dept., 1999]). In fact, this Court's Order directing disclosure of financial statements and tax returns in the instant case has been affirmed on appeal. (See *One Beacon Insurance Group, LLC v. Midland Medical Care, P.C.*, 54 A.D.3d 738, 863 N.Y.S.2d 728 [2d Dept., 2008]).

Documentation showing the actual costs pertaining to the operation and management of the defendant professional corporations and management companies is relevant in determining whether moving defendants engaged in fraud with respect to payments by AutoOne. Furthermore, plaintiff does not have the ability to obtain such financial documentation in any other way but for requesting such documents through discovery. To deny plaintiff these essential documents would unduly prejudice its case.

However, this Court does not find it necessary to permit disclosure of personal information. Accordingly, the motion for a Protective Order is granted to the extent that plaintiff is prohibited from disclosing social security numbers, home addresses and dates of birth contained in the documents provided.

The foregoing constitutes the Order of this Court.

Dated: February 25, 2009
Mineola, N.Y.


J.S.C.