

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-20759-CIV-UNGARO

MARKEISHA JENKINS, et al.,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendants.

DEFENDANT'S MOTION TO COMPEL PRODUCTION
OF DOCUMENTS AND ANSWERS TO INTERROGATORIES

The defendant, United States of America, by and through the undersigned Assistant United States Attorney, hereby submits its motion to compel the plaintiff to provide responses to the defendant's request for production propounded on September 18, 2007. As grounds, therefor, the defendant submits the following:

1. In the instant case, the plaintiff has filed a claim of medical malpractice against the Economic Family Health Center, a federally funded facility for which a defense is provided by the United States under the Federal Tort Claims Act. The plaintiff seeks \$20 million. The defendant intends to vigorously defend this case.

2. On September 18, 2007, the defendant propounded to the plaintiff interrogatories and requests for production with a cover letter. A copy of the defendant's First Request for Production, defendant's First Set of Interrogatories, Authorization to Furnish Medical and Insurance

Information, Authorization to Furnish Medicaid, Medicare and Social Security Information and Records and cover letter are attached, Exhibit 1. To date, despite several telephone conversations between the defense and plaintiff's counsel and the assurance that the response would be forthcoming, and letters from the defense requesting same, the plaintiff has not posted any response to the request for production. On Friday afternoon, November 2, 2007, the defense received via facsimile a letter dated November 2, 2007 with the plaintiff's answers to defendant's First Set of Interrogatories, though not signed by the plaintiff. A copy of the plaintiff's cover letter and Answers to defendant's First Set of Interrogatories, is attached as Exhibit 2. The plaintiff's answers to the defendant's First Set of Interrogatories are incomplete and do not provide sufficient information.

3. As set forth in the plaintiff's cover letter dated November 2, 2007, plaintiff's counsel advised that "As to the Request for Production, we have requested materials, upon receipt, we will forward same to you."

4. On October 26, 2007, the plaintiff's counsel filed a motion to withdraw, and on October 29, 2007, the court denied the motion, but afforded the plaintiff's counsel the opportunity to renew his motion after November 19, 2007.

5. In its order dated August 24, 2007, the court set the discovery cut-off at January 25, 2008. With the impending holiday season and a case that is destined to be dependent upon experts, the defense has requested the information about the plaintiff's experts, in both the interrogatories and request for production. In addition, the defendant sought releases to be signed by the plaintiff so that the defendant may obtain records about the plaintiff from non-parties, all of which has been denied the defendant. To be sure, the defendant is prejudiced by the plaintiff's continued delay.

6. Federal Rule of Civil Procedure 37 provides that an application for an order directing a

party to respond to discovery requests may be made to the court in which the action is pending. In the instant case, the request for production has remained outstanding since it was served on September 18, 2007, with responses due on or before October 18, 2007, with plaintiff providing no definitive time for any production.

7. Federal Rule of Civil Procedure 37(a)(3) states that an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer or respond. In the interrogatories, the defendant asked at question 12, page 14, as follows:

12. With respect to all witnesses whom you will call or may call as experts to give opinion testimony in the trial of this matter, state the following:
 - a. name and address;
 - b. name and address of his/her employer or the organization with which he is associated in any professional capacity;
 - c. the field in which he/she is offered as an expert;
 - d. a summary of his/her qualifications within the field in which he/she is expected to testify;
 - e. the substance of the opinions to which he/she is expected to testify and a summary of the grounds for each opinion;
 - f. state the names and addresses of experts who have been retained or specially employed by the claimant in anticipation of this litigation or preparation for trial but who are not expected to be called as a witness for trial.

The plaintiff's response was "Not yet determined."

Further, at question 16, page 18, the defendant inquired,

16. If you are claiming loss of past earnings and/or loss of future earnings capacity, state the exact amount of each that you are claiming and the method used to calculate each claim.

In response, the plaintiff simply stated, "Yes. I have not calculated this."

Again at question 18, page 20, the defendant propounded the following question:

18. State with specificity the amount you are seeking to recover for medical care, loss of earnings (past and future) and all other elements of your damages.

The plaintiff 's response: "I have not calculated this. The court will decide my daughter's serious neurological injuries."

The defendant should not be prejudiced in its ability to defend the plaintiff's serious allegations. The plaintiff has not provided any reason to justify her delay. Neither the spirit nor the substance of The Federal Rules of Civil Procedure condone such dilatory conduct by a party to a federal civil suit. Plaintiff has stalled and stymied the defendant's ability to develop its case, which is patently unfair. Incomplete or evasive answers can support sanctions, including the expenses necessary to file the motion to compel if the plaintiff's position is not substantially justified. See Stallworth v. The Harford Insurance Co., No. 3L:06CV89/MCR/EMT, Feb. 16, 2007 (not reported in Fed. Supp. 2nd) (copy Attached, Ex. 3); Pensacola Beach Community United Church v. National Union Fire Insurance Co. of Pittsburgh, 2007 WL 737499 (N.D. Fla.). In the instant case, the plaintiff has posited no justifiable reason for her failure to comply. In the meantime, the defendant seeks complete compliance with its discovery requests to the plaintiff. Defendant requests an order

compelling plaintiff to comply with defendant's First Request for Production, and to provide full and complete answers, under oath, to Interrogatories 12, 16 and 18 of defendant's First Set of Interrogatories.

Respectfully submitted,

Date: November 7, 2007
Miami, Florida

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By: s/ Karin D. Wherry
Karin D. Wherry
Assistant United States Attorney
Fla. Bar No. 509530
E-mail: karin.wherry@usdoj.gov
99 N.E. 4th Street, Suite 300
Miami, FL 33132-2111
Tel.: (305) 961-9016
Fax: (305) 530-7139

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2007, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF, or in some other authorized manner for those counsel or parties who are not authorized to receive Notices of Electronic Filing.

s/Karin D. Wherry
KARIN D. WHERRY
ASSISTANT U.S. ATTORNEY

SERVICES LIST

CASE NO. 07-20759-CIV-UNGARO

Jeffrey S. Hirsh, Esquire
Goldberg & Hirsh, P.A.
Florida Bar No. 207810
email: jhirsh@goldberghirshpa.com
SunTrust International Center, Suite 1280
One Southeast Third Avenue
Miami, Florida 33131
Tele: 305-372-9601
Fax: 305-372-2323
Attorney for Plaintiff
Notice via CM/ECF

Karin D. Wherry
Assistant United States Attorney
Florida Bar No. 509530
United States Attorney's Office
99 NE 4th Street, 3rd Floor
Miami, Florida 33132
Tele: 305-961-9016
Fax: 305-530-7139
Attorney for Defendant
Notice via CM/ECF



United States Attorney
Southern District of Florida

99 N.E. 4 Street
Miami, FL 33132
(305) 961-9016

September 18, 2007

Jeffrey S. Hirsch, Esquire
SunTrust International Center, Suite 1280
One Southeast Third Avenue
Miami, Florida 33131

Re: Jenkins v. United States
Case No. 07-20759-CIV-UNGARO

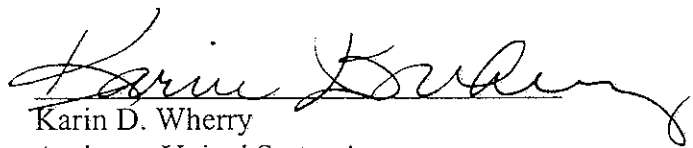
Dear Mr. Hirsh,

Enclosed are a notice of production and interrogatories for the above referenced case. An Authorization to Furnish Medical and Insurance Information and Authorization to Furnish Medicaid, Medicare and Social Security Information and Records are also included. Although you certainly have thirty days to provide the information and documents (and more if necessary), since the court has shortened our preference for the discovery and trial schedule, would you be able to advance the medical and Social Security releases within the next two weeks? I will then send them on for production of medical records, including North Shore Medical Center, and of course for income tax returns and earnings records. If you are able to provide them within the next few weeks, please advise my assistant Karen Snider, at 305-961-9372 and advise her that you will be sending them. She will send out the subpoenas with the signed releases. As well, if you need any additional information in my absence, please contact Ms. Snider. I will return to the office on October 3, 2007

Thank you for your consideration.

Very truly yours,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By: 
Karin D. Wherry
Assistant United States Attorney

Enclosures



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-20759-CIV-UNGARO

MARKEISHA JENKINS, on behalf of
and as parent and natural guardian of
LAMARIYA REDFORD, a minor,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

**DEFENDANT'S FIRST
REQUEST FOR PRODUCTION**

The Defendant, United States of America, pursuant to Rule 34, Federal Rules of Civil Procedure, hereby requests that the Plaintiffs, MARKEISHA JENKINS, produce for inspection and/or copying the following designated records and documents within their possession, custody or control (including those in the possession, custody or control of their attorneys, agents and representatives) within thirty (30) days of the date of service at the offices of the United States Attorney, 99 N.E. 4th Street, Third Floor, Miami, Florida.

DOCUMENTS TO BE PRODUCED

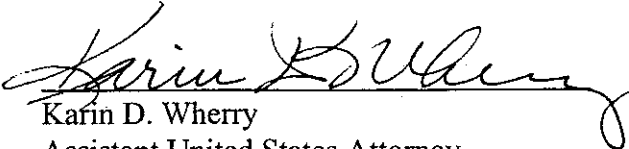
1. Copies of all federal income tax returns and all attachments thereto including, but not limited to, schedules, forms, statements, W-2 forms, 1099 forms, filed by Markeisha Jenkins from 2000 to the present.
2. Copies of all exhibits intended to be used at trial.
3. Copies of all medical, dental and hospital records and reports relating to the medical care and treatment Lamariya Redford has received during her life.

4. Copies of any and all documents containing statements or observations of persons who have knowledge of the facts and circumstances giving rise to this lawsuit.
5. Copies of any and all documents or records reflecting any income or benefits, including but not limited to SSI, Social Security, Veterans or Military benefits, received by Markeisha Jenkins and/or Lamariya Redford from 2000 to the present.
6. Copies of any and all documents reflecting the economic damages incurred by Markeisha Jenkins as a result of the care and treatment received by Markeisha Jenkins and/or Lamariya Redford.
7. Attached hereto are releases for Markeisha Jenkins to sign in order for the United States to obtain Social Security records, an earnings history, income tax records and medical records. Please complete the forms and return to the undersigned.
8. Any and all releases, covenants not to sue, Mary Carter or Mary Carter- type agreements to withhold execution and/or execute against one Defendant first entered into between the Plaintiffs and any other person, individual, insurance company, firm or corporation, who you contend may be responsible for Markeisha Jenkins injuries.
9. All statements obtained by you, your attorneys or investigators of independent witnesses having knowledge of facts relevant and material to the claims and defenses in the instant litigation.
10. All reports written and/or prepared by your experts concerning the subject matter of the instant lawsuit.
11. All documents which support your claim that the United States is liable for the injuries to Lamariya Redford.
12. Copies of all documents, other than medical records, which support or establish your alleged damages in this case.
13. All medical bills, nursing bills, doctor bills, hospital bills, drug bills, dental bills, and all other bills supporting Lamariya Redford's claims for damages in this case.
14. Any and all documents or records reflecting the income or benefits received by Markeisha Jenkins and Lamariya Redford from the government from 2000 to the present including but not limited, SSI, Social Security, Veterans and military benefits.
15. Any and all insurance records, including policy and payment records, for medical, life or disability insurance for which Markeisha Jenkins was the policy holder from January 2000 to the present.

16. All records in your possession, custody or control which relate to any civil or criminal action in which Markeisha Jenkins was a party since January 1, 1995.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

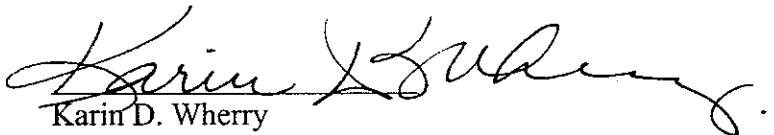
By: 
Karin D. Wherry
Assistant United States Attorney
Fla. Bar No. 509530
E-mail: karin.wherry@usdoj.gov
99 N.E. 4th Street, Suite 300
Miami, FL 33132-2111
Tel.: (305) 961-9016
Fax: (305) 530-7139

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by

U.S. mail this 18th day of September, 2007, to:

Jeffrey S. Hirsh, Esquire
SunTrust International Center, Suite 1280
One Southeast Third Avenue
Miami, Florida 33131


Karin D. Wherry
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-20759-CIV-UNGARO

MARKEISHA JENKINS, et al.,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendants.

DEFENDANT'S FIRST SET OF INTERROGATORIES

The Defendant, United States of America, pursuant to Rule 33 of the Federal Rules of Civil Procedure, hereby requests that the Plaintiff Markeisha Jenkins, respond under oath to the following interrogatories within thirty (30) days from the date of service hereof.

The number of interrogatories served herewith is 20. Each interrogatory shall be answered separately and fully, in writing, in the space provided, or, if the space provided is insufficient, on additional papers which may be attached to the answer. These interrogatories are continuing in nature so as to mandate the filing of supplementary answers upon the acquisition of further or contrary information prior to trial.

DEFINITIONS

1. "You" or "your" shall mean the plaintiff Markeisha Jenkins.
2. "Identify" or "identity" when used in connection with a document, shall mean to state the title of the document, its author, the date on which it was prepared or written and its current location.
3. "Identify" or "identity" when used in connection with a person shall mean to state that person's name, his last known address, and his occupation.
4. "Documents" shall mean any writing, drawing, chart, photograph, tape or other data compilation from which information can be obtained, translated, or extracted.
5. "Person" shall mean any nature person, and shall also mean any corporation, partnership, unincorporated association, or any other entity.

INTERROGATORIES

1. State your full name (include your current name and all former names by which you have been known, including nicknames, maiden name, names from prior marriages, etc.) residence address, work or business name and address, date of birth, place of birth and Social Security number.

2. State whether you are a naturalized United states citizen, and if so, identify your alien registration number and date of United States citizenship.

3. State whether you have ever been married. If so, state the names of your spouses, their current addresses and the dates on which you were married and the marriage ended.

4. Describe your educational background including the names and addresses of all educational institutions attended and all degrees received.

5. Identify by name, date of birth and current residential address, all of your natural born or adopted children. For each child, identify the natural (biological) parents of that child.

- 6 Identify (by name and address) each of your employers for the past 10 years; your job title, the length of time you were employed by each employer; and your starting and ending salary.

7. Identify by name and address all health care providers (including but not limited to physicians, physical therapists, nurses, psychologists and psychiatrists) who conducted, examined, treated, or rendered any medical service to Markeisha Jenkins in the past 10 years. Please include in your answer the dates when such services were rendered.

8. Identify by name and address all hospitals, clinics, mental care facilities, or medical facilities that rendered any medical or psychological services to Markeisha Jenkins in the past 10 years. Please include in your answer the dates when such services were rendered.

9. List the names and addresses of all persons who are believed or known by you, your agents or attorneys to have any knowledge concerning the issues in this lawsuit and specify the subject matter on which the witness has knowledge.

10. Please state, in detail, each and every item of economic loss or damage sustained by you as a result of the care and treatment you received at the Economic Opportunity Family Health Center.

11. Identify the source and amount of any and all payments your presently receive from the Social Security Administration, CHAMPUS, the Department of Veterans Affairs, the military, or any other state or federal entity as a benefit or pension.

12. With respect to all witnesses whom you will call or may call as experts to give opinion testimony in the trial of this matter, state the following:
 - A. name and address;
 - B. name and address of his/her employer or the organization with which he is associated in any professional capacity;
 - C. the field in which he/she is offered as an expert;
 - D. a summary of his/her qualifications within the field in which he/she is expected to testify;
 - E. the substance of the opinions to which he/she is expected to testify and a summary of the grounds for each opinion;
 - F. state the names and addresses of experts who have been retained or specially employed by the claimant in anticipation of this litigation or preparation for trial but who are not expected to be called as a witness for trial.

13. Please state the name and address of each person you expect to call as a fact witness at trial and, for each person, state his relationship to you and the subject matter on which such witness is expected to testify.

14. Please identify by name all medical personnel who discussed with you or a member of your family the care and treatment Markeisha Jenkins and Lamariya Redford received at the Economic Opportunity Family Health Center.

15. State the names and addresses of every health care provider (including doctors, osteopaths, chiropractors, clinics, nurse practitioners, physical therapists, etc.), hospitals (as an inpatient and outpatient), emergency care facilities, etc., who, or which, treated or examined you and/or Lamariya Redford as a result of the injuries you allegedly sustained in this case, and state the amount of the bills for each.

16. If you are claiming loss of past earnings and/or loss of future earnings capacity, state the exact amount of each that you are claiming and the method used to calculate each claim.

17. Identify all medications that you and/or Lamariya Redford are currently taking, including the dosages and frequencies of each medication, the condition for which each medication was diagnosed, and the name and address of the physician who prescribed each medication.

18. State with specificity the amount you are seeking to recover for medical care, loss of earnings (past and future) and all other elements of your damages.

19. Please provide a list of all monies received into your household on a monthly basis and on a lump sum basis from all sources, including, but not limited to, Social Security, Department of Veterans Affairs, insurance disability, etc. Please specify the name and address of the source of the funds, the amount of the monies received monthly or on a lump sum basis and the time period for the payments.

VERIFICATION

STATE OF FLORIDA)
 S.S.:
COUNTY OF DADE)

I, Markeisha Jenkins, being first duly sworn, depose and say that the attached Answers to Defendant's First Set of Interrogatories are true and correct to the best of my knowledge, information and belief.

Markeisha Jenkins

The foregoing instrument was acknowledged before me this _____ day of _____, 2007 by _____, who is personally known to me.

Notary

Name of Acknowledger

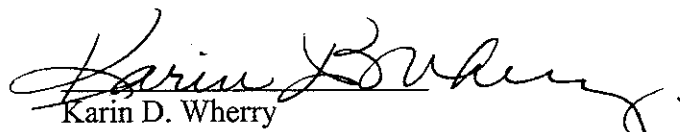
Social Security Number

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by

U.S. mail this 18th day of September, 2007, to:

Jeffrey S. Hirsh, Esquire
SunTrust International Center, Suite 1280
One Southeast Third Avenue
Miami, Florida 33131


Karin D. Wherry
Assistant U.S. Attorney

AUTHORIZATION TO FURNISH
MEDICAL AND INSURANCE INFORMATION

TO WHOM IT MAY CONCERN:

I hereby authorize any physician, nurse or other medical personnel; any hospital, medical facility and other organization providing medical care, treatment, services and/or supplies; and any insurance organization to furnish to any representative of the United States any and all records, information and evidence in their possession, custody or control concerning Markeisha Jenkins and Lamariya Redford.

“Records” for purpose of this authorization shall include but are not limited to, medical charts, physician’s office records, handwritten notes, correspondence to or from any person, entity, organization, all hospital records regularly maintained concerning patients, all laboratory reports, all x-rays, all medical reports furnished routinely or specially to any person, organization or entity including a representative of the patient, and all records generated or maintained by any insurance company.

Upon presentation of this authorization or an exact reproduction thereof, you are directed to permit the personal review or reproduction of such records, information and evidence by any representative of the United States of America or to have you copy such records, information and evidence and transmit them to the United States at the cost of the United States. You are also authorized to transmit any slides or tissue specimens or biopsy information or pathology slides pertaining to the medical condition of Markeisha Jenkins and Lamariya Redford to a representative of the United States for examination purposes.

A photocopy of this authorization shall be considered as effective and valid as the original.

MARKEISHA JENKINS

DOB: _____

SSN: _____

MARKEISHA JENKINS, on behalf of and as
parent and natural guardian of LAMARIYA
REDFORD, a minor

SSN of Lamariya Redford

Date this release was executed: _____

AUTHORIZATION TO FURNISH MEDICAID, MEDICARE
AND SOCIAL SECURITY INFORMATION AND RECORDS

TO WHOM IT MAY CONCERN:

I hereby authorize any representative of Medicaid and/or Medicare, and/or the Health Care Financing Administration and/or the Social Security Administration to provide to any representative of the United States Attorney's Office any and all records, information, and reports in their possession, custody or control including but not limited to all medical records, claims, reports, billing records, pay-out information, correspondence, etc., concerning Markeisha Jenkins.

"Records" for purpose of this authorization shall include but are not limited to, copies of medical records, claim forms, requests or applications for benefits, correspondence, handwritten notes, earnings history information on Markeisha Jenkins, insurance records, and all records generated by Medicaid, Medicare, the Health Care Financing Administration and/or the Social Security Administration concerning Markeisha Jenkins.

Upon presentation of this authorization or an exact reproduction thereof, you are directed to permit the personal review or reproduction of such records, information and evidence by any representative of the United States or to respond by copying such records, information and evidence and transmitting the records to the United States at the cost of the United States.

A photocopy of this authorization shall be considered as effective and valid as the original. This authorization shall remain in effect until the case is tried in U.S. District Court.

MARKEISHA JENKINS

DOB: _____

SSN: _____

MARKEISHA JENKINS, on behalf of and as
parent and natural guardian of LAMARIYA
REDFORD, a minor

SSN of Lamariya Redford

Date this release was executed: _____

GOLDBERG & HIRSH, P.A.

ATTORNEYS AT LAW
SUNTRUST INTERNATIONAL CENTER
SUITE 1280
ONE SOUTHEAST THIRD AVENUE
MIAMI, FLORIDA 33131

SIDNEY A. GOLDBERG
JEFFREY S. HIRSH
BOARD CERTIFIED CIVIL TRIAL ATTORNEY

TELEPHONE (305) 372-9601
TELEFAX (305) 372-2323
E-MAIL: info@golberghirshpa.com

November 2, 2007

VIA FACSIMILE (305) 530-7139

Karin Wherry, Esquire
Assistant U.S. Attorney
Federal Justice Building
99 N.E. 4th Street
Suite 300/Civil Division
Miami, FL 33132

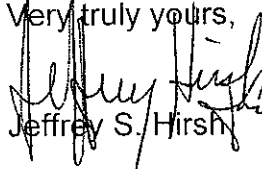
Re: Markeisha Jenkins, on behalf of and as parent and natural guardian of
Lamariya Redford, a minor vs. United States of America, et al.,

Dear Ms. Wherry:

Enclosed is our client's answers to interrogatories which were propounded by you on September 18, 2007. Upon receipt of the jurat page, we will forward same to you. As to the Request for Production, we have requested materials, upon receipt, we will forward same to you.

Thank you for your cooperation in this matter.

Very truly yours,


Jeffrey S. Hirsh

JSH:amg

Enclosures



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 07-20759-CIV-UNGARO

MARKEISHA JENKINS, on behalf of
and as parent and natural guardian of
LAMARIYA REDFORD, a minor,

Plaintiffs,

vs.

UNITED STATES OF AMERICA, et al.,

Defendants.

PLAINTIFF'S ANSWERS TO INTERROGATORIES
PROPOUNDED BY DEFENDANT, UNITED STATES OF AMERICA
ON SEPTEMBER 18, 2007

The Plaintiff, MARKEISHA JENKINS, on behalf of and as parent and natural guardian of LAMARIYA REDFORD, a minor, file her Answer to Interrogatories propounded by Defendant, UNITED STATES OF AMERICA on or about September 18, 2007.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the forgoing was mailed this 2nd day of November, 2007 and by via facsimile to: Karin D. Wherry, Esquire, Assistant United States Attorney, 99 N.E. 4th Street, Suite 300, Miami, FL 33132-2111 .

Respectfully submitted,

GOLDBERG & HIRSH, P.A.
Counsel for Plaintiffs

By: s/Jeffrey S. Hirsh
Jeffrey S. Hirsh
Attorney for Plaintiffs
Florida Bar Number: 207810
Email: jhirsh@goldberghirshpa.com
SunTrust International Center
Suite 1280
One Southeast Third Avenue
Miami, Florida 33131
Telephone (305) 372-9601
Telefax (305) 372-2323

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 2, 2007, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

By: s/Jeffrey S. Hirsh
Jeffrey S. Hirsh
Attorney for Plaintiffs

PLAINTIFF'S ANSWERS TO INTERROGATORIES

1. Markeisha Jenkins
1848 N.W. 42nd Street
Miami, FL 33142

Unemployed

D.O.B.: 3/6/1985
Place of Birth: Miami, Florida
S.S.#: 591-34-7785
2. U.S. Citizen
3. Yes. Demetrius Batts
Married on January 29, 2007 presently separated.
4. Attended school through 12th grade but failed FCAT I don't have a High School Degree. Miami Northwestern High School.
5. Lamariya Redford
D.O.B.: 8/21/04
1848 N.W. 42nd Street
Miami, FL 33142
Father: Earl Redford
6. PRC Precision Response Corporation
Title: Direct T.V. Representative
worked there for 2 months \$9.00 an hour full time job.

Walmart
5851 N.W. 177th Street
Miami Gardens, FL
Title: Cashier
worked there approximately 8 months. Starting pay \$6.35 an hour part-time and ending pay \$7.30 an hour part-time.

Target
Title: Cashier
worked there approximately 5 months. Starting pay \$6.25 an hour part-time.

Wendy's Restaurant
Title: Cashier
worked there about 6 months. Starting pay \$6.25 an hour part-time.

7. 1997 treated at Camallius House Clinic
2002 Jackson North
2002 Economic Opportunity Family Health Center
8. See answer to number 7.
2003 North Shore Hospital
9. Wanda Phillips, mother
1848 N.W. 42nd Street
Miami, FL

Jamisha Carter, friend
Derricka Johnson, baby's aunt
Earl Redford, father of baby
10. I have not been able to hold a full time job because I have to take my daughter to a doctor's appointment almost every week.
11. Medicaid, Social Security Benefits \$623.00, food stamps.
12. Not yet determined
13. See answer to number 9. They will testify as to what happened at labor and delivery and my daughter's injuries.
14. Dr. Christ-Ann A.E. Magloire
15. I was treated by Economic Opportunity Family Health Center, Dr. Christ-Ann A.E. Magloire.

My daughter, Lamariya Redford has treated with the following:

Physical therapist, Isabel and Lynette, Jackson Memorial Hospital.
Dr. Magloirem 54 N.W. 22nd Avenue, Miami, FL
Dr. Bridges (Primary Peditrician)
Dr. Moody, Physical therapist and OT at Jackson Memorial Hospital.
Silva Fagardo-Hiriartna
Mailman Clinic Jackson Memorial
Jaquess Toussaint, 1601 N.W. 12th Avenue, Miami, FL
Dr. Robert Lopez 1001 N.W. 12th Avenue, Neurologist
Alexis Diaz, (ITDS) 1601 N.W. 12th Avenue
Silva Fagardo-Hiriartna, 1601 N.W. 12th Avenue, Miami, FL
Bascom Palmer (Jackson Memorial Hospital)
Jackson Memorial MRI Center
North Shore Hospital
Miami Children's Hospital

16. Yes. I have not calculated this.
17. None
18. I have not calculated this. The court will decide my daughter's serious neurological injuries.
19. Social Security Benefits \$623.00
Food Stamps: \$298.00

INTERROGATORIES

1. State your full name (include your current name and all former names by which you have been known, including nicknames, maiden name, names from prior marriages, etc.) residence address, work or business name and address, date of birth, place of birth and Social Security number.

2. State whether you are a naturalized United states citizen, and if so, identify your alien registration number and date of United States citizenship.

3. State whether you have ever been married. If so, state the names of your spouses, their current addresses and the dates on which you were married and the marriage ended.

4. Describe your educational background including the names and addresses of all educational institutions attended and all degrees received.

5. Identify by name, date of birth and current residential address, all of your natural born or adopted children. For each child, identify the natural (biological) parents of that child.

- 6 Identify (by name and address) each of your employers for the past 10 years; your job title, the length of time you were employed by each employer; and your starting and ending salary.

7. Identify by name and address all health care providers (including but not limited to physicians, physical therapists, nurses, psychologists and psychiatrists) who conducted, examined, treated, or rendered any medical service to Markeisha Jenkins in the past 10 years. Please include in your answer the dates when such services were rendered.

8. Identify by name and address all hospitals, clinics, mental care facilities, or medical facilities that rendered any medical or psychological services to Markeisha Jenkins in the past 10 years. Please include in your answer the dates when such services were rendered.

9. List the names and addresses of all persons who are believed or known by you, your agents or attorneys to have any knowledge concerning the issues in this lawsuit and specify the subject matter on which the witness has knowledge.

10. Please state, in detail, each and every item of economic loss or damage sustained by you as a result of the care and treatment you received at the Economic Opportunity Family Health Center.

11. Identify the source and amount of any and all payments your presently receive from the Social Security Administration, CHAMPUS, the Department of Veterans Affairs, the military, or any other state or federal entity as a benefit or pension.

12. With respect to all witnesses whom you will call or may call as experts to give opinion testimony in the trial of this matter, state the following:
 - A. name and address;
 - B. name and address of his/her employer or the organization with which he is associated in any professional capacity;
 - C. the field in which he/she is offered as an expert;
 - D. a summary of his/her qualifications within the field in which he/she is expected to testify;
 - E. the substance of the opinions to which he/she is expected to testify and a summary of the grounds for each opinion;
 - F. state the names and addresses of experts who have been retained or specially employed by the claimant in anticipation of this litigation or preparation for trial but who are not expected to be called as a witness for trial.

13. Please state the name and address of each person you expect to call as a fact witness at trial and, for each person, state his relationship to you and the subject matter on which such witness is expected to testify.

14. Please identify by name all medical personnel who discussed with you or a member of your family the care and treatment Markeisha Jenkins and Lamariya Redford received at the Economic Opportunity Family Health Center.

15. State the names and addresses of every health care provider (including doctors, osteopaths, chiropractors, clinics, nurse practitioners, physical therapists, etc.), hospitals (as an inpatient and outpatient), emergency care facilities, etc., who, or which, treated or examined you and/or Lamariya Redford as a result of the injuries you allegedly sustained in this case, and state the amount of the bills for each.

16. If you are claiming loss of past earnings and/or loss of future earnings capacity, state the exact amount of each that you are claiming and the method used to calculate each claim.

17. Identify all medications that you and/or Lamariya Redford are currently taking, including the dosages and frequencies of each medication, the condition for which each medication was diagnosed, and the name and address of the physician who prescribed each medication.

18. State with specificity the amount you are seeking to recover for medical care, loss of earnings (past and future) and all other elements of your damages.

19. Please provide a list of all monies received into your household on a monthly basis and on a lump sum basis from all sources, including, but not limited to, Social Security, Department of Veterans Affairs, insurance disability, etc. Please specify the name and address of the source of the funds, the amount of the monies received monthly or on a lump sum basis and the time period for the payments.

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Not Reported in F.Supp.2d, 2007 WL 522009 (N.D.Fla.)
(Cite as: Not Reported in F.Supp.2d)

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Stallworth v. Hartford Ins. Co.
N.D.Fla., 2007.

Only the Westlaw citation is currently available.

United States District Court, N.D. Florida,
Pensacola Division.

Thomas STALLWORTH and Willie Mae Stall-
worth, Plaintiffs,

v.

The HARTFORD INSURANCE COMPANY, et
al., Defendants.

No. 3:06cv89/MCR/EMT.

Feb. 16, 2007.

Thomas Stallworth, Houston, TX, pro se.

Willie Mae Stallworth, Houston, TX, pro se.

Joseph T. Kissane, Geoffrey David Sessions, Hin-
shaw & Culbertson, Jacksonville, FL, for Defend-
ants.

ELIZABETH M. TIMOTHY, United States Magis-
trate Judge.

*1 This cause is before the court on Defendant
Hartford Insurance Company's motion to compel
Plaintiffs' responses to requests for production
(Doc. 53) and Plaintiffs' response thereto (Doc. 65).

This is an action alleging breach of contract and
breach of the implied warranty of good faith and
fair dealing. Generally, Plaintiffs allege Defendants
breached their contract for automobile insurance
coverage by failing to pay benefits for injuries
Plaintiffs incurred during an automobile accident in
May of 1999, and failing to reasonably perform
their duties under the contract (*see* Doc. 30).
Plaintiffs seek compensatory and punitive damages
(*id.*).

On December 27, 2006, Defendant Hartford prop-
ounded, among other discovery requests, a request
for production of documents (consisting of fourteen
requests) upon each Plaintiff (*see* Doc. 53 ¶ 1, Ex.
A). In Defendant's motion to compel, counsel al-
leges that Plaintiffs objected to request number 7,
which requests copies of all medical, psychiatric

and hospital records relating to an accident in-
volving Plaintiffs that occurred on March 10, 2005
(*id.* at 2-3). Defendant asserts that Plaintiffs objec-
ted to the request on the ground that the informa-
tion is irrelevant (*id.*). Counsel for Defendant fur-
ther states that prior to the filing of the motion to
compel, he made a good faith effort to obtain the
discovery without court action but was unsuccess-
ful (*id.* at 4).

Plaintiffs have responded to Defendant's motion to
compel by stating that they submitted "copies of re-
quest for production" to Defendant on January 5,
2007 (Doc. 65 ¶ 2). Plaintiffs refer the court to Ex-
hibit A in support of this assertion. Additionally,
Plaintiffs state that on January 1, 2006, prior to ini-
tiation of his lawsuit, both of them signed medical
authorizations and supplied them to Mr. Sean Man-
ley and Nate F. Matthews, employees of Defend-
ants, to enable Defendants to obtain "whatever
medical documentation was needed by defendant
from 1997 to present," and Plaintiffs refer the court
to Exhibit D (*id.* ¶ 5).

The Federal Rules of Civil Procedure provide that a
party may serve requests for production of docu-
ments which are "in the possession, custody or con-
trol of the party upon whom the request is
served." Fed.R.Civ.P. 34(a). "Control is defined not
only as possession, but as the legal right to obtain
the documents requested upon demand." Searock v.
Stripling, 736 F.2d 650, 653 (11 th Cir.1984). The
response shall state that inspection and related
activities will be permitted as requested, unless the
request is objected to, in which case the reasons for
objection shall be stated. Fed.R.Civ.P. 34(b). If the
documents for production are not in existence, the
objecting party should so state under oath. *See*
Cairnes v. Chicago Exp., Inc., 25 F.R.D. 169, 170
(N.D. Ohio 1960). An evasive or incomplete answer
to an interrogatory or request for production is to be
treated as a failure to answer. Fed.R.Civ.P.
37(a)(3).

*2 Upon review of Plaintiffs' response to the mo-



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tion to compel, the court concludes that Plaintiffs have not responded to the discovery request and should be required to do so. As discussed *supra*, this action involves a claim for personal injury benefits; therefore, evidence relating to accidents and injuries that occurred after the accident in May of 1999 are relevant to the issue of whether Plaintiffs' presently claimed injuries resulted from the accident in May of 1999 or a subsequent accident. See *Holmes v. Redland Const. Co.*, 557 So.2d 911, 912 (Fla.3d Dist.Ct.App.1990) (evidence relating to personal injury claim brought by plaintiff five years after accident for which he was currently suing was relevant because it tended to prove that plaintiff's presently claimed injuries resulted from subsequent accident); *State Farm Fire and Cas. Co. v. Pettigrew*, 884 So.2d 191, 197 (Fla.2d Dist.Ct.App.2004 (citing *Holmes*)). Additionally, to the extent Plaintiffs contend that they complied with the request for production because they supplied Defendants with medical authorizations in January of 2006 (see Doc. 65 ¶ 5, Ex. D), this does not constitute compliance with Defendant's discovery request. Plaintiffs do not allege that they informed Defendant in their response to the request for production that they had executed the authorizations one year earlier, nor do they assert that they supplied the one-year-old authorizations in response to Defendant's request. Furthermore, the authorizations enable Defendant to obtain medical records only for the period of time from 1997 to January 1, 2006, thus the authorizations do not cover the period subsequent to January 1, 2006. Moreover, the authorizations attached to Plaintiffs' response to the motion to compel enable Defendant to obtain records of only one Plaintiff, Thomas Stallworth (Doc. 65, Ex. D). Because the documents requested by Defendant are discoverable and Plaintiffs did not provide them, Plaintiffs shall be required to provide them.

The remaining issue is whether Defendant Hartford is entitled to an award of expenses. Rule 37(a)(4) provides, in relevant part:

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an oppor-

tunity to be heard, require the party ... whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.

Fed. R. Civ. Pro. 37(a)(4). There exists a rebuttable presumption that the court will impose sanctions against the party whose conduct necessitated the motion to compel. The party who necessitated the motion may rebut this presumption by showing that his or her failure to comply with a discovery request was either "substantially justified" or "that other circumstances make an award of expenses unjust." Fed.R.Civ.P. 37(a)(4)(A). A party's objection to a discovery request is substantially justified if the objection raises an issue about which there is a genuine dispute, or if reasonable people could differ as to the appropriateness of the discovery request. See *Doe v. Lexington-Fayette Urban County Gov't*, 407 F.3d 755, 766 (6th Cir.2005) (citing *Pierce v. Underwood*, 487 U.S. 522, 565 (1988)).

*3 In this case, the court cannot conclude that Plaintiffs' objection to the request for records related to the 2005 accident was "substantially justified." Furthermore, Defendant Hartford states that even after he advised Plaintiffs of the holding in *Holmes*, Plaintiffs refused to provide the requested documents. Therefore, the court cannot conclude that an award of expenses is unjust. Accordingly, Defendant Hartford is entitled to fees and expenses incurred in bringing the motion to compel.

Accordingly, it is **ORDERED**:

1. Defendant's Hartford's motion to compel (Doc. 53) is **GRANTED**.

Plaintiffs shall respond to Defendant's requests for production within **TWENTY (20) DAYS** of the date of docketing of this order.

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3. Within **TWENTY (20) DAYS** of the date of docketing this order, Defendant Hartford shall submit documentation of fees and expenses incurred in making the motion to compel. Within **TWENTY (20) DAYS** thereafter, Plaintiffs will be permitted to address the issue of sanctions and the reasonableness of the fees and expenses submitted by Defendant Hartford's counsel.

DONE AND ORDERED.

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END OF DOCUMENT