

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

ERIN PARKINSON, as Personal
Representative of the Estate of JOEL
PARKINSON,

CASE NO.: 08-CA-27688
DIVISION: 33

Plaintiff,

vs.

KIA MOTORS CORPORATION, a South
Korea corporation, KIA MOTORS AMERICA,
INC., a California corporation f/k/a CITY KIA,
and JAMES C. GIERLICH, as Florida Resident,

Defendants,

KIA MOTORS AMERICA, INC.,
a foreign corporation,

Cross-Claimant,

vs.

JAMES C. GIERLICH, a Florida resident,

Cross-Defendant.

*Copies
attached*

KIA MOTORS AMERICA, INC.,
a foreign corporation,

Third Party Plaintiff,

vs.

PROGRESSIVE CASUALTY INSURANCE COMPANY,
a Florida corporation,

Third Party Defendant.

**JAMES C. GIERLICH'S MOTION FOR PROTECTIVE ORDER AND
OBJECTION TO THE NOTICE OF DEPOSITION OF
LIEUTENANT TIMOTHY FREEBERN
FLORIDA PATROL, EVIDENCE DEPARTMENT**

COMES NOW the Defendant, JAMES C. GIERLICH, by and through the undersigned counsel, and hereby objects to Defendant , KIA MOTORS AMERICA, INC.'S Notice of Taking Deposition *Duces Tecum* of **Lieutenant Timothy Freebern** of the **Florida Highway Patrol, Evidence Department** and files this Motion for Protective Order, and in support thereof states as follows:

1. The above-captioned lawsuit arises out of a motor vehicle accident which occurred on October 30, 2006, resulting in the death of JOEL PARKINSON.

2. Plaintiff has brought claims against JAMES C. GIERLICH alleging negligent operation of his vehicle. In addition, Plaintiff has brought claims against KIA MOTORS AMERICA, INC. and various other entities associated with KIA alleging the Kia vehicle driven by the decedent, JOEL PARKINSON, was unreasonably dangerous.

3. On August 12, 2009, KIA MOTORS AMERICA, INC. filed its Notice of Taking Deposition *Duces Tecum* of **Lieutenant Timothy Freebern** of the **Florida Highway Patrol, Evidence Department** seeking medical records for JAMES C. GIERLICH. A copy of the Notice of Taking Deposition *Duces Tecum* and attached Schedule "A" are attached hereto as Exhibit "1".

4. Defendant, JAMES C. GIERLICH objects to the aforementioned Notice of Taking Deposition *Duces Tecum* and any and all other Notices of Taking Depositions *Duces Tecum*'s directed to a medical provider of JAMES C. GIERLICH on the grounds that they seek the discovery of information or documents that are neither relevant to the issues in this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. This is particularly true with respect to the co-defendant, KIA MOTORS AMERICA, INC.

5. In addition, JAMES C. GIERLICH further objects to the aforementioned Notices of Taking Depositions *Duces Tecum* on the grounds that they violate JAMES C. GIERLICH'S right to privacy as guaranteed under Fla. Const. art. I, § 23 and U.S. Const. amend XIV, § 1. *See Whalen v. Roe*, 429 U.S. 589 (1977); *Berkeley v. Eisen*, 699 So. 2d 789, 790 (Fla. 4th DCA 1997); *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984); *South Florida Blood Service, Inc. v. Rasmussen*, 467 So. 2d 798, 803 (Fla. 3d DCA 1985). Specifically, it is clear that contained in

the right to privacy is the right to prevent the disclosure of personal medical records. *E.E.O.C. v. Alabama Dept. of Youth Services*, 2006 WL 1766785 (M.D. Ala. 2006); *Doe v. Southeastern Pennsylvania Transportation Authority*, 72 F.3d 1133, 1137 (3d Cir. 1995); *United States v. Westinghouse Electric Corp.*, 638 F.2d 570, 577 (3d Cir. 1980); *Wilson v. Pennsylvania State Police Dept.*, 1999 WL 179692 (E.D.Pa. 1999) (“There can be no question that an employee's medical records, which may contain intimate facts of a personal nature, are well within the ambit of materials entitled to privacy protection. Information about one's body and state of health is matter which the individual is ordinarily entitled to retain within the “private enclave where he may lead a private life.””) (citing *Murphy v. Waterfront Commission*, 378 U.S. 52, 55 (1964)); *Norman-Bloodsaw v. Lawrence Berkeley Lab.*, 135 F.3d 1260, 1269 (9th Cir. 1998) (“The constitutionally protected privacy interest in avoiding disclosure of personal matters clearly encompasses medical information and its confidentiality.”). Finally, Defendant objects as this they seek information that is privileged and confidential.

WHEREFORE, Defendant, JAMES C. GIERLICH respectfully requests that this Court grant an Order of Protection prohibiting the disclosure and discovery of any and all medical records and information of JAMES C. GIERLICH and prohibiting the aforementioned Deposition *Duces Tecum*.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by Facsimile and First-Class U.S. Mail to Darryl L. Lewis, Esquire, 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida 33409; Larry M. Roth, Esquire, P.O. Box 547637, Orlando, Florida 32854; and Joseph T. Kissane, Esquire, Cole, Scott & Kissane, 4686 Sunbeam Road, Jacksonville, Florida 32257, this 20th day of August, 2009.

SMITH HOOD PERKINS

By:  _____

TERENCE R. PERKINS
FL Bar No. 321117
Post Office Box 15200
Daytona Beach, FL 32115
386-254-6875
386-257-1834 facsimile
ATTORNEYS FOR DEFENDANT
JAMES GIERLICH

IN THE CIRCUIT COURT, NINTH
JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

CASE NO.: 08-CA-27688

ERIN PARKINSON, as Personal
Representative of the Estate of JOEL
PARKINSON,

Plaintiff,

vs.

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a South Korea corporation, KIA MOTORS
AMERICA, INC., a California corporation,
NEW MOTORS, INC., a Florida corporation
f/k/a CITY KIA, and JAMES C. GIERLICH, a
Florida Resident,

Defendants.

KIA MOTORS AMERICA, INC.,
a Foreign corporation,

Cross-Claimant,

vs.

JAMES C. GIERLICH, a Florida resident,

Cross-Defendant.

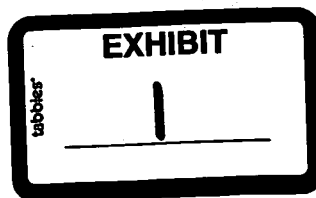
KIA MOTORS AMERICA, INC.,
a Foreign corporation,

Third Party Plaintiff,

vs.

PROGRESSIVE CASUALTY INSURANCE
COMPANY, a Florida corporation,

Third Party Defendant.



**NOTICE OF TAKING DEPOSITION DUCES TECUM OF
LIEUTENANT TIMOTHY FREEBERN
FLORIDA HIGHWAY PATROL, EVIDENCE DEPARTMENT**

YOU WILL PLEASE TAKE NOTICE that the Defendant, KIA MOTORS AMERICA, INC., will take the following deposition:

DEPONENT: **LIEUTENANT TIMOTHY FREEBERN**
Florida Highway Patrol
Evidence Department
133 South Semoran Boulevard
Suite A
Orlando, FL 32807
Re: FHP Homicide Case No. FHP 706-07-100
Homicide Investigator: Brian J. Gensler

LOCATION: **Florida Highway Patrol**
133 South Semoran Boulevard
Suite A
Orlando, FL 32807

DATE AND TIME: **October 7, 2009 @ 10:00 a.m.**


This deposition is being taken upon examination before Barbara Perry and Company, or any other Notary Public authorized by law to take depositions. This deposition is being taken for purposes of discovery, for use as evidence and for such other uses and purposes as are permitted under the Florida Rules of Civil Procedure and other applicable law. This deposition will continue day to day until completed. Attached hereto as Schedule A is a listing of those items to be produced per Fla. R. Civ. P. 1.310(b)(5).

RESPECTFULLY SUBMITTED this 13th day of August, 2009.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct of the foregoing has been delivered by Facsimile and U.S. Mail delivery to: **DARRYL L. LEWIS, ESQUIRE** and

EDWARD V. RICCI, ESQUIRE, Searcy, Denney, Scarola, Barnhart & Shipley, P.A.,
2139 Palm Beach Lakes Blvd., West Palm Beach, Florida 33409; **TERENCE R.**
PERKINS, ESQUIRE, Smith, Hood, Perkins, Loucks, Stout, Bigman, Lane & Brock,
P.A., P.O. Box 15200, Daytona Beach, Florida 32115, and **JOSEPH THOMAS**
KISSANE, ESQUIRE, Cole, Scott & Kissane, 4686 Sunbeam Road, Jacksonville, FL
32257; this 12th day of August, 2009.


Neil P. Di Spirito, Esquire
Florida Bar No. 027698
Larry M. Roth, Esquire
Florida Bar No. 208116
Law Office of Larry M. Roth, P.A.
Post Office Box 547637
Orlando, Florida 32854-7637
Phone: (407) 872-2239
Attorney for Defendant,
KIA MOTORS AMERICA, INC.

cc: Barbara Perry and Company
(407) 422-2953

Schedule A

Any records pertaining to the blood, tissue and biological samples as well as the actual blood, tissue and biological samples taken from **James C. Gierlich, DOB: 07/18/78**, taken on October 30, 2006, and descriptions of their means of preservation, if any, or means of disposal, if any and the chain of custody.

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Cross-Claimant,

vs.

JAMES C. GIERLICH, a Florida resident,

Cross-Defendant.

KIA MOTORS AMERICA, INC.,
a Foreign corporation,

Third Party Plaintiff,

vs.

PROGRESSIVE CASUALTY INSURANCE
COMPANY, a Florida corporation,

Third Party Defendant.

**NOTICE OF TAKING DEPOSITION OF
DWAYNE FITZGERALD OF INFINITY INSURANCE COMPANY**

YOU WILL PLEASE TAKE NOTICE that the Defendant, KIA MOTORS AMERICA, INC., will take the following deposition:

DEPONENT

Dwayne Fitzgerald
Infinity Insurance Company

LOCATION

3600 Vineland Road
Suite 103
Orlando, FL 32811

DATE AND TIME

October 7, 2009
@ 1:00 p.m.

mmH

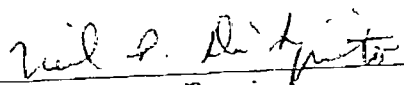
This deposition is being taken upon examination before Barbara Perry & Company, or any other Notary Public authorized by law to take depositions. This deposition is being taken for purposes of discovery, for use as evidence and for such other uses and purposes as are permitted under the Florida Rules of Civil Procedure and other applicable law. This deposition will continue day to day until completed.

RESPECTFULLY SUBMITTED this 13th day of August, 2009.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct of the foregoing has been delivered via U.S. Mail delivery to: **DARRYL L. LEWIS, ESQUIRE** and **EDWARD V. RICCI, ESQUIRE**, Searcy, Denney, Scarola, Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida 33409; **TERENCE R. PERKINS, ESQUIRE**, Smith, Hood, Perkins, Loucks, Stout, Bigman, Lane & Brock, P.A., P.O. Box 15200, Daytona Beach, Florida 32115; and **JOSEPH THOMAS KISSANE, ESQUIRE**, Cole, Scott &

Kissane, 4686 Sunbeam Road, Jacksonville, FL 32257, this 13th day of August, 2009.


Neil P. Di Spirito, Esquire
Florida Bar No. 027698
Larry M. Roth, Esquire
Florida Bar No. 208116
Law Office of Larry M. Roth, P.A.
Post Office Box 547637
Orlando, Florida 32854-7637
Phone: (407) 872-2239
Attorney for Defendant,
KIA MOTORS AMERICA, INC.

cc: Barbara Perry & Company

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Cross-Defendant.

KIA MOTORS AMERICA, INC.,
a Foreign corporation,

Third Party Plaintiff,

vs.

PROGRESSIVE CASUALTY INSURANCE
COMPANY, a Florida corporation,

Third Party Defendant.

**NOTICE OF TAKING DEPOSITION OF
KYLE BERTHIAUME OF INFINITY INSURANCE COMPANY**

YOU WILL PLEASE TAKE NOTICE that the Defendant, KIA MOTORS AMERICA, INC., will take the following deposition:

<u>DEPONENT</u>	<u>LOCATION</u>	<u>DATE AND TIME</u>
Kyle Berthiaume Infinity Insurance Company	3600 Vineland Road Suite 103 Orlando, FL 32811	October 7, 2009 @ 2:00 p.m.

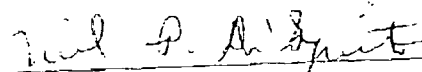
This deposition is being taken upon examination before Barbara Perry & Company, or any other Notary Public authorized by law to take depositions. This deposition is being taken for purposes of discovery, for use as evidence and for such other uses and purposes as are permitted under the Florida Rules of Civil Procedure and other applicable law. This deposition will continue day to day until completed.

RESPECTFULLY SUBMITTED this 13th day of August, 2009.

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Kissane, 4686 Sunbeam Road, Jacksonville, FL 32257, this 13th day of August, 2009.



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Florida Bar No. 208116
Law Office of Larry M. Roth, P.A.
Post Office Box 547637
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Phone: (407) 872-2239
Attorney for Defendant,
KIA MOTORS AMERICA, INC.

cc: Barbara Perry & Company