

IN THE SUPREME COURT OF FLORIDA

Case No. SC11-2291

BY

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CARLOS A. ALEJANDRO ULLOA, ET AL.,

Petitioners,

vs.

CMI, Inc.,

Respondent,

**AMICUS BRIEF OF THE FLORIDA ASSOCIATION OF CRIMINAL
DEFENSE LAWYERS, IN SUPPORT OF PETITIONER ULLOA**

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SUMMARY OF THE ARGUMENT

The Uniform Act is merely a method to serve a subpoena on an out-of-state witness or corporation. The Uniform Act is not the exclusive means to serve such a subpoena. If an out-of-state witness is served a subpoena while in this state, the witness is lawfully served. Likewise, a foreign corporation doing business in this state can be served by the statutory method of service upon its registered agent. The service upon CMI's registered agent was lawful service.

ARGUMENT

I. ***THE CIRCUIT COURT PROPERLY CONCLUDED THAT THE SUBPOENAS DUCES TECUM WERE PROPERLY SERVED UPON CMI'S REGISTERED AGENT IN FLORIDA***

The Uniform Act is not the exclusive mechanism for serving a subpoena on an out-of-state witness; the Uniform Act is merely a method of serving a subpoena on an out-of-state witness. CMI asserted in its Motion to Quash that the Uniform principle of law

the Uniform Act is the exclusive mechanism for serving a subpoena on an out-of-state witness. While use of the Uniform Act may be the only way to compel the attendance of a witness that is no longer in the State of Florida, there is no portion of the act which precludes serving a witness that is not a Florida resident while the witness is in the State of Florida or from serving a foreign corporation that is actively engaged in business in the State of Florida using a traditional subpoena issued outside the parameters of the Uniform Act.

The Uniform Law authorizes a request for testimony accompanied by a request for production of documents. *CMI, Inc. v. Landrum*, 64 So.3d 693 (Fla. 2d DCA 2010), rev. denied, 54 So.3d 973 (Fla. 2011). *State v. Bastos*, 985 So.2d 37 (Fla. 3d DCA 2008) and *General Motors Corp. v. State*, 357

So.2d 1045 (Fla. 3d DCA 1978). The Uniform Law does not apply to requests solely for the production of documents. *Landrum; General Motors*. The Third District clarified its holding in *General Motors* in the *Bastos* opinion writing: "Since the instant subpoena duces tecum requests only the production of documents and since it is directed to a foreign corporation authorized to do, registered to do and doing business in Florida, the Uniform Law is inapplicable." *Bastos* at 39. The subpoena duces tecums to CMI only requested the production of documents; since CMI was a foreign corporation authorized to do, registered to do and doing business in Florida, the trial court followed the principles set forth in *Landrum, General Motors* and *Bastos*. Neither the trial court, nor the circuit court, by following *Landrum, General Motors* and *Bastos*, could not have violated "a clearly established principle of law."

The Indiana Supreme Court, in addressing a subpoena duces tecum sent to the State of Kentucky, rejected the notion that the Uniform Act is the exclusive mechanism for serving a subpoena on an out-of-state witness. *Forbes v. Indiana*, 810 N.E.2d 681 (Ind. 2004). In *Forbes*, a subpoena duces tecum was sent to a hospital in Kentucky for medical records not utilizing the Uniform Act. The Indiana Supreme Court found the Uniform Act "is designed to provide a method of compelling attendance of witnesses

or documents from another state.” (Emphasis added) *Id.* The Court further held the Uniform Act “does not purport to be the exclusive method for sharing information across state lines.” *Id.*

If CMI did not have a presence in the State of Florida, then the Uniform Act would have been the only way to subpoena CMI. Since CMI has a presence in the State of Florida and is registered to transact business in the State of Florida, a Florida subpoena is lawful.

If CMI’s analysis of Chapter 942 were correct, then every Florida subpoena served upon a winter visitor would be invalid. These witnesses could only be served utilizing the Uniform Act, even if they were served in Florida before they returned to their home state. This interpretation is erroneous. There is nothing in the Uniform Act that indicates it is the only method to serve a witness which has a presence in both Florida and another State. However, the contrary is true. Section 942.04(1), Florida Statutes provides that if a person comes into this state in obedience to a summons issued pursuant to the Uniform Act, that person is **not** subject to service of process. If the Uniform Act was the exclusive method to serve a subpoena on an out-of-state witness, this provision would be meaningless, for notwithstanding this statute, the out-of-state witness could not be served a subpoena by any method other than the Uniform Act. The Uniform Act is

simply a set of procedures to subpoena a witness who is otherwise beyond the jurisdiction of the Court. Since CMI is transacting business in the State of Florida, there was no reason to utilize the Uniform Act.

If CMI's interpretation of the Uniform Act were correct, routine subpoenas issued to out-of-state hospitals doing business in Florida would all have to utilize the Uniform Act. For example, Hospital Corporation of America, Inc. (HCA) runs over one hundred hospitals in Florida. HCA is a Delaware Corporation with its home office in Tennessee. If this court adopted CMI's reading of the Uniform Act, all subpoenas for HCA medical records would have to be processed in the State of Delaware. The well reasoned decisions in *Landrum*, *General Motors* and *Bastos* are much more logical; if HCA is a foreign corporation authorized to do, registered to do and doing business in Florida, then a subpoena may be issued without utilizing the Uniform Act. The Uniform Act is only necessary if the foreign corporation is not doing business in the state.

The basis of CMI's Motion to Quash and the District Court's opinion was an out-of-state corporation can only be served a subpoena using the Uniform Act. This is not a case where the ruling was based upon evidence that CMI did not have sufficient presence in Florida, for no evidence was

presented in regards to CMI's business contacts in Florida.¹ The Opinion of the Fifth District Court, would allow any corporation in Florida, that chooses to transfer its registration to another state, to obtain immunity from service of subpoenas (except under the Uniform Act), regardless if the corporation had zero or a thousand employees working in this state.

The trial court also had jurisdiction over CMI pursuant to Florida Statutes. A foreign corporation registered to transact business in the State of Florida, is subject to the same duties, restrictions, penalties, and liabilities imposed on a domestic corporation of like character. §607.1505(2), Florida Statutes. As a foreign corporation registered to transact business in the State of Florida, the Circuit Court had jurisdiction over CMI just like it has jurisdiction over any Florida corporation. CMI came to Florida and registered under this Statute so it could obtain a multi-million dollar contract to sell breath testing machines to the State of Florida. CMI cannot seek the benefits of transacting business in this state, and then claim it is not here.

¹ CMI did assert in footnote 8 of the Motion to Quash that CMI "has no offices, employees or documents in the state", but no evidence was presented to the trial court, and likewise, no counter-evidence was presented such as the provisions contained in CMI's contract with the State of Florida to sell Intoxilyzers, the presence of repair facilities in Florida and their legal effect.

CONCLUSION

CMI is a foreign corporation authorized to do, registered to do and doing business in Florida. While the Petitioner had the option of serving CMI with a subpoena utilizing the Uniform Act, there is no requirement to do so. The Uniform Act is merely a means of serving a subpoena, but the Act is not the exclusive means to serve a subpoena.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished by regular U.S. mail to the following counsel, this 17th day of August, 2012.

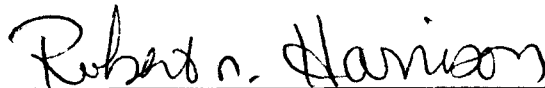
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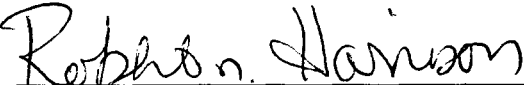
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CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I hereby certify that this Petition complies with the font requirements
of Rule 9.210.



Robert N. Harrison